

## 7. Recommendations

In the development of my recommendations, I kept in mind and was guided by the principles identified in the terms of reference. The terms of reference clearly stated these principles as follows:

- the police are ultimately accountable to civilian authority;
- the public complaints system must be and must be seen to be fair, effective and transparent;
- any model of resolving public complaints about police should have the confidence of the public and the respect of the police; and
- the Province's responsibility for ensuring police accountability in matters of public safety and public trust must be preserved.

It was clear from the submissions I received that almost everyone supported these principles and that these principles should form the cornerstone for my recommendations. The debate was chiefly over how well these principles are reflected in the current system and whether changes are necessary so that these principles may be better reflected.

While some members of the policing community expressed frustration that the police appear to be unfairly targeted for yet another review, most recognized that in a time when accountability systems across our society are being reviewed, it is inevitable that one of the most important components of our criminal justice system will also be subjected to review and scrutiny. The regular review of accountability systems should be expected as standards continue to evolve.

The trend across all jurisdictions is for more robust forms of civilian oversight of the police. This fact should cause neither surprise nor concern given the role of the police in modern society, the work of the police, the power that the police wield and the potential for abuse of that power. In my review of complaints systems in other jurisdictions, it became clear that no one system stands out as a model upon which all others should be based. Complaints systems appear to have been implemented based on the historical relationship between the police and the community. This presents a significant challenge to the creation of a system in a Province as large and diverse as Ontario, with police services that have over 5000 and some that have fewer than ten officers. In crafting my recommendations, I have accorded considerable weight to the history of civilian oversight in Ontario and the submissions that were made to me.

Implicit in the principles crafted by the government to guide me in the preparation of my recommendations is the rationale for the establishment of complaints systems in the first place. The first and most obvious reason is that a properly administered system for complaints assists the police service in correcting problems that exist within the organization. In many cases, the problems can be addressed through remedial measures such as education and training instead of punitive measures. The second is that effective complaints systems help in preserving community confidence and trust in the police. While relatively few of us may ever see the need to file a complaint regarding the police, common wisdom recognizes that the bad experiences of only a few are sufficient to

undermine the general respect for an entire institution. Where policing is concerned, confidence and trust in the police is critical to effective policing, which in turn is vital to preserving public safety.

Many of the discussions during my consultation were centred on the requirement for independence of the oversight system. To some groups, confidence in the system can only be achieved when the receipt, investigation and adjudication of complaints is administered completely by civilians. Although this was something that many community groups have argued for, and a view that is shared by some members of the policing community, others felt that confidence in the system could be achieved by increased civilian involvement in the system.

While independence is critical to foster trust and respect for the system, I am not convinced that a system totally removed from the police is in the interests of the community or the police in Ontario. However, I am of the view that significant systemic changes, which include civilian oversight and monitoring of the complaints process, need to be made to improve confidence in how complaints regarding the police are handled.

Across Ontario, there are community representatives and police services that are working together to increase the level of trust and confidence in the operation of the current complaints system. That trust and confidence is being built in some communities, despite a complaints framework that is, in my view, flawed. This

speaks volumes for the initiative and determination of some police services and community representatives. This type of cooperation needs to be encouraged across the Province. Capacity for civilian oversight and management of the public complaints system no doubt needs to be increased, but this should not release the police from doing their professional duty of monitoring, controlling and punishing misconduct, and improving services and policies within their organizations. In regard to the latter, I would be remiss if I did not note the work that has been conducted to date by the Kingston Police Service to promote bias-free policing.<sup>139</sup>

I have gained considerable appreciation for the intimate connection between public complaints and the disciplinary process. Part V of the PSA combines the process used for public complaints in relation to the action and service delivery of the police with the internal work performance and disciplinary process utilized by the chief of police to maintain discipline within the police service and address issues of work performance by members of the service. Much of this is managerially sound and logical; however, the system as it exists today requires a new model of civilian participation and oversight.

The following recommendations should be seen as a response to some of the fundamental problems underlying the current legislation, with the goal of improving parts of the system so that it operates more effectively. In preparing

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<sup>139</sup> Kingston Police Service, Kingston Police Data Collection Project: A Preliminary Report to the Kingston Police Services Board (Kingston: Kingston Police Service, 2005).

my recommendations, I have decided not to set out an extensive list of detailed recommendations, and I have not addressed every issue that was identified in the submissions that I received. Instead, I have focused on what I believe are the necessary and key reforms to the system. They should be seen as my views on the general direction to which change should be headed.

