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Mercredi 31 janvier 2007

**Standing committee on
justice policy**

Independent Police
Review Act, 2007

**Comité permanent
de la justice**

Loi de 2007 sur l'examen
indépendant de la police

Chair: Lorenzo Berardinetti
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

**COMITÉ PERMANENT
DE LA JUSTICE**

Wednesday 31 January 2007

Mercredi 31 janvier 2007

The committee met at 1006 in room 151.

**INDEPENDENT POLICE
REVIEW ACT, 2007
LOI DE 2007 SUR L'EXAMEN
INDÉPENDANT DE LA POLICE**

Consideration of Bill 103, An Act to establish an Independent Police Review Director and create a new public complaints process by amending the Police Services Act/ Projet de loi 103, Loi visant à créer le poste de directeur indépendant d'examen de la police et à créer une nouvelle procédure de traitement des plaintes du public en modifiant la Loi sur les services policiers.

The Chair (Mr. Lorenzo Berardinetti): Good morning, everybody. The committee is now back in session. This is the standing committee on justice policy.

KEITH HOWELL

The Chair: Our first deputation this morning is Mr. Keith Howell.

Good morning and welcome. The format is basically to allow you 20 minutes to speak, and the three parties will ask you questions during any time left over after your presentation.

Mr. Keith Howell: I'd just like to make it clear that I have no axe to grind against the police. I was a police reporter for more than 12 years, and every day on a daily basis I was dealing with the police. I went out on patrol with police officers numerous times. I had very good relationships with police, mainly in North Bay and Brockville. I did numerous feature stories on policing every year, and frankly I think the cases that I have outlined here are very isolated.

Just to give you an overview of the main points I'd like to make out of this, I think it's really important to consider allowing third-party representation in the police complaints process. This is a very intimidating process. I'm somebody who as a reporter dealt with politicians and police on a daily basis. Even for me, it's just been extremely frustrating the last two months, trying to get anything done about a mistake. Everybody makes mistakes. A police officer made certain mistakes on a police report, and to get it changed has been so frustrating. I think the average person would really have a hard time going through this. I really encourage you, as a part of

the new system, to please consider third-party representation. In the case of my family member, she just could not have gone through this on her own. She has told me she would have had a nervous breakdown to navigate the whole process.

Another thing is the six-month statute of limitations. I think that should be reconsidered—if you would please give that considerable thought. This case would not be brought forward if that were strictly applied here, and I think there's a real injustice that's been done and it wouldn't be corrected, and others wouldn't be corrected. I think there are other cases that are going to come behind us here that would benefit from this presentation, hopefully, so that nobody else has to go through the same kind of thing.

Another point: The investigating officer in this case is still investigating our complaint, and I just don't think that's appropriate. I think it's a conflict of interest.

Another key aspect: I talked about an assault incident in November 2000. I really believe that for a full and complete examination of what happened there, you need the trial transcript. There was a trial, and there was a full acquittal that ruled that my family member acted in self-defence. It's all laid out there in the trial and yet the police have not, I have been told, ordered a copy of that transcript.

How would you like to be raped, and then find out that the police report says you and your rapist are married, you're recently separated after a six-year relationship and that you lived with your rapist's mother for eight or nine months after the attack? There's not a shred of truth to that, and police officers I've talked to agree, but the problem is getting it corrected. What do you do in a system like this to get a police report corrected? It is incredibly hard. I've been working on it for two months. Even though the police admit these mistakes that I just outlined—and that's just the start; I think there are other mistakes too but I'll just leave it at that—further to that, these mistakes are being used against my family member in order to get a restraining order, keeping somebody away from her, to get that quashed. It's just created terrible consequences for our family.

Basically I'll just leave it at that. I'm open to any questions that you might have. Thank you.

The Chair: Thank you for your presentation. We have about 15 minutes left, so five minutes per party. We'll start with the Conservative Party.

Mr. Garfield Dunlop (Simcoe North): Thanks very much, Mr. Howell, for being here this morning. I haven't really had a chance to go over your document because there's a lot to it. Can you just briefly sum up the change you'd like to see? Are you familiar with the legislation?

Mr. Howell: Yes. I've looked over it.

Mr. Dunlop: Do you have one key recommendation that you'd like to see put forward at this point?

Mr. Howell: Well, I see a problem, basically. How do you get a police report changed? If somebody says that you're a child molester, for instance, and it's on a police report, how do you go about getting that changed? It's a frustrating process. It's very intimidating. I know that one of the things you're considering is whether there should be third party representation. I really encourage you to do that, if you can, because there are just so many people out there in the public who would run into brick walls and would not be able to go through with this.

The six-month statute of limitations: I think there are so many injustices. I believe these are isolated incidents, but there are others that occur outside the six-month statute of limitations. I believe that that should be opened up. In a lot of cases there may be something written down in a police report, as we found, and if you don't find out about it within six months, does that mean you shouldn't be able to do anything about it?

Again, I don't think the investigating officer should be involved in a subsequent appeal in the complaints process.

Mr. Dunlop: That's fine for me.

The Chair: Thank you. Mr. Kormos.

Mr. Peter Kormos (Niagara Centre): Thank you kindly. This is a troubling narration. I read the material you wrote while you were speaking. I hope you don't mind, because I was listening to you as well. This incident, the crime, was in 2000?

Mr. Howell: Yes.

Mr. Kormos: You write in your material that last week a complaint was made to OCCPS?

Mr. Howell: Yes. We tried to go through an informal process. I've dealt with the police a lot in the past through in my job, in my career, and I thought that probably something could be done; because there were obvious mistakes, it would be easy for people to find out that this isn't true.

Mr. Kormos: Did you have a lawyer acting for you at any point, the family member, at any point during this process?

Mr. Howell: Not in regard to the police, no.

Mr. Kormos: Chair, I think all of us are concerned when there is a bona fide allegation made about a sexual assault, a rape, and when investigating police appear to prejudge the matter to the point where they don't lay a charge. Quite frankly, even if the information you say was adopted by the police officer is true—spouse or common-law spouse living with mother-in-law—that doesn't impact on an allegation of sexual assault. It's a matter of, as we heard yesterday, "So what?" It's ir-

relevant. Spouses can rape spouses while they're married to each other, and that's straightforward, clear-cut. This is disturbing.

The problem is that yesterday the Ombudsman was here, and he spoke about this bill last May when he spoke to the Toronto Police Services Board. If you read this morning's paper, you'll see that the Ombudsman was successful in the case of one Ms. Aucoin, down where I come from, Jim Bradley's constituent in St. Catharines, in persuading the government to fund some out-of-province treatment for her. The Ombudsman described the process whereby health patients have to apply for and appeal decisions about out-of-province treatment and medication as being complex, irrational, illogical, and difficult to manoeuvre even for literate, well-educated people. This is the point I'm getting to: I believe, as does the Ombudsman, that it's incredibly important that this new complaints process be capable of being reviewed by the Ombudsman, because even the best of complaints can be frustrated by a complaints process. In your case the informal complaints process was frustrating: complex brick walls after brick walls, right?

Lord Jesus, why is the government resisting letting the Ombudsman be in a position of oversight of the new complaints procedure being proposed? Because just like you and your family member, if you're frustrated by the process, you've got nobody to go to. You go to your MPP, and do you know what he or she is going to tell you? "Oh, I can't get involved in those things." Do you know what the Attorney General is going to tell you when you raise a question in question period? "Oh, it's an arm's-length body." Not very gratifying, is it, Mr. Zimmer? Not very gratifying at all.

Lord Jesus, if this man's story here today doesn't tell us how important it is to have the Ombudsman engaged in a role of oversight over a complaints body, then nothing.

Thank you very much. You've made some compelling points here, and I wish you well in your complaint to OCCPS. Have you visited your MPP yet in the jurisdiction? This is in Peel?

Mr. Howell: Yes. I don't live in Peel—

Mr. Kormos: That's okay. But the incident is in Peel?

Mr. Howell: Yes.

Mr. Kormos: I encourage you, and again, I don't want to impose more work on that member because that member is probably pretty busy, but that's okay, because he or she is quite capable of writing to the Attorney General, the Solicitor General, calling for an investigation of this matter at that level. I encourage you to do that.

Mr. Howell: Thank you.

The Chair: We'll move on to the Liberal Party.

Mr. David Zimmer (Willowdale): Thank you very much for coming and sharing this story with us. I know it's a delicate and sensitive issue with you and your family member, so it takes a certain amount of courage to come here and share that with us. I'll reflect on what you've put before this committee.

The Chair: Thank you for your submission today.