I also want to emphasize that the mandate is to review the public complaints system. Given the linkage between public complaints and the internal discipline process, it is difficult to delineate where the public complaints system commences and where it ends. There are certain areas where I would be exceeding my terms of reference if I were to make recommendations. Because of that, I have purposely omitted any recommendations regarding the code of conduct despite many requests that I recommend its modernization. I also do not discuss summary discipline nor the proposal to combine police complaints hearings with civil court and human rights proceedings. However, there are other areas where I did not have such reservations about the scope of my mandate.

## **Access**

I have heard a great deal from community groups and individual complainants regarding the current difficulties in filing a complaint. Underlying some of these difficulties is the lack of understanding of how the system operates and where to find information about the system. Public education on the complaints system has been virtually non-existent for many years. Recently there have been

significant serious efforts on the part of OCCOPS to engage in community outreach. Outreach and public education are critical to fostering understanding and public confidence, and the lack of efforts in this area has no doubt been partly responsible for the current problems. An example of how outreach can make a profound impact is in the Windsor Police Service's experience of developing a small pamphlet on police practices. This pamphlet contains information, in general terms, on issues such as a citizen's rights when stopped by police and when searches are permitted. It also contains information on how to file a complaint about the police. The development of the pamphlet involved the police service, the police association, the police services board and a host of local community groups. Not only did their work produce an important tool for public education, but the process itself helped to promote trust and understanding amongst the parties. More of this type of work is to be encouraged. Despite the success of the Windsor initiative, the existing system places almost all the burden on local entities to build relationships and operate the complaints machinery. In many communities, these efforts have either not been made, are difficult to organize, or have not met with as much success. It is essential to the success of any new public complaints system that an extensive public education program be put in place so the citizens of Ontario are informed about how the system operates and can be accessed. Community outreach groups, schools and organizations such as the Ontario Justice Education Network (OJEN) need to become involved. Community legal clinics may also have a role in this area.

I have no doubt that many complainants may be discouraged from filing a complaint at the police station. Although complainants may file a complaint by sending a complaint to the police or OCCOPS by mail or fax, I believe that many complainants are simply unable to effectively draft a complaint without assistance. As a result, many complainants are likely to prefer to file a complaint in person. Yet filing a complaint about the police is inherently different from filing a complaint against a department store. There is an understandable reluctance to file complaints regarding those in authority by going directly to the authority. This is especially true if the perception is that the filing of a public complaint with the police will turn into an investigation of the person making the complaint, rather than the complaint itself. Other avenues for filing a complaint are necessary.

I also heard from, and strongly agree with, those who suggest that other systemic barriers currently exist that impede the filing of complaints. As such, legitimate complaints may not even have a chance of being investigated and corrective action cannot be taken. A key concern about the current system is the limitation period. This limitation period simply does not recognize the reality that there are times when it is inappropriate for a potential complainant to file a complaint within six months from the time of the events upon which the complaint is based. While I recognize that there is discretion conferred upon chiefs of police to extend the limitation period, this decision should not be made by members of the

organization being complained about. In cases where complaints stem out of the laying of criminal charges, the limitation period should not begin to run until those charges reach their ultimate resolution.

The current system does not allow third-party complaints. While there was considerable debate as to whether third-party complaints should be allowed, it is obvious to me that the current rule needs to be changed. I also consider it significant that some chiefs of police have advised that despite the Act, they will, quite rightly, consider third-party complaints as part of their duty to manage the police service. I believe that the system should not bar outright third-party complaints. Additionally, only defined members of the public are allowed to make complaints.

In terms of ensuring access to the complaints system, it is vitally important that members of the public are able to identify officers. Identification is of particular concern in the context of public demonstrations where officers may be unrecognizable due to protective gear worn. Provincial standards should be set by the Government to ensure that all officers are readily identifiable by way of a sufficiently large name patch on their uniforms.