1020

COMMUNITY AND LEGAL AID
SERVICES PROGRAMME,
YORK UNIVERSITY

The Chair: We'll move on then to our next deputa- tion: Community and Legal Aid Services Programme, CLASP, York University.

Good morning.

Mr. Rob Carson: Good morning. My name is Rob Carson. I'm a law student at Community and Legal Aid Services Programme, CLASP, a student legal aid clinic at Osgoode Hall Law School at York University. We are located in, and do most of our work in, the Jane-Finch community.

I would like to begin by discussing the importance of an effective police complaints system in socially ex- cluded communities like Jane and Finch. Second, I will turn to specific aspects of Bill 103 and how we believe the bill can be enhanced to improve the quality of the police complaints system and ultimately the quality of policing in Ontario. Specifically, I will speak about the need for independence from the police, informal resolu- tion of complaints and third-party complaints.

The police system cannot function without public trust and co-operation. During the second reading debate of Bill 103, many of the members cited the figure that 80% of Ontario citizens have faith in the police. However, I would like to stress that in a socially excluded com- munity, such as Jane and Finch, this area of trust is substantially lower. In socially excluded communities, trust in the police may be almost non-existent. Another agency that we work with in the Jane-Finch community called Caring Village did a survey in 2005 in which 78% of youth surveyed in the Jane-Finch community said that they have never called the police when they were in trouble, and 51% stated that they knew someone who had been mistreated by the police. Large segments of these communities view the police with suspicion, antagonism, hostility and fear. The reform of the police complaints system is a great opportunity to restore a necessary level of trust in the police. However, this opportunity is in- extricably linked to a larger risk. If the proposed system does not serve the public, the result, we fear, will be an increase in the level of mistrust in the police and in state power more generally.

Independence from the police: We are concerned that the public will perceive the proposed system in Bill 103 as a process that does not serve the public any better than the current ineffective police complaints process. The public will not have confidence in a police complaints system that is not fully independent from the police. Without independence, we must assume trust, not build it. To allow any complaints to be investigated or adjudicated by police officers or chiefs of police will under- mine the integrity of the police complaints system. Even if the current system is not actually biased against the complainant in all cases, the perception of bias renders

the system useless in the eyes of those people who need it the most.

Both the police and the public will be well served by a complaint system in which complaints are investigated by an impartial third party. The public can be confident that complaints have been thoroughly investigated. Con- versely, the police can defend themselves against frivolous complaints by standing behind the investigation of the impartial party that has vindicated them without any question as to the neutrality of that body. Both the public and the police would be well-served by a system in which the determination of whether an officer is engaged in misconduct is made by an impartial third party. This third party must not have participated in the investigation process. Further, we submit that where there is a finding of misconduct, the penalty that the officer receives could be determined by a chief of police in accordance with a specific range of penalties for each characterization of misconduct.

There are many benefits to a system like this. First, the public can have confidence that the determination of whether or not misconduct occurred was determined by an impartial and objective third party. Second, the public can have confidence that, where an officer is found to have committed misconduct, the officer received a penalty that was proportionate to the type of misconduct that he or she engaged in. It is imperative that the public does not view the penalties that are imposed by the chief of police to be arbitrary or unjust. The decision-making for the choice of penalty must be, and must be seen to be, transparent.

Now I'll turn to informal resolution. First, the informal resolution mechanisms in Bill 103 could be enhanced by establishing safeguards to ensure that power imbalances between the complainant and chief of police are minim- ized. We submit that the most effective way to do this would be to require an impartial mediator to facilitate informal resolution discussions.

Second, the provisions of Bill 103 do not provide for an outcome where no resolution is reached. This is a gap that needs to be filled. Where no resolution is reached, the chief of police may impose a penalty upon the officer. If the officer refuses to accept that penalty, the officer has recourse to a hearing. However, we submit that where no resolution is reached, the complainant should also have the option of proceeding to a hearing. The public will have more confidence in a system in which the outcome of the complaint is formally determined in a hearing than a system in which the complaint is simply disposed of in a clandestine manner without the consent of the com- plainant.

Finally, I'll speak about third-party complaints. The Attorney General has indicated that third-party com- plaints "would be allowed if they met certain legislative criteria. However, third-party complaints would only be considered if they met those criteria." Bill 103 is cur- rently structured so that the director has the discretion to refuse complaints from all public interest organizations.

At CLASP, we agree with Justice LeSage that any party should be permitted to make a police complaint. As

mentioned at the outset, we submit that the ultimate goal of the police complaint process is to improve the quality of policing in Ontario. Complaints made by public interest organizations initiate constructive dialogue between police and community organizations and are often an effective way to bridge the gap between police and the communities that they serve.

Further, at CLASP we work with a number of vulnerable groups, the members of which have good reasons to abstain from attaching their names to a police complaint, especially given their own experiences with police. For instance, youth in the Jane-Finch community have good reason to be concerned that if they make a complaint, they may be the victims of police retaliation. The community has seen far too many incidents of this nature—which have gone unaddressed—to believe that there is not a risk of retaliation.

Likewise, a person who is homeless or living in Canada without status has good reason to be concerned about the retaliatory consequences of making a complaint. Public interest organizations can be an effective form of representation for any person who has experienced mistreatment at the hands of the police but has reason to abstain from making a complaint. The organization shields the complainant while allowing the complaint to go forward.

Third-party complaints can also be an effective way to initiate constructive dialogue for a larger group that may not be collectively mobilized. For example, there are many people in the Jane-Finch community who experience police mistreatment on a regular basis, including arbitrary questioning, arbitrary searches and other forms of harassment. When Caring Village asked youth what the role of the police was in their community, 21% of those youth answered that the role of police was “to harass and bother youth,” while only 35% answered that the role of the police was “to serve and protect.”

Despite the fact that these forms of harassment constitute police misconduct, arbitrary stops and arbitrary searches of young black males will rarely, if ever, result in a citizen initiating a police complaint. We often advise against making a complaint in this circumstance because the threat of retaliation may be too great and the current system limits the prospect for any sort of satisfactory resolution. However, an issue like racial profiling of black youth in the Jane-Finch community is a pandemic issue that must be addressed. A public interest organization is in a perfect position to compile evidence and make a complaint on behalf of many members of this community, initiating a necessary dialogue. We submit that removing the director’s discretion to refuse third-party complaints would enhance the police complaints system. Further, we submit that the standard should be the same for anyone. If the complaint is frivolous, it will not be allowed in any case. But if there appears to be a basis for the claim, it must be investigated.

Finally, to conclude, we cannot afford to ignore the fact that there is a glaring absence of trust between police and citizens in many areas of Toronto, especially socially

excluded areas like the Jane-Finch community. We submit that improving the police complaints system can be a positive first step in restoring a necessary level of trust in the police and improving police-community relations. However, it will only be a positive first step if the police complaints system is actually improved for the benefit of the people who need it. If this is not achieved, we submit that there is a very real risk that the result will be an increase in the level of mistrust in the police and state power more generally. In our opinion, Bill 103 in its current form is more likely to do the latter. While it is a step in the right direction, Bill 103 is not a sufficient departure from the current system.

We would like to say thank you for having us here today, and we are happy to field any questions that you may have.

The Chair: We have just about 12 minutes, so four minutes per party. We’ll start with the NDP. Mr. Kormos.

1030

Mr. Kormos: Thank you kindly, sir. I appreciate your participation. I’m a fan of this program; I’m also a fan of Osgoode law school. The fact that I graduated from there should not discourage you in any way at all. I’m sure you’ll have a far more successful career than I have managed here at Queen’s Park. You may or may not know that the Ombudsman—you heard me reference this a few minutes ago—talked as early as May of last year in a speech to the Toronto Police Services Board about section 97 of this bill, which specifically states that the Ombudsman will not have oversight of this yet again new body.

You heard me reference Ms. Aucoin in St. Catharines, a news item today, and many of us are familiar with Ms. Aucoin because her matter has been raised in the Legislature by myself, by Mr. Jackson, who was with the Conservative caucus, and I know Mr. Bradley has advocated for her. He is a Liberal member, her representative. In this particular instance, the Ombudsman persuaded the government to fund her out-of-province treatment, but also stated that the process for applying—because there is a process, it’s institutionalized; again, many of us are familiar with it because we’ve tried to help constituents manoeuvre their way through it. But the process is difficult, it’s filled with roadblocks and it doesn’t really serve the interests of those people making the applications.

The Ombudsman says that it’s wrong to exclude his oversight of a police complaints process—not that the Ombudsman wants to deal with complaints about police, but he wants to be able to be there to point out problems that may occur. You’ve talked about problems that people have in the community you serve, making complaints that are at the lowest, most grassroots ground level, right?

Mr. Carson: Absolutely.

Mr. Kormos: Never mind the problems that could be encountered in the institutional bureaucratic process, which could become perhaps even more profound and complex. What do you think about whether or not the

Ombudsman should be able to oversee this process, like he does so many others?

Mr. Carson: Well, I watched the Ombudsman speak yesterday morning and I thought that it was a very compelling presentation. I agree 100% that the Ombudsman should oversee this organization and I don't see any good reason why he would not. I agree.

Mr. Kormos: Well, I suppose I could be accused of thanking you just because you agree with my proposition, but I appreciate—

Interjection.

Mr. Kormos: You and your program have prepared an excellent submission and made a number of points. I obviously am focusing very much on section 97. I appreciate your contribution to this process and wish you well.

Mr. Carson: Thank you.

The Chair: We'll move on now to the Liberal Party and Mr. Crozier.

Mr. Bruce Crozier (Essex): Good morning. Welcome to the committee and thank you for your presentation. As you have heard at the beginning of today, and certainly Mr. Kormos is making the point with regard to the Ombudsman not having any oversight role in this particular act—and I respect the fact that you feel that he should have as well—in fact, as his own material says, if you translate the French, he is Ontario's guard dog. So one would ask why he may not have that role.

Well, in the terms of reference that Mr. Justice LeSage dealt with, which I think were pretty broad, quite frankly—the Ombudsman thought they were restrictive, but I think, having read them, they were very broad. I think the history, the precedent was taken into consideration, and that being that perhaps there wasn't any need to point out that the Ombudsman should play part of that role or should not because the Ombudsman has never had that authority in police complaints. So really, we're just carrying on from where it was before.

It's also interesting to note that the Ombudsman appeared as a participant to Mr. Justice LeSage. Not only did he speak with him subsequent to that and subsequent to his speaking out last May to other bodies, but I would wonder—and I can only wonder because our time was limited yesterday and I didn't have the opportunity to ask if in fact Mr. Marin spoke about the Ombudsman role or the need for the Ombudsman role when he was a participant. Granted, when he was a participant, he was then the Ombudsman for National Defence and the Canadian Forces, so he wasn't before Justice LeSage in the role that he has now as the Ontario Ombudsman.

My point is, notwithstanding how someone might feel, the Ombudsman never has had that role, and I believe we're just continuing with that precedent that was set before.

Mr. Carson: In our experience with the system, the police complaints system is extremely flawed and has been for some time. To my way of thinking, the fact that the Ombudsman has never been involved in a system that is ineffective does not produce a compelling argument as

to why the Ombudsman should not be involved in a system that we want to be effective. With respect, we're searching for ways to enhance this system. I would certainly submit that the system would be enhanced if the Ombudsman were involved, and perhaps that is one of the shortcomings of the traditional police complaints system.

Mr. Kormos: Mr. Zimmer, I'd take him into my firm; wouldn't you?

The Chair: You've got about a minute left.

Mr. Zimmer: On behalf of the AG's office, I just want to recognize the great work that CLASP has done as a training ground for young lawyers with a real social conscience. Often the folks who work at CLASP move on into positions in the crown's office or the AG's office or the defence bar, and they bring that great experience and sensitivity. So, do carry back to your colleagues at CLASP a note of thanks from this committee and the AG's office.

Mr. Carson: Thank you very much.

The Chair: We'll move on to the Progressive Conservatives. Mr. Dunlop.

Mr. Dunlop: Welcome this morning. It was a great presentation. I went right to the back of your presentation and the actual recommendations you've included in here. This is really what you're after in the end on Bill 103, these types of things to be included. There are 13 recommendations. I notice that the Ombudsman was not one of them at this point.

Mr. Carson: No, it's not one of them at this point. It's not something that we focused on. We have tried to focus specifically on the impact that this bill would have on the clients we work with and the community we work with. So from that point of view, the Ombudsman aspect of it was not something we focused on.

Mr. Dunlop: Okay. But everything else—you haven't actually included the sections, but what you are saying is that at some point in the legislation or in the clause-by-clause, these 13 recommendations that you've presented today are the changes you'd like to see to the bill.

Mr. Carson: Certainly. They are the ways that we think this legislation would be enhanced.

Mr. Dunlop: Okay. That's all I have.

The Chair: Again, thank you for your presentation today.

1040

AFRICAN CANADIAN LEGAL CLINIC

The Chair: We'll move on to our next deputation, the African Canadian Legal Clinic, Royland Moriah and Marie Chen.

Mr. Royland Moriah: Good morning, members of the committee.

The Chair: Good morning. You have 20 minutes to make your presentation. Any time that's left over, if you finish before 20 minutes, will be shared equally amongst the three parties in asking you any questions.

Mr. Moriah: Thank you. Good morning, committee members. Thank you for the opportunity to present before you today. My name is Royland Moriah. I'm the policy lawyer at the African Canadian Legal Clinic. With me today is our staff lawyer Marie Chen, who will be assisting me with my presentation, particularly with respect to any questions that might be asked at the conclusion of my presentation.

Just to let you know, the ACLC is a specialty clinic that's part of the Legal Aid Ontario system that provides legal work that's aimed at addressing systemic racism and discrimination in the province of Ontario. We engage in test-case litigation and we've represented litigants at tribunals and courts at all levels, up to and including the Supreme Court of Canada. We also monitor legislation, which is why we're here today, and engage in advocacy and legal education aimed at eliminating racism and in particular anti-black racism.

Needless to say, I think it's without any sort of controversy that I can say that there is racism in Canadian society today. As part of the criminal justice system and some of the other institutions that experience this phenomenon, the police services aren't immune. Whether it's with regard to inappropriate use of police discretion, racial profiling or police use of force, there have been various reports, court decisions, etc., that have acknowledged the impact of racism on policing. Because of this reality, for racialized communities such as African Canadians, the creation of an open, accessible and effective police complaints system is critical. This is very much rooted in the history, obviously, of the formation of the police complaints system. Certainly because of some of the issues that our community has had to face in the past, we have always advocated for a very independent, very accessible and very open system, and we'll continue to do so.

In principle, we do support the amendments that are proposed in Bill 103. We are pleased that Bill 103 moves towards a more independent police complaints system by the creation of an independent oversight body to administer the system. Particularly, it's very important that Bill 103 contemplates a system where the independent police review director has the discretion to determine how complaints will be investigated. So they will receive complaints and, of course, have the discretion, particularly in the case of complaints against individual officers, which are a lot of the complaints that we deal with with our clients, to determine how those are dealt with. However, one of our major concerns is that Bill 103 doesn't provide any guidelines regarding how that discretion will be exercised. There's no clear direction given as to when the IPRD will be required to retain complaints for investigation, and there's a very real possibility that without such guidelines we effectively could return to the status quo. This really comes back to the purpose of the changes that we're trying to make. What Justice LeSage made quite clear was that there is a lack of confidence in the police complaints system, and a lot of that has to do with the police involvement and police control of that

system. What we are seeing with the amendments proposed by Bill 103 is a move away from that; however, we're concerned that although the structure has been put in place, without ensuring that there are specific guidelines, we might go back to what we have currently, which is a system whereby the police will continue to investigate the majority of complaints against themselves.

In our experience, the need to eliminate or reduce substantially police involvement in police complaints is critical. In our experience, that involvement has contributed to a lack of confidence in the system, and a lot of that has to do with several things. One of the things that we see in the media and in our experience has been the overall lack of willingness on the part of the police establishment to actually acknowledge the impact of racism and racial profiling and other racially biased policing issues on the police services. Certainly, this has an impact on how communities see the police as taking those concerns seriously. Secondly, being a clinic that is involved on a day-to-day basis with police complaints and in assisting and representing clients who file police complaints, we know that there are very specific barriers within the complaints system itself that contribute to problems.

Our clients have to overcome the concerns of:

- having to file a complaint at a police station;
- the possibility of reprisal;
- living in the same neighbourhood where the officer who is the subject of the complaint might be working;
- having the complaint investigated, perhaps, by somebody who works within that same police division;
- having an investigating officer who is not willing to understand and accept that there might be issues of racism that need to be dealt with.

All of these things create a barrier, and these were the issues that Justice LeSage was trying to deal with when making some of the recommendations with respect to changes to the police complaints system.

What we are really trying to say is that if we are going to make the changes that we need to make, we have to make sure that the system that we put in place will have the guidelines, specifically for the independent police review director, to ensure that such issues like racism, racial profiling—issues that are fraught; issues that, regardless of the good faith of the particular officer, are best dealt with by an independent body—will be taken by the independent police review director, to be investigated by them only. For our community, that's an important goal of this process; without that, there will certainly be a concern that we have created something that could be useful but lacks the direction to actually deal with these issues effectively.