I am keenly aware that expanding access may open the door to mischief and abuse of the system. It is possible that groundless complaints could tax the resources of the system to the degree that the effectiveness of the system itself



is threatened. The current system attempts to control this problem through some of the mechanisms that I have referred to above, and by allowing chiefs of police to decide not to deal with complaints at the outset if they are considered to be frivolous, vexatious or made in bad faith.<sup>140</sup>

Removing the current systemic barriers to the reception of complaints needs to be balanced by conferring greater discretion on the recipient of complaints to determine whether a complaint should be pursued. There will be cases where the evidence to support a complaint is so tenuous that resources should not be expended to pursue them. Also, there will be cases where the “complaint” is really not one that is suitable for the complaints system to resolve. For example, a dispute as to whether a traffic ticket has been wrongly issued is a matter for the courts. While the current system allows a chief of police’s decisions to not pursue a complaint to be reviewable by OCCOPS, such a review is time intensive and inimical to the efficient resolution of complaints.

Facilitating access should mean the reception of all complaints, but it also requires that judicious screening of complaints be made as early as possible to protect the integrity of the system. It should include providing the necessary assistance to complainants to articulate their complaint. Potential complainants should be given an explanation of what the complaints system can and cannot do

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<sup>140</sup> I should note that these three terms were viewed with considerable distaste by many community groups and by many police and were seen by some to be evidence of police hostility towards complainants. Whatever merits there may be for their use in the legislative context, their use should be strongly discouraged except for those rare situations where they may be appropriate.

for them so that reasonable expectations are maintained. All complainants must be treated in a manner that allows them to be able to come to an informed understanding of how their complaint was dealt with. In my view, access needs to be managed by an independent body.

While overall management of access to the system should lie with an independent body, the police should not stop dealing with the public regarding their concerns. Police officers should still have a role in providing education on the complaints system and working with people who have complaints, such as directing them to the proper resources or attempting to resolve their concerns informally where appropriate. Furthermore, the police will have to continue to deal with public concerns that are not subject to the complaints system. Both the independent body and the police will need to work together to ensure that the system operates effectively and efficiently.

Proper leadership of this independent body will be critical to the new system's success. The head of the new body will in addition to the management skills required for the position require an understanding of policing and the diversity and needs of Ontarians and legal training and experience in dispute resolution. Although sitting judges have served with great distinction in the past, the evolving view is that judges should refrain from participating in public bodies that are not historically or legislatively mandated.

### **Recommendation 1:**

**An independent civilian body should be created to administer the public complaints system in Ontario. The body should not be related to OCCOPS. A civilian who has not been a police officer should lead this new organization. Civilian administrators should be responsible for the administration of the complaints system for each region of the Province.<sup>141</sup> The new body should produce an annual public report for the Government and should also hold an annual public meeting.**

### **Recommendation 2:**

**The Government should appoint community and police representatives to an advisory group for each region. The groups would meet with the head of the new body to discuss systemic concerns, but would not direct the new body.**

### **Recommendation 3:**

#### **The new body:**

- **will engage in educating the public about the complaints system;**
- **will be responsible for the intake of complaints in as many forms as possible including complaints from agents (e.g. lawyers and community groups) of complainants;**
- **will provide appropriate access to the system recognizing the linguistic, cultural and geographic diversity of the Province;**
- **will provide appropriate assistance to complainants in the filing of a complaint;**
- **will review complaints to determine whether they should be pursued further and screen out those that do not reveal a reasonable basis for the complaint, those that may be more suitably addressed through another process or those that should otherwise not be subject to further action; and**
- **will review complaints to determine whether the complaint is in regard to policy, service, conduct or any combination thereof.**

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<sup>141</sup> As an example, the Province could be divided into five separate regions: a Northwestern Region, a Northeastern Region, a Southwestern Region, a Southeastern Region, and a Central Region (consisting of Durham, York, Peel, and Toronto).

**Recommendation 4:**

**Individual police services must also participate in educating the public regarding the complaints system, continue to deal with public concerns that are not subject to the complaints system and provide necessary assistance to people who have complaints.**

**The police should still have the ability to listen to concerns on an informal basis where individuals genuinely do not wish to lodge formal complaints. A written acknowledgement indicating that he or she was informed of the complaint process should be obtained from such individuals prior to engaging in informal discussions.**

**Recommendation 5:**

**Each police service should designate a senior officer to act as a liaison to the new body. The responsibilities of this senior officer should include facilitating communication between the police service and the new body.**

**Recommendation 6:**

**Any person should be permitted to file a complaint. Third party complaints should be supported by cogent evidence.**

**Recommendation 7:**

**The limitation period for the filing of complaints should remain at six months running from the time of the events upon which the complaint is based. However, if the complainant was charged and the complaint relates to the circumstances upon which the complainant was charged, the six-month limitation period should run from the time when the charges were finally disposed of. The new body should have broad discretion to extend the limitation period in cases where the complainant is a minor or is a person incapable of bringing forward the complaint and in cases where it is of the opinion that it is in the public interest.**

**Recommendation 8:**

**Provincial standards should be set by the Government to ensure that all officers are readily identifiable by way of a sufficiently large name patch on their uniforms.**

**Recommendation 9:**

**Subject to the independent body's right to intervene and subject to the powers of the independent body described in Recommendation 24, complaints regarding policy or service should continue to be handled in the current manner. However, the chief of police should provide a final written report regarding all such complaints to the complainant, to the police services board and to the new body.**

**Recommendation 10:**

**In any final disposition of a complaint, sufficient information must be provided to the complainant to allow the complainant to arrive at an informed understanding of how the complaint was handled.**

**Recommendation 11:**

**It must be clear that any person who makes a complaint or is responsible for the handling of a complaint must not be harassed, intimidated or retaliated against for making or handling that complaint.**

**Any police officer who seeks to undermine the efficient and effective operation of the complaints system should be deemed to have engaged in misconduct.**

***Informal Resolution***

Most groups told me that in the vast majority of complaints only an explanation is sought from the police service or officer complained of. There was a great deal of interest from all parties that these complaints should be dealt with informally

and expeditiously. While the police claim that they are able to resolve many of these complaints informally, the lack of any real oversight of this process gives rise to concerns, either actual or perceived, regarding pressure exerted against the complainant to accept a certain resolution.

My discussions with the parties suggest that, despite the interest in informal resolution and an interest in expanding the process to cases beyond those which may call for an explanation, there was uncertainty regarding the operation of the process and its application. This doubt is understandable because the legislation provides little guidance on the informal resolution process. Apart from providing informal resolution as an option for resolving non-serious complaints and stating that statements made in an attempt at informal resolution are inadmissible in a future civil proceeding or at a PSA hearing, the Act is otherwise silent.

As a result, my discussions with the parties dealt with the kinds of complaints that may be suitable for informal resolution and the potential consequences on a police officer's record of an informal resolution. Many community groups and most police associations agreed that informal resolution should be available for the majority of complaints except for the most serious cases, and that the results of an informal resolution should not form part of a police officer's record. Chiefs of police, however, were concerned about police officers who might want to take advantage of an informal resolution process simply to avoid the harsher penalties available in a formal process. They also felt that if the results of an informal

resolution were not recorded in a police officer's record, it would be extremely difficult for the police service to verify the success of this process and to identify patterns of misconduct.

In my view, the informal resolution process is an opportunity not only for everyone to engage in a potentially more efficient and satisfactory process, but it allows for creative processes to be developed locally with the police and the community to deal with complaints. Informal resolution should be an alternative means of complaint resolution with an emphasis on educating both the complainant and the officer that is the subject of the complaint and correcting the behaviour of the officer if necessary. Some of the possible outcomes of an informal resolution process could include an agreement by an officer to undergo counselling, treatment, training or to participate in a certain program or activity. Given the non-punitive nature of the potential consequences that may flow from the informal process, I do not believe that records of such consequences would attract the stigma of punitive measures. As a result, I do not believe that there should be real concern regarding the retention of records. However, it should be clear that records are kept for the purposes of assessing the process' success and to identify trends, so that preventative steps may, if necessary, be taken.