To that end, we do recommend, particularly, first off, in terms of the investigation of complaints, that the independent police review director should be required to investigate all complaints involving claims of racism, discrimination, racial bias or racial profiling or related allegations and cases that are involving injury not under the jurisdiction of the SIU.

Second, and related to the issue of the investigation of complaints, is the need to adequately fund the police complaints system. This was something that was touched on by Justice LeSage in his report, and it continues to be something that's particularly important when looking at the system that we're trying to put in place. For the IPRD to be effective, we do need to have adequate resources so that it can fulfill its mandate of independent civilian oversight. Any government commitment to ensuring effective independent oversight must necessarily include resources to ensure its proper functioning. Without sufficient funds, it's clear that it would be a mere shell; it won't be able to complete the job that it's supposed to do or fulfill its capacity in providing civilian oversight and ensuring fair and transparent police complaints. Consequently, we are reiterating recommendation 27 from Justice LeSage's report that funding "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."

Related to the issue with respect to the investigation is section 57 of Bill 103, which deals with the review of systemic issues. We would propose a change to that particular section—and if you want to turn to it right now, I'll allow you to have the opportunity to do so. In particular, we're looking at section 57, because, again, what we're looking at is trying to move to a system that addresses some of the systemic issues that a lot of communities that use the police complaints system have to deal with. I would suggest the following wording: "In addition to his or her other functions under this act, the independent police review director shall"—as opposed to "may"—"examine and review issues of a systemic nature that are the subject of or give rise to complaints by members of the public under this part and may make recommendations to the Solicitor General, the Attorney General, chiefs of police, boards and any other person or body."

Secondly, related to the issue of funding—because there isn't any specific clause, obviously, dealing with funding within the bill itself—we would recommend that a review clause or a sunset clause be put in place so that the implementation of the act be reviewed after two years, including any issues involving funding, and that those issues be addressed by the Legislature.

I'd like to thank you for the opportunity to provide submissions today. If you do have any questions, I am willing to take those now and hopefully provide you with some assistance.

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The Chair: Did Ms. Chen want to add anything?

Ms. Marie Chen: No.

The Chair: Okay. Thank you for your presentation. That leaves us about 10 minutes—just over three minutes per party. We'll start with the Liberal Party.

Mr. Zimmer: I was taken by your last comment where you recommended that the "may" be switched over to "shall," so they can in effect make policy recom-

mendations on how to combat systemic racism and so on. Is that correct?

Mr. Moriah: Yes.

Mr. Zimmer: The way the system is set up now under this bill is that the complaints process is an adjudicative process. So if somebody has a complaint and a decision has to be made on the facts giving rise to that complaint—uphold the complaint, dismiss the complaint or whatever—do you think there's a conflict if you have the same body, the complaints mechanism, doing an adjudicative function, deciding on the facts—this happened, this didn't happen and so on—and mixing that up with a broader policy rule?

Mr. Moriah: I'm not quite sure if I follow you in terms of the issue of the conflict. In terms of the suggestion that "may" be changed to "shall," that really is looking to the overall issue of making sure that systemic concerns are dealt with by the independent police review director. I think at this point in time that they are the only body that has the ability to do so.

Mr. Zimmer: Right. But my point is, once you turn the commission into making broader policy recommendations, how are you going to separate that out from the commission's adjudicative function, to be deciding the facts of a particular complaint? Would you rather see the commission as an adjudicated body or a policy body, or are you advocating a mix of both?

Mr. Moriah: I don't think that it has to be one or the other. I think that there can be a mix of both. Certainly, there would have to be procedures put in place to address any of those concerns. I don't think it's something that hasn't been done before, so I think that it is a possibility. And I think that by being the body that actually receives some of those complaints, they do have the opportunity to review them and determine where there are certain policy and systemic issues that seem to be arising.

Mr. Zimmer: So just to take the analogy of the court system, let's take a criminal court judge. The judge is charged with the responsibility of making decisions on facts. If somebody is accused of doing something, he or she has got to sort out the facts. Now, I think that would put the judge in a difficult position if the judge was sorting out facts and then also making policy recommendations, or making laws, in effect.

Mr. Moriah: I think that it's a fundamentally different—to me, I believe that's sort of apples to oranges. I don't know if that's necessarily the parallel that we're looking at in this particular circumstance. First off, findings of misconduct are what they are looking at for those situations when we're talking about the police complaints system. What we are trying to do is make sure that issues that are systemic in nature are dealt with by the IPRD because they are independent and because they are best able to address them properly.

The concern is that if we stick with the "may" that's in the legislation, there might not be any decisions with respect to policies that might be important for communities to have addressed.

Mr. Zimmer: Thank you.

The Chair: We'll move on to the Progressive Conservatives. Mr. Dunlop.

Mr. Dunlop: Thank you very much and welcome to Queen's Park this morning. In listening to your presentation, I take it there's no written presentation you have for us.

Mr. Moriah: I actually did speak with Ms. Stokes prior to our presentation. We had some problems with our systems yesterday. We will provide a written presentation—

Mr. Dunlop: We really appreciate that. You're the sixteenth of 26 presentations, and I'm hearing so far a lot of potential recommendations that are coming forward here for amendments to the bill. I'm not sure what the government's intentions are with a number of these recommendations.

I'd ask you a couple of quick questions. One, if there were no amendments made to this bill, would you still support this piece of legislation?

Mr. Moriah: That's an interesting question.

Mr. Zimmer: I'm curious, I guess, because there are a number of recommendations—

Mr. Moriah: As I said before, I think in principle we do support the bill. But certainly there are changes that could be made—very minor changes—that could make a world of difference in terms of how effectively the police complaints system could operate moving forward.

Ms. Chen: I think that the bill presents a huge potential for independence, and it's a promise. But I think the amendments we have suggested today will actually fulfill that promise—the promise of accountability, the promise of independence, and the promise of remedies for our clients.

Mr. Dunlop: And I understand that. I'm just curious because they are coming in quite a wide variety of potential amendments, the recommendations people are making. But I'm curious about your organization. Can you give the committee any feedback on the types of complaints you are getting? Can you share that with the committee, the kinds of numbers, etc., that type of thing?

Ms. Chen: As my colleague has said, we are a test-case clinic. Part of our work includes assisting people with police complaints, and we do that on a regular basis. Practically every day we get calls from people who have suffered at the hands of the police, and they are wide-ranging issues, some of them extremely serious involving police abuse, and some of them you would term minor, involving verbal harassment or just simply stopping on the street. We assist clients on a wide range. That's why it's linked to one of our recommendations: that if an allegation or complaint involves injury, the independent director should be keeping those complaints, because we've found that with those types of complaints, including complaints involving racial discrimination, the process has not worked at all. In fact, it has revictimized our clients. It's not just an uphill battle; it has been fraught with resistance, and our clients are just completely revictimized by the whole system. So we do get a range.

We find as well that the SIU mandate is way too narrow for many of our complaints because their mandate stops at serious injury. We find that with a lot of complaints that involve police use of force, they don't come up to that standard of serious injury. We find that the police end up investigating those complaints, and that process has been completely problematic.

Mr. Dunlop: Thank you very much for your presentation.

The Chair: We'll move on to the NDP.

Mr. Kormos: Thank you very much for your participation. I don't have a problem understanding your proposal around section 57. The retention of "may" means that the government will effectively control the amount of investigation of systemic issues that's performed by funding, or underfunding. Since the director is not required to investigate, lack of funding does not create a crisis in terms of the application of section 57. That's the problem, Mr. Zimmer. That's the problem. Come on; is Bill 107 that distant in your memory that you can't contemplate an investigative function and an adjudicative function, along with addressing systemic issues and investigating them?

Alan Borovoy was here yesterday. He was concerned about the dichotomy of policy issues being kept within the bailiwick of the director while the director can farm out conduct issues to local chiefs of police. His proposal was that there should be not just a review of the complaint, which means looking at it and taking it verbatim, but an initial investigation to determine whether or not something that might be, in the first instance, conduct is in fact a policy issue. Why in hell would you refer a policy issue, for good reason, down to the chief of police? It's probably the chief of police who set the policy. For instance, if it's the policy of a given police service to use a technique or tactic with citizenry, the victim of that technique or tactic would perceive it and report it as the conduct of that police officer, yet in fact it may be a policy issue: The cop is following orders. He's doing what's consistent with the policy of that police force.