**Recommendation 12:**

**Upon a review of the complaint, the new body should determine whether it might be suitably resolved through informal mediative type resolution. Considerations to take into account in deciding whether a complaint may**

**be suitable for informal resolution should include the gravity of the allegation, the effect of the alleged conduct on the complainant, and the public interest.**

**Informal resolution should be contingent upon the agreement of the complainant and the police officer involved. However, the views of the chief of police regarding the appropriateness of informal resolution are to be taken into consideration when deciding whether the process is to be engaged.**

**Informal mediative resolution may be agreed upon at any time, but must be approved by the new body.**

**Informal mediative resolution should be organized by the new body and conducted by a neutral. Parties to the informal resolution will be the complainant, the officer complained of and a representative of police management. Discussions should take place in confidence and should be without prejudice. The results of the informal resolution shall not form part of a police officer's discipline record. However, statistical records should be kept by the police service and the new body regarding the details of the complaint and the resolution.**

**Where an informal resolution is deemed unsuitable by the new body, has been rejected, or has failed, the new body may refer the complaint for investigation.**

**Statements made in informal mediative resolution should not be admissible in any subsequent civil proceedings or PSA hearing except with the consent of the person who made them.<sup>142</sup>**

## ***Investigation***

A considerable amount of time was spent on a discussion of who should be responsible for the investigation of a complaint. Many reports have documented the debate on whether police officers should be allowed to conduct an investigation of a complaint. There has also been a great deal of debate regarding the competence of various classes of investigators and the perception

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<sup>142</sup> The provisions of the current act in relation to statements made in informal resolution should be maintained.



of conflict where police officers investigate other police officers. There is much merit in the view that civilians should conduct these investigations, but I am not convinced that it is necessary to recommend a system where the presumption is that all investigations are to be conducted by independent civilian investigators. The decision as to who shall conduct the investigation should be determined by the new body having regard to, among other things, the nature of the complaint, the circumstances surrounding the complaint, the public interest, the size of the police services, and the rank of the officer complained of.

Where the police do conduct the investigation, there should be steps taken to ensure that conflicts of interest are avoided. In larger police services, this should be relatively straightforward. Very small police services may have difficulty avoiding conflicts such that the relatively few complaints received by these police services would either have to be investigated by someone outside the police service or be investigated by the police service with rigorous monitoring.

**Recommendation 13:**

**The new body will examine and consider the nature of the complaint, the circumstances surrounding the complaint, the public interest, the size of the police service, the rank of officer and any other relevant factors to determine whether the complaint is to be investigated by the new body, the police service affected or by another police service.**

**Recommendation 14:**

**If investigated by the police service affected or by another police service, the police officers assigned to investigate should not have any connection to the incident and be removed from the persons involved in the incident.**

**Recommendation 15:**

**The new body must be given powers and resources to enable it to properly investigate a complaint as well as the authority to oversee a complaint investigated by the police and reassign the investigation of a complaint at any stage of the process.**

**Recommendation 16:**

**The new body should be staffed with highly skilled investigators. These investigators shall not be police officers, but may be former police officers. However, a former police officer shall not conduct investigations related to any police service with which the investigator was formerly employed.**

**Not more than 50% of the investigative staff of the new body should be former police officers.**

***Hearings and Discipline***

The current legislation provides an opportunity for informal resolution following an investigation, but it does not allow a chief of police to unilaterally impose discipline following an investigation where the chief believes that there has been misconduct or unsatisfactory work performance. This clearly limits a chief of police's powers - powers that are typically available to other employers. However, a chief of police is permitted to hold a hearing and appoint a police officer (or a legal counsel or an agent) to prosecute. The hearings process appears to be a compromise that is designed to balance the interests of police

officers, who may want to have a hearing before any discipline is imposed, and the interests of chiefs of police for a streamlined and efficient discipline process.

I received a number of comments about the complaints process following an investigation. I believe that everyone supports informal resolution even after an investigation has occurred, subject to the appropriate level of oversight.

There were some concerns regarding the appropriateness of OCCOPS' involvement in the review of investigations and a chief of police's decisions, given OCCOPS' role in appeals. Indeed, concerns over OCCOPS' many conflicting roles have been identified not only in my consultation, but also in a number of court decisions.<sup>143</sup> It is my view that OCCOPS should not be involved in the review of a chief of police's decisions following an investigation. This responsibility should lie with an independent body that does not have a role in an appeal of a subsequent hearing decision.

There was also considerable debate at the meetings regarding when a hearing should be conducted. Some chiefs of police have argued for the use of a "reasonable and probable grounds" test. They pointed out that given the relatively high standard of proof of "clear and convincing evidence" used at hearings, a low threshold for the ordering of hearings results in disproportionately few findings of misconduct or unsatisfactory work performance. This issue was

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<sup>143</sup> See *Ontario (Civilian Commission on Police Services) v. Browne* (2001), 56 O.R. (3d) 673 (C.A.); *Gardner v. Ontario (Civilian Commission on Police Services)*, [2004] O.J. No. 2968 (C.A.) [hereinafter *Gardner*].

examined by the Ontario Court of Appeal in *Canadian Civil Liberties Association v. Ontario (Civilian Commission on Police Services)*.<sup>144</sup> In that case, the Court of Appeal rejected the argument that the “reasonable and probable grounds” standard should be used to determine whether a hearing should be ordered following an investigation. The Court of Appeal stated that that the “reasonable and probable grounds” standard was too close to the “clear and convincing evidence” standard used at a hearing. Its use would confuse the chief of police’s screening function and the role of a hearing officer in determining misconduct or unsatisfactory work performance. However, I am of the view that a “reasonable grounds” test should be used to determine whether a hearing is held. While the application of the “air of reality” test appears to have resulted in more hearings, these hearings have often yielded findings that the complaint was not substantiated which has led to feelings of frustration by all involved. Given my recommendations for greater oversight of the process, in the assessment and assignment of complaint investigations, I believe it would not be unreasonable to set a higher threshold for ordering a hearing. Furthermore, I believe that if the review of a decision not to order a hearing is transparent, there will be greater understanding and acceptance of the system.

The standard of proof used at a hearing was also discussed at length. I heard various arguments that the standard of proof should be changed and arguments that it remain the same. There is no doubt that the standard of proof is of some benefit to police officers. Police officers, by the very nature of their employment,

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<sup>144</sup> (2002), 61 O.R. (3d) 649 [hereinafter *Canadian Civil Liberties Association*].

often find themselves in positions of conflict. As a result, complaints are not infrequently filed against them. A finding of misconduct or unsatisfactory work performance based on a “clear and convincing evidence” standard ensures that discipline is not administered without significant proof. On the other hand, it is troubling to many groups with whom I met that a police officer could be found in a civil proceeding to have engaged in misconduct (and a police service ordered to pay significant damages) while the complaint against the officer has been found to be unsubstantiated in a PSA hearing in relation to the same incident. Whatever merits there are to the argument that a higher standard of proof is necessary for serious allegations of misconduct, it was argued that this should not extend to other allegations of misconduct.

The “clear and convincing evidence” standard has been accepted to mean “weighty, cogent and reliable evidence upon which a trier of fact, acting with care and caution, can come to the fair and reasonable conclusion that the officer is guilty of misconduct.”<sup>145</sup> The Ontario Court of Appeal has commented that the standard is “slightly higher” than the “balance of probabilities” standard.<sup>146</sup> The “clear and convincing evidence” standard does not appear to be used in any other province except Manitoba.

In my view, the standard of proof used at a hearing should not be compared with the standard of proof used in a civil proceeding. These are different types of

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<sup>145</sup> *Ibid.* at 664.

<sup>146</sup> *Ibid.*

proceedings and one could argue that a different standard of proof should apply for PSA hearings. While the argument for a standard of proof that fluctuates with the alleged seriousness of the misconduct may be attractive, I believe that this really masks the underlying need for a revision of the substantive offences in the code of conduct. A review of the substantive provisions of the code of conduct is beyond the scope of my mandate, but I agree with many submissions that the code of conduct may need to be reviewed and updated. That being said, I am of the view that the “clear and convincing evidence” standard should not be replaced with a “balance of probabilities” standard. The “clear and convincing evidence” standard is not a standard that is referred to in Ontario statutes other than in the PSA, but it has been accepted as the relevant standard in the misconduct hearings of many professional bodies.<sup>147</sup>

I also heard submissions advocating an independent hearings process where the matter has arisen from a public complaint. This would include fully independent prosecutions and fully independent adjudication. I appreciate the demands for greater independence in the hearings process. Indeed, there is much merit to the arguments in support of independence. Conflicts of interest need to be avoided. It would be inappropriate for hearings to be staffed entirely by members of the police service who interact with each other on a daily basis. This problem is especially acute in small police services where outside prosecutors and hearing officers would be necessary. This is already addressed in the current

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<sup>147</sup> R. Steinecke, *A Complete Guide To The Regulated Health Professions Act*, looseleaf (Aurora, ON: Canada Law Book Inc., 2003) at paras. 6.1170-6.1210.

legislation by allowing chiefs of police to appoint prosecutors and hearing officers from outside the police service.