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I go through this because we're dealing with these, and I'm trying very hard—I'm worried that the government's not going to accept any of the proposals put forward by people like Alan Borovoy, even the points where Alan Borovoy and Bruce Miller of the police association agree with each other—they do, in terms of wanting non-police adjudication.

Do you see that as a significant issue, especially in view of your comments around section 57? Do you believe the director should be required to investigate the initial complaint to make a determination as to whether it's in fact a policy as compared to mere conduct, to avoid that horrible dilemma of sending policy issues disguised as conduct issues down to a chief of police to adjudicate?

Mr. Moriah: It's very important, and it does go back to what we're talking about, even in terms of systemic

issues. One of the concerns is, as you said, that Bill 107 isn't that far distant in our memory.

Mr. Kormos: I remember it well.

Mr. Moriah: There's that sometimes unfortunate idea that there's a disconnect between individual and systemic issues and, because of that, we can separate them somehow and deal with them appropriately in two different manners. We know from the experiences we have with our clients that one of the concerns is that the conduct issues they face often derive from systemic issues within the police services. Unless there is a way in which the director, whether through policy initiatives or through the investigation they receive in the initial investigation of complaints, can address whether or not a systemic issue is at play, the concern is that these issues are going to go back as conduct issues to that particular police service, and they might not be addressed or investigated as properly as they could be had it been done by an independent body.

The Chair: Thank you for your presentation, and thank you for your time today.

COMMUNITY EDUCATION AND ACCESS TO POLICE COMPLAINTS DEMONSTRATION PROJECT

The Chair: We move on then to our next deputation, which is the Community Education and Access to Police Complaints Demonstration Project, CEAPC; Susanne Burkhardt, director of development and community engagement, acting CEAPC project coordinator.

Ms. Susanne Burkhardt: Hello.

The Chair: Good morning.

Ms. Burkhardt: Good morning. My name is Susanne Burkhardt. I am the director of development and community engagement at Scadding Court Community Centre, and I have been for the past four or five months the acting coordinator of the Community Education and Access to Police Complaints Demonstration Project, which is a mouthful. We refer to it as the CEAPC project, so I'll be referring to it that way from now on.

Scadding Court is a multi-service community centre that serves residents in the west downtown area of Dundas and Bathurst. We have a long history of serving a very diverse community, culturally, economically and otherwise. We were involved in the initial formation of the CEAPC project, which is a two-year demonstration project that's focused on making the police complaints system more accessible and available to the specific needs of community members, particularly those who are marginalized due to their culture, race, language, socio-economic status and other factors.

The CEAPC project is based out of a pretty unique partnership of 39 diverse organizations from across Toronto. The partnership includes legal clinics, community centres, grassroots groups, advocacy groups and a lot more. It also includes the active participation and support by the Toronto Police Service as a project partner, which has been really instrumental in its success. We've worked

quite closely with their professional standards department.

I'd like to provide a brief overview of who we are and what we do, after which I'll outline our partnership's analysis of Bill 103 and the recommendations that we are putting forward. The second part, where I speak about the recommendations, is based on our partnership's analysis, which I've given to you in its long version and as a summary as well. Because we have 39 partners, which includes a number of legal clinics, it's a pretty detailed document with a lot of recommendations.

In 2002, events in our community led to the development of a new area of programming which related to addressing issues of race relations. There was the formation of a local task team on race relations which, over time, identified a number of themes that were in need of attention. These included the relationship between the community, particularly youth and police, as well as the reluctance of community members to file complaints and generally very low levels of awareness about how to even go about filing a complaint. We explored this a little bit further throughout the city and held 17 focus groups which confirmed that the same issues were being experienced in a lot of other marginalized communities around the city. Therefore, we developed a project and in May 2005 launched it with over 30 partner agencies.

Our approach to facilitating access to the police complaints system is to provide community-based intake and support and to proactively educate and raise awareness and knowledge about the police complaint system. At the same time, we recognize that many complaints are symptomatic of a much broader issue of police community relations. For this reason, an underlying theme in everything that we do is to promote understanding and more positive relations between communities and police.

We've worked in six high-needs Toronto neighbourhoods, and in doing that, we basically carry out four primary streams of activity. We offer a community-based intake of complaints and support for pursuing those complaints. We do a lot of outreach awareness-raising. We do a lot of community education, and we hold divisional orientations which bring together police with community members.

In terms of our community-based intake, we've trained over 75 community workers across the city on police complaints, anti-racism, conflict resolution and a number of other topics. That training was provided by university professors, grassroots community groups and members of the Toronto Police Service, so it was a very solid, intensive training process. Many of those who've been trained are actively providing support to people who want to file complaints around the city and support in terms of providing information, letting people know what to expect, providing translation services, cultural interpretation—that kind of thing.

Our first evaluation, which covered the first six months of the project, found that within the six divisions served by CEAPC, we took in 9.7% of all complaints

filed, which was a statistically significant number. In our second evaluation, we found that that number had risen by 187%, so as awareness about the project grew, people were really accessing it a lot more.

We also created a number of resource materials. I've given you the brochures and a bookmark, I believe. All of those brochures were translated into 16 different languages, based on the needs of our partners, and have been disseminated very broadly around the city. We also held two TTC ad campaigns which really were successful in raising awareness. As someone who took this over four or five months ago, I'm astounded by the number of phone calls I get from people just wanting information, wanting to know about the process and how to proceed, and sometimes wanting help, but not always.

We've done 29 workshops to over 400 community members on a wide range of topics. These are really successful, and we're increasingly getting requests from other communities to do workshops. As I mentioned, we also have held a number of divisional orientations, which bring together communities and police for a day-long session and are preceded by a number of planning meetings as well. What these do is build relationships. They create understandings. They let people identify what local issues are and how they might work on them together.

An interesting development is that we've been approached by a couple of other communities around using our model. We're actively working with a group in Hamilton which includes the Hamilton police to adapt our materials for their setting, and have been approached by a group in Ottawa that's interested as well.

We believe that our project clearly demonstrates that increasing access to the complaints system and using this process to create opportunities for dialogue and building relationships between police and communities is both viable and productive and results in positive outcomes. Community-based education and intake seems to really work. People are comfortable in community settings, agencies can provide information and services in a way that meets people's needs, and we also have a capacity for referring people to other sources of information and services that does not exist at all in the current system.

We have, of course, been following the development of Bill 103 fairly closely and very much welcome the review of the legislation, but we do feel strongly that the proposed changes are insufficient and don't provide a lot of reforms that would result in a more legitimate, transparent and accountable procedure. We would really like to see a model that not only allows for but encourages and actually welcomes the engagement of a lot of individuals and communities who currently feel discouraged from coming forward.

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We have identified a number of broad themes around which there is concern, which includes a strong emphasis on accessibility. We also have 50 recommendations that are pretty specific and pretty concrete. I'm not going to go through them all, but I would strongly urge you to

consider them as you move forward. As I said, we do have 39 partners, and that's part of why this document is pretty detailed, because we were trying to accommodate all of our partners.

One of our big concerns is the issue of civilian oversight, and I believe I've heard it mentioned before. We really notice that there is a widespread perception among those who have had negative interactions with the police that the current system isn't effective as an instrument of accountability. We don't believe that Bill 103 does anything about this distrust of the system. In response to calls for civilian oversight, it has established the independent police review director, which is a step forward, but our partners believe that the legitimacy of this office is compromised by the fact that control over the complaints process has shifted from the hands of the police into the hands of the Attorney General and that the oversight mechanism is therefore independent in name only.

We also have a sense that power is now concentrated in a few people or in a few positions and really believe that true accountability will only result if the IPRD is accountable to fully independent civilian boards across the province, which should be representative of the diverse makeup of the province.

Another broad area of concern is that the language that's used and the terminology used in the bill is often very vague and creates very little certainty as to how the process is actually going to work. There is a concern that this leaves a lot of power within the hands of policy-makers and that the political climate and interest groups will have quite a bit of ability to influence how the actual bill is implemented. Ultimately, we worry that this vagueness will result in inconsistently applied practices that frustrate the ability of people to actually access the system, particularly the communities that we work with, which face a number of barriers.

A final area of concern relates to the breadth of the mandate of the IPRD and the fact that its powers are highly discretionary. This basically impacts on the whole legitimacy of the complaints regime, as there is not a sense that the IPRD can necessarily administer it in a consistent manner.

I'm now going to speak to a couple of specific concerns that we've had around the issue of access. If I could get a heads-up when I have five minutes left, that would be great.

The Chair: Just to let you know, you started at just after 11 o'clock. According to my clock it's about 11:12 right now, so you can speak for at least nine more minutes.