I have been very impressed by the work of the dedicated police adjudicators in this Province. However, I am of the view that the role would receive far greater public acceptance if it were performed by persons who are not in the employ of the police services. Special skill and experience is essential to ensure judicious decisions, and those who can best fulfill the mandate will have a background and experience in law enforcement. Such a group is probably not immediately available. I recommend that the Government develop a cadre of adjudicators with experience who can be trained in decision-making and the conduct of hearings, to be on call to preside at the adjudicative stage of public complaints. Until this group is identified and trained, the existing adjudication process should continue. There also needs to be a requirement to inform the public of the hearings process and the hearing decisions. Hearing decisions are currently made available to police officers, and there does not appear to be any reason why the decisions should not also be made available to the public.

Finally, I was provided with suggestions for potential penalties that should be available to hearing officers upon a finding of misconduct. Where punitive measures are necessary, I believe that penalties need to be significant. On this issue, I note that police officers may elect to satisfy a forfeiture of pay penalty by applying it to sick leave credits. The efficacy of penalties that may be satisfied in

this manner is questioned by many. In addition, I believe that greater flexibility needs to be provided to hearing officers so that penalties could be combined. I am of the view that professional policing in Ontario demands that police officers who are facing discipline should not be able to avoid the disciplinary process by finding employment with another police service. As well, where a police officer has been dismissed or forced to resign, that police officer should be prohibited from working as a police officer in Ontario for an extensive period of time.

**Recommendation 17:**

**The review of interlocutory decisions presently residing with OCCOPS should be transferred to the new body.**

**Review decisions should be made publicly accessible through an internet site.<sup>148</sup>**

**Recommendation 18:**

**The informal resolution process following an investigation should allow a chief of police to impose any penalty available to a hearing officer at a hearing other than dismissal or demotion unless rejected by the officer complained of. Information concerning the matter, the officer's reply, if any, and the penalty should be provided to the complainant and the new body. This information should be placed on a central internet site.**

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<sup>148</sup> In all cases where recommendations are made indicating that information should be posted publicly, personal information should not be removed unless there are exceptional circumstances (e.g. where the complainant is a minor or the complainant is a victim complaining about the handling of a sexual assault investigation). If the complaint were also the subject of criminal proceedings, publication would be subject to any court issued publication order.



**Recommendation 19:**

**Hearings should be held where there are reasonable grounds to form an opinion that there has been misconduct or unsatisfactory work performance and where the matter has not otherwise been resolved.**

**Recommendation 20:**

**The Government should develop a body of independent adjudicators to preside over PSA hearings in the Province.**

**Recommendation 21:**

**All hearing dates, hearing locations and hearing decisions must be made publicly accessible through a central internet site.**

**Recommendation 22:**

**A police officer should not be permitted to satisfy a forfeiture of pay penalty by applying it to sick leave credits. Demotions, suspensions, and forfeitures of pay should be combinable.**

**Investigations and disciplinary proceedings should continue against an officer if the officer chooses to find employment with another police service. Any subsequent penalty should be transferred to the other police service.**

**An officer who has been dismissed or resigns following a direction that the officer be dismissed should be prohibited from re-applying to another police service for a significant period.**

***Appeal***

OCCOPS currently acts as an appellate body in addition to carrying out its many other functions at earlier stages of the complaints process. In some cases, OCCOPS' many roles have, not surprisingly, led to difficulties. For example, the

Divisional Court, in *Gardner*,<sup>149</sup> recently found that an OCCOPS panel hearing a matter had been tainted by its earlier participation in the investigation, giving rise to a reasonable apprehension of bias. While that case dealt with OCCOPS' investigative and adjudicative roles instead of its appellate function, the case demonstrates the difficulties OCCOPS faces when it is involved in multiple stages of the complaints process. While OCCOPS may use operational policies to avoid placing itself in situations like the one in the *Gardner* case, it is my view that as far as complaints are concerned, OCCOPS should focus primarily on its appeal role.

Where an appeal is launched under the current legislation, I believe that there are occasions where the penalty imposed by a hearing officer should be effective despite an appeal having been launched. Under the *Statutory Powers Procedures Act*<sup>150</sup>, appeals of disciplinary hearing rulings generally act as a stay on the imposition of a penalty. Despite this, the tribunal, court or other appellate body can order otherwise. Police services are currently able to ask that penalties be imposed after adjudication, but prior to an appeal, where the circumstances warrant such a request.<sup>151</sup>

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<sup>149</sup> *Supra* note 143.

<sup>150</sup> SPPA, s. 25(1).

<sup>151</sup> *Ibid.*, s. 25(1)(b).

**Recommendation 23:**

**The appeal procedure should remain unchanged. Appeals from a hearing should continue to go to OCCOPS and if necessary a further appeal may be made to the Divisional Court.**

**An appeal decision by OCCOPS must be supported with reasons. These reasons should be placed on a central internet site.**

***Audits, Research and Inquiries***

Audits allow the public to know how a system is performing. This is an invaluable tool that should be applied to the complaints system. Indeed, audits and policing are not foreign to each other. In Los Angeles, independent audits of the public complaints system are a key feature of oversight of the Los Angeles Police Department. The City of Toronto Auditor has conducted a number of audits of the Toronto Police Service involving not only the complaints system, but also its practices for investigating sexual assaults.

I also expect that audits will assist the new body in its role of handling complaints, and will identify problem areas in the complaints system that require corrective action.

Furthermore, the new body will be uniquely positioned to identify trends in complaints which may warrant either inquiry or research into policing practices or policy. A power of inquiry may be another tool that could prove useful on the rare occasions that such a power is necessary.

#### **Recommendation 24:**

**Police services boards should be required to order bi-annual independent audits of complaints handling within their respective police services and make their audits available to the public, subject to the direction of the new body for more or less frequent audits. Audits should be prepared to a standard to be set by the new body.**

**The new body should order independent audits of the complaints system from time to time.**

**The new body should have the authority to issue guidelines and set public complaints administration standards for particular police services.**

**The new body should have a power of inquiry available to it to identify systemic problems that may underlie complaints and make recommendations to prevent their recurrence.**

#### ***Aboriginal Policing***

I referred to Aboriginal policing earlier in my report and I believe that the new body should give special consideration to the needs of Aboriginal communities in Ontario. The diversity of Aboriginal communities, their unique standing in Canadian society and the geographical remoteness of many of these communities require that special efforts be made to address complaints from Aboriginal communities regarding policing.

First Nations policing in much of Ontario is a relatively new endeavour and the issue of oversight for these police services is complex. Not only must the general considerations of oversight be addressed when dealing with First Nations police services, but other factors such as First Nations autonomy and the police service's constitution need to be considered. I note that there are many First

Nations communities that feel oversight of their police service should rest exclusively with that First Nation. However, some believe strongly that the legislation should be amended to allow First Nations police services to fall under the provincial complaints system.

**Recommendation 25:**

**The new body should make special efforts at outreach to the Aboriginal communities in Ontario.**

**Recommendation 26:**

**The law should not preclude those First Nations that wish to have their police service fall under the provincial complaints system from being able to do so.**

***Resources***

Almost all of the groups and individuals that made a submission spoke about the importance of properly resourcing the complaints system. Proper resourcing is essential to the success of any endeavour. In 1996, its last full year of operation, the Police Complaints Commission had an annual budget of \$4.1 million and the Board of Inquiry had a budget of \$0.6 million. OCCOPS had a budget of \$0.7 million. When the Police Complaints Commission and the Board of Inquiry were abolished, the OCCOPS budget was increased by about \$1 million. As a result, almost four million dollars or almost 70% of the financial resources that had been available up to then was withdrawn from the complaints system. According to

statistics from OCCOPS, complaints did fall between the years 1996 and 1998 from 3533 complaints to 2538. However, this only represented a 28% drop in complaints.

I have not provided an analysis regarding how much money would be required to implement my recommendations. While I understand that public resources are limited, funding allocated to these recommendations should be seen as an investment in public trust, respect and safety. The citizens of Ontario currently pay \$2.8 billion each year for public policing, excluding the costs of federal policing through the RCMP. Funding to adequately implement these recommendations would only represent a small fraction of that amount.

**Recommendation 27:**

**Funding must be sufficient to ensure that the new independent body is able to operate in a manner that ensures public confidence in the police complaints system.**