Ms. Burkhardt: Thank you.

One area of concern is around outreach and education to diverse communities. We really believe that Ontario's diversity is a reality that has to be explicitly addressed by a public mechanism that aims to provide an equitable and just complaints system.

We agree with Justice LeSage, who said, "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.” Our partner organizations know from first-hand experience that barriers caused by a lack of outreach and public education are magnified for a lot of people, such as those who do not speak English as a first language, face literacy challenges, have a disability, are socially isolated, or live in underserved communities.

We also feel that true accessibility demands that complainants have a wide variety of intake mechanisms. There are examples of flexibility with respect to intake mechanisms in other jurisdictions—I think some are outlined in our analysis—and also in the public complaints context of the provincial Ombudsman, where you can do an intake by phone, e-mail, Internet, fax or mail, which are more options than are currently available under the police complaints regime.

We feel strongly that the bill must take linguistic, cultural and other diversity considerations into account in terms of providing information and assistance. There are some specific recommendations around that.

We also believe that our project, as the only one of its kind in Ontario and in fact in Canada that we are aware of, could be considered as a model for public education and assistance with complaints. For this reason, we would recommend that the bill consider mandating the availability of community-based complaints intake to be provided by community-based organizations that are trained and funded to do so. We’re not saying that’s the only way that complaints should be taken in, but we do think it’s one way that complaints should be able to be submitted.

There’s concern about geographic barriers. Even in Toronto, where the current civilian oversight body is located, making a complaint can be intimidating and inconvenient. Geographic difficulties for people in smaller rural or northern communities are even more of an issue. As it stands, the bill permits the IPRD, but doesn’t require it, to establish regional offices. We strongly believe, as did Justice LeSage, that the province should be divided into regions and that adviser groups should be formed in each region. This would address the issue of geography. It would also address the issue of civilian oversight.

A concern raised by a number of our partners is the fact that the bill does not appear to address the issue of accessibility for aboriginal communities, where problems of geography, language and cultural barriers can really converge and access is a strong concern. We have a number of recommendations around that.

We are also concerned that the bill doesn’t impose a positive obligation on the police to identify themselves, which creates the potential for police to act anonymously and, in doing so, avoid accountability mechanisms. We would like to see a provincial standard for identification. We’d also like to go a step further and impose a positive duty on police to ensure that information about complaints procedures is accessible at different points of contact that police have with civilians, including on the street, in squad cars and at police stations. At this point, that information is not that easy to get to.

Another issue that we’d like to raise is the limitation period. At this point, it’s set at six months, and we believe that’s too short. We’ve encountered many situations where it just has not allowed for the time that someone has needed to recover from either emotional or physiological trauma that they’ve actually sustained, and it has kept them from filing complaints. We’d like to see that made longer.

I think I’ll mention one or two more points and then conclude so that we can have some questions.

The informal resolution is another concern that a number of our partners raised. They were troubled by the poorly conceived emphasis that they believe to be in place in Bill 103 around informal resolution. There was a concern that mediators have traditionally not been neutral. As a result, we would like to recommend that only neutral and qualified parties who are not and have never been employed as police officers should mediate informal resolution and that the results of informal resolution should be recorded, publicly available and audited.

I think I may end there. I’d like to echo some of the comments that the previous speakers made around funding for the system and point you towards the recommendations that we have around auditing, because there were a number of recommendations in that area.

I’d also like to thank you for your time and attention and let you know that our partnership would very much welcome the opportunity for more dialogue on this issue. I’m happy to answer questions. I do want to state that I’m not a lawyer. I very much come from a community-based perspective. I’ll do my best to answer any questions you might have. I’m also representing a number of different agencies, but I will do my best.

The Chair: Thank you. We have about three and a half minutes left, so roughly over a minute per party. We’ll start with the PC Party.

Mr. Dunlop: I just have a quick question. I appreciate the amount of information you brought to us this morning. This demonstration project: Did this take place after Bill 103 was introduced, or has this been going on for some time?

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Ms. Burkhardt: The development of it started in about 2003, so it was in process. We got funding in late 2004, I believe, so we started actually implementing the project in 2005. I’m not sure of the timeline of Bill 103. I do know that a number of our partners were involved in the LeSage consultations and then sort of moved on to Bill 103.

Mr. Dunlop: So you kind of carried on, you sort of paralleled your demonstration project with Bill 103 and the LeSage report.

Ms. Burkhardt: Yes. I don’t think it was intentional; it just happened to take place that way.

Mr. Dunlop: I noticed you do have recommendations.

Ms. Burkhardt: We do, yes.

Mr. Dunlop: So Mr. Zimmer is going to have a busy afternoon here. Thank you very much.

The Chair: Mr. Kormos for the NDP.

Mr. Kormos: Thank you very much. I'm amazed at the goodwill being displayed towards this bill when the fundamental problem, as perceived by so many, is police investigating the police. Yet while this bill creates yet a new body, which is not a police body, complaint about policies or services shall be referred to the local chief of police. Complaint about conduct shall be referred to the local chief, to another chief, or may be retained by the director, yet we know that funding constraints will determine how many actual investigations the director is going to be able to do. I'm amazed that people who have been struggling with the fundamental problem of police investigating the police come here and say, "Oh, it's basically a good piece of legislation." I find it mind-boggling. If the fundamental problem is police investigating police, the fundamental foundation of this bill is for the police to continue investigating the police. How come people aren't concerned about that, and how come people are suggesting that somehow, yes, the bill should be supported because it's a good new start?

Hell's bells. Do you think this is going to be reviewed and amended in the course of the next 10 or 15 years? Not bloody likely.

Ms. Burkhardt: We are very concerned with police investigating police and do go through that in our analysis. I didn't—

Mr. Kormos: So do I vote for the bill and hope that somehow in the years to come successive governments are going to make it better, or do I say, no, I'm taking a stand: This is not an adequate level of reform?

Ms. Burkhardt: That's a discussion that actually was held in many different ways within our partnership. What emerged was a real sense that, "You know what? It has come this far. We're better off to try and put some changes into it that would suit our needs than to try and oppose it." There was a real sense that that would be futile and that it was better to just go with it and try and make it suit the needs. That's the sense I get from the discussions that we held.

The Chair: Thank you for your answer. Over to the Liberal Party.

Mr. Crozier: With the restraint of the minute that I have, I'll just ask one question.

Ms. Burkhardt: My apologies.

Mr. Crozier: No, that's fine, and we can read your report as well. Thanks for bringing it.

The length of notification period, the six months: If you do recommend, what time period do you recommend?

Ms. Burkhardt: In our recommendations it says up to two years. In our specific discussions, there was that consensus that 12 to 18 months would be ideal. There were some people who really felt strongly about putting it to the two years because there was legal precedent, basically. The lawyers felt that there was legal precedent for the two years. A lot of the community groups felt that might even be a little bit too long, and 12 to 18 months would be ideal.

The Chair: Thank you for your presentation today.

R.J. POTOMSKI

The Chair: The next deputant is Mr. Potomski.

Just a reminder, Mr. Potomski: You've probably already heard this, but it's 20 minutes for your presentation. You can use all the time in the 20 minutes for your presentation, or you can use part of it and have questions asked of yourself.

Mr. R.J. Potomski: I haven't sent you anything and I haven't written anything down. I read this bill and I'm putting in some background on me so you understand why I'm here. I looked at it and I'm seeing what changes compared to what the existing system is and what this new system is. The only thing I see is that you've added some new employees onto the government payroll. I'm not sure if anything else changes.

I want to tell you a story, and really, at first sight, I'm looking at it and saying, is it worth the money and the time to have Bill 103?

Here's my background: There have been a number of issues I have had. I'm from Windsor, Ontario. I'm not affiliated with any agency and I came up here on my own with no third party paying for anything.

Some 20 years ago, I was involved with quite a litigious break-up. One summer, after a couple of years, I had not seen my kids once they got out of school. My access was denied. I had taken my ex-wife to court a couple of times—twice on contempt. The judge each time kept on saying, "One more time." Finally, he said, on August 14—and I remember that date; I forget even what year it was, but I remember August 14—I was to see my children at 10 a.m. come hell or high water, or she might lose custody or get thrown in jail at that point. And I'm only telling you one part of my life story; there are a lot of other issues.

So, going ahead, I'm kind of excited that this 10 o'clock in the morning is coming along, and at 8 o'clock there's a "knock, knock" on my apartment door. It's the Windsor police. Okay. I opened the door. The police officer said he was instructed that there was a warrant for my arrest and he had to take me downtown. I'm on the east side and he's going to take me downtown. Okay. I knew the officer from other issues that had been brought up, that had happened, and he took me downtown. They kept me until 11 o'clock in the morning and said they had made a mistake. They didn't offer a ride back; nothing. I had to find my own way back, and eventually by noon or 1 o'clock, when I got there, she was gone. I didn't see my kids. And she had a valid reason: The police arrested me.

I eventually found out later—

Mr. Kormos: Potomski's such a common name; I can see why they were confused.

Mr. Potomski: Well, what it was is that I was arrested on the 14th for not appearing in court on the 20th of that month. It really puzzled me. There's a number of things I could point out, and this is one thing.

I went around to different lawyers in Windsor. I felt like I should at least sue them. Off the record—because I'm friendly with a few lawyers and we were talking—

nobody really wanted to handle the case, because it wasn't a big case and they feared reprisal. The lawyers feared reprisal, okay? That's what really got me. I eventually hired a lawyer out of Toronto and we settled the thing to my satisfaction. I was told that because it was a minimal thing—basically, I wanted to get them off my back. I'll give you examples of things, like—this was back when, if you had an unpaid parking ticket, you could get arrested—I'd show up at 10 o'clock on a Sunday morning and there would be a police car waiting at the house to pick me up for an unpaid parking ticket. Now, that's 20 years ago. I want to tell you something that happened last summer.

I was arrested for trespassing on property that I was a tenant at. I asked for a copy of the police report. The cuffs were put on me in front of my business and I asked for a copy of the police report. That's sometime in June, I believe it was, give or take a few weeks in there. To this day, I have not received it yet. Yes, I can go through the whole process and what have you. I don't know who the police officers were. I have no idea, because they don't identify themselves and they don't have to. I have to tell them who I am. They can come and bother me like you wouldn't believe, but I have no idea who they are. They have a badge number, which is not their employee number, and they go through a process—like, they must be very paranoid, and I think a lot of them, or whoever set the system up, probably should get some psychological help.

Now, my daughter had another situation where she made a phone call. The call was a domestic violence call, where my brother had hit her. The police showed up for the trespassing and they ignored that. She filed a complaint. If you want to see something very intimidating, have a 26-year-old go into a police department and sit down with two police officers to talk about something and all they can do is say how she is wrong.

1130

Now, I've read this act, and the thing that maybe should change isn't so much whether police investigate the police, which I think is a big issue, but the other thing is the reprisal part. I think the Ontario Labour Relations Board has a very good model for dealing with complaints. If there is a reprisal on any complaint or anything before the board, it's a reverse onus. If you file a complaint with them, they also have somebody from the board who actually acts as a mediator and sits down and talks to the people. They are not associated with either the union or the employer; they're from the board.

If you sit down and you look at this process: The police chief has a lawyer, the director has a lawyer, the police officer has a lawyer. If there is any reprisal, the complainant has no legal help. They don't even have someone to hold their hand. Then, if there is a reprisal—and I'm going to tell you, there were reprisals on my lawsuit; I'm not going to go into all that. If there was a reprisal, this piece of legislation is suggesting that it has to be approved by the Attorney General. Well, I raised a bit of hell on that during my problems last year.

It was just in December that I left church in Windsor on a Sunday morning. It was about a quarter to nine or nine o'clock. My mother had had a stroke the week before and she was in the hospital. I pulled out of the church parking lot, drove three blocks going to the hospital to see my mother, and I got pulled over by a police officer. I asked what the problem was. Well, the van I drive is under a corporation that I am a president of and it's an out-of-town one. He felt he had to find out who was driving the van. He told me point blank that it had an out-of-town plate and he wanted to identify the person who was driving the van. He pulled me over, checked my credentials, and that was his reasoning. I don't know who he is because he doesn't have to identify himself. I just went on my way. Am I going to file a complaint? To what end? To have more harassment from the police department? Because if I do, I have to make a case, I have to spend time, take time off work and everything. There's no help here.

I don't know what the purpose of Bill 103 is. In some ways it seems like it's a labour relations bill to deal with the management of the police department and the police officers. If they have a complaint and take care of a citizen, that might be—I don't know, the movie was *Collateral Damage*, the thing on the side—a collateral issue.

I would ask that if your purpose is to deal with complaints, have it set up, first of all, that police officers have to wear a name tag. That's not a number; a name tag—with a number. If there is a reprisal, it will be a reverse onus so that someone doesn't have the fear of having to make a case. I also would ask that there might be some type of person available, whether it be a one-on-one—I'm not too sure if the funding for this type of operation would be similar to the Ontario Labour Relations Board, but that somebody can be contacted and you might be able to talk to somebody about what is here, what is there. Also, it wouldn't be a bad idea if the mediation could be dealt with by a third party from the government, not from the police department.

This was the other thing I found out last year: They told me that if I file a complaint on that arresting thing, I had to show that they had contravened certain rules. I said, "Could I get a copy of those rules?" They said, "No, it's not available." I'm supposed to have a complaint against something they've done, but the rules aren't readily available?

Through the Solicitor General or through the Internet, I eventually got somebody to send something out to me. But, you know, a lot of people don't have the time. So I think the issue here is, if you have a problem with the police department—and in my experience I can probably talk about 10 or 12 issues—you're best not to complain, because the repercussions could be worse, and you will never know who the police officer is because they protect that.

That's where I'm at with this. I wish this bill had a little more meat as to how you can deal with the common guy or woman on the street. That's where I'm at. If you

have any questions or any other issues that you want to hear, I'm willing to give them to you.

The Chair: Thank you, Mr. Potomski. We've used up about 12 minutes, so there are about eight or nine minutes, so three minutes per party. We'll start with Mr. Kormos of the NDP.

Mr. Kormos: Thank you very much for coming here. I would invite you to speak with Ms. Stokes, the clerk, about getting compensated for your mileage. You're entitled to it.

Interestingly, people have been hiding behind the judicial robes of Mr. LeSage—government people, by and large—in terms of saying, “Well, if LeSage didn't recommend it, it's not in the legislation.” I note, for instance, that LeSage recommended that the six-month limitation period be maintained but for when criminal charges are laid, and then the six-month limitation period should run from the resolution, one way or another, of those criminal charges. Am I missing something? Is that in the bill somewhere, Mr. Zimmer? I don't see it there, the recommendation by Mr. LeSage.

Mr. LeSage talks about the need—you spoke to this recommendation number 8—for provincial standards for police officers. Some police forces and police services do this; police officers have to wear easily-read name tags to identify themselves. I'm not aware of those standards yet—another recommendation by the Honourable Patrick J. LeSage, author of the report whose judicial robes the government hides behind when it comes to section 97, for instance.

Think about this: If you or any other person who uses this new procedure—which still, by and large, uses police to investigate police; let's cut to the chase—have a complaint about the process itself, no longer a complaint about the police officer or police service, but a complaint about the process itself, you've got nowhere to go. This is because the government, by virtue of section 97, says that people can't go to the Ombudsman to request the Ombudsman to commence an inquiry into the process, just like the Ombudsman has with respect to the Family Responsibility Office or just like the Ombudsman has with respect to the incredibly Byzantine and difficult process that sick people have to undergo in the province of Ontario to get out-of-province health treatment.

So I appreciate you coming. You bring a very human, real-life, real-world—this isn't about statutes and sections; it's about real people. And quite frankly, it's about the relationship between citizenry and their police officers in a community. I thank you very much.

Mr. Potomski: There is one thing I've got to add in there.

Mr. Kormos: Sure.

1140

Mr. Potomski: The original comments that I had, the problem with the police at the beginning: I used to have troubles with the marriage break-up, with custody, access and all that. Once I got the police off my back through a court process, I eventually got custody of my kids. That's

something that legislation doesn't help. You can't get rid of the police if they're bothering you.

The Chair: Thank you. We'll move on, then, to the Liberal Party. Any questions?

Mr. Zimmer: Thank you very much for your presentation and for coming down from Windsor.

The Chair: We'll move on to the PC Party.

Mr. Runciman: Thank you again for coming all this way to make a contribution. It is much appreciated. I know that your story with respect to domestic disputes is not unfamiliar. I had a public forum in my own community sponsored by the local bar and certainly that was a major concern from the perspective of husbands or ex-husbands: that there seems to be a real bias built into the justice system in the province with respect to how police and the crown approach these kinds of issues. It's a concern that I think the officials should be taking a look at and assessing the merit in terms of how we proceed in the future with these kinds of situations.

Mr. Potomski: The issue that happened to me, I would step up here and say it wasn't so much sexism and sexist people and all this. It was a matter of who you knew, from what I understand, as opposed to the sexism or not, in my case. Like I said, once I got rid of the police department and people my in-laws knew, I eventually got custody of my kids.

Mr. Kormos: But, Chair, who you know is still prevalent. Raminder Gill got appointed a citizenship judge without going through the process, I'm sure, because of who he knew.

Mr. Runciman: No, no. Don't be so cynical.

The Chair: Thank you for your presentation, Mr. Potomski.

OTTAWA WITNESS GROUP

The Chair: We will move on now to our next presentation, which is a video-conference with the Ontario Witness Group. Good morning, Paul Durber and John Baglow. There has been a slight delay here. Good morning. You have 20 minutes to make your presentation. Whatever time you don't use, the three parties will utilize to ask questions of you. Welcome to the committee.

Mr. Paul Durber: Thank you very much, Mr. Chairman. I'm Paul Durber and my colleague here is John Baglow. I believe you have our written presentation, and what we'd like to do is to talk about where we see the bill needing to be strengthened. Particularly, we see some areas such as the objectives of the bill and also some specifics.

Pardon me if my speech seems a little broken, because we're getting the feedback here.

Mr. John Baglow: Yes, we're hearing ourselves.

The Chair: Okay.

Mr. Durber: I believe you have a copy of our written presentation.

The Chair: Yes, we do.

Mr. Durber: Good; thank you. We think that having objectives for this bill would be especially important for

audits, for understanding the effectiveness of the bill, and particularly for giving people education on this particular bill.

You will see that we note the principles in the Ontario Police Service Act. We don't see in there anywhere issues of accountability, fairness and equity. We do urge the committee to add a statement of what you hope this bill is to stand for. Therefore, we suggest you add values of meaningful accountability and equity to an opening declaration.

I'm going to hand over to my colleague, John Baglow, a discussion of some of our other recommendations, but before I get there I would also like to emphasize that we worry a little about one particular constraint which was highlighted by Mr. Justice LeSage: that there be no more than 50% of IPRD investigators who are former police officers.

Mr. Baglow: The Ottawa Witness Group believes that within the proper context, so long as initial hearings, third-party review and third-party investigations are assured, we can expect police investigations to tend generally to be thorough and above board. We're concerned, however, that an actual hearing is delinked from these investigations and indeed may take place only after several more steps in the complaints process. We would strongly support the right to an automatic initial hearing close to the beginning of the process in which a complainant or representative may appear to argue his or her case and in which both parties would table their respective information and evidence, much like an examination for discovery. In the federal government there has been an appeal process where there is an initial disclosure phase. It would, to some extent, resemble that.

This hearing would act as a filter—sorry, did we cut out for a moment?

The Chair: Yes, you did, just when you were saying the word “filter.”

Mr. Baglow: Thank you. This hearing would act as a filter, revealing to both parties the strengths and weaknesses of the case at hand, and in many instances either precluding further action on the part of a complainant or encouraging immediate remedial action by the chief of police. Certainly, when they brought in the disclosure phase for the appeal system in the federal regime, the number of appeals was cut back.

Our recommendation is that an opportunity for an initial hearing be accorded a complainant upon the completion of an internal police investigation or of an IPRD investigation if the complaint is retained, and that that hearing normally take place no later than three months after the complaint is submitted.

We would also suggest that, rather than reviewing the findings of the chief of police after an internal police investigation—and that's the IPRD's scope of review at the moment—the IPRD would review those findings in light of the evidence brought out at the hearing and be authorized, in addition, to review the hearing process itself.

The IPRD is accorded quite a lot of power, so much will depend upon how those powers are exercised. For

greater clarity and certainty, therefore, the legislation, we feel, should be more explicit.

We recommend that the revised act specify the purpose of establishing this post, identify the specific values that the IPRD is expected to uphold in managing the complaints process—for example, transparency, fairness, accountability and credibility—and define the accountability framework within which the IPRD will carry out his or her duties.

The IPRD appears to us to have too much power in one respect and too little in another. Once an investigation is carried out by the IPRD and a complaint is considered unfounded, the process appears to stop. There is no appeal possible on the part of the complainant, and we refer you to subsections 68(2) and 87(1). Furthermore, if the IPRD upholds the police after reviewing, under subsection 71(1), the findings of the chief of police after a complaint has been initially referred to investigation, there appears to be no right of appeal in that circumstance either. So the scope of appeal for a complainant—and we ask the committee to please put yourselves in the place of a complainant when you're reviewing this legislation; think what it's like for the complainant—their scope is very, very restricted by the current draft of the legislation.

We also recommend—I'm sorry, we've been through the recommendation, I guess, in other words.

1150

The IPRD may review, upon the request of the complainant, the finding of a chief of police that a complaint is unsubstantiated or not of a serious nature and choose from a variety of actions under subsection 71(3), but this doesn't seem to include referral to the Ontario commission. A complaint finds its way to the OCPC only when a complainant, after a hearing, exercises his or her option to appeal the outcome to the commission.

We recommend that upon the completion of the review of the findings of a chief of police, the IPRD have the explicit authority to refer the case directly to the commission for appropriate disposition.

I'll hand things over Paul now.

Mr. Durber: Thank you, John. On page 4 of our submission, we begin with the question of penalties. We've noted here in Ottawa, for example, that some relatively egregious offences against complainants have resulted in absolutely minimal wrist-slapping. This follows, I think, on John's proposal that appeal on penalty also be permitted. At the very least, we think that the IPRD should specifically be required to review the issue of penalty and, if necessary, be able to refer the issue to the commission. So you will see there our recommendation 8.

As with some other speakers, we are very concerned about access. Police do, whether they wish to or not, exercise a certain intimidation by virtue of their authority, particularly on the young or the marginalized. We would really like to stress that public accessibility to the complaints procedure must be a fundamental component of a successful civilian complaints regime. While we applaud the provision in subsection 58(4), which pro-

vides for public education and assistance, we do believe that the IPRD should be required to establish regional offices.

We also think there should be some guidelines set out in the act for the IPRD to provide a certain standard of assistance to a potential complainant.

We believe that these recommendations to you are with the spirit and intent of the proposed legislation which you have before you, as well as the report from Mr. Justice LeSage. We look forward to hearing your questions, if any. Thank you so much for the opportunity of appearing.

The Chair: Thank you. We have almost nine minutes for questions. We'll start with the Liberal Party. Are there any questions at all?

Mr. Crozier: I guess not. Thank you very much for your presentation, and we'll forward the time to someone else.

The Chair: We'll move on, then, to the Progressive Conservative Party.

Mr. Runciman: I would echo the thanks of the committee for your contribution to the process. I'm just curious about the fact that we heard extensively yesterday the issue of whether or not there should be oversight through the Ombudsman's office for IPRD. You haven't spoken to that. I wonder if you have a view related to that issue.

Mr. Baglow: Thank you for the question. We didn't get specific about the type of oversight that would be required. We did say that the accountability framework should be spelled out in the legislation. Certainly the involvement of the Ombudsman would be useful, but that doesn't necessarily have to be the solution to this.

The problem now is that a tremendous amount depends upon the discretion of the IPRD, the mindset of the IPRD. So with someone whose mindset is really toward the right of the complainant, for example, we'd be fine; otherwise, not. There doesn't seem to be any real check on the power, or at least on the fairly unfettered discretion of the IPRD, so certainly the involvement of the Ombudsman would be one possibility for accountability.

Mr. Durber: Perhaps I could just add to that. In terms of checks and balances, I do believe that it's very important that there be provisions in the act for help to local groups who would be available to help complainants. I think, as the act stands right now, there is a great deal of emphasis placed on police investigation. I'm not sure that that can be avoided. Our group is generally supportive, with some worries, but we do think that some of those worries could be resolved if there were clear checks and balances afforded within the working of the bill, and we don't believe at the moment that there actually are. The Ombudsman is another person from outside. We do think that there need to be checks and balances within the system that is set up; for example, through help lines, through helping local groups and representative and consultative groups.

Mr. Runciman: I'm not taking issue with that. I'm just curious, on the other side of the coin, though, about

what your view would be with respect to what you might describe as a serial frivolous complainant. Should there be some sort of a fee attached to someone who engages in that kind of an activity on a regular basis?

Mr. Baglow: I think that would really discourage a lot of complaints that wouldn't in their nature be frivolous and vexatious. It seems to us that the bill already contains enough ammunition, if you like, to discourage frivolous complaints without the threat of being fined, in effect, if you put in a complaint that someone finds frivolous and vexatious. We certainly do think that the simple dismissal of a complaint for that reason should be subject to review, but I don't think putting in a user fee for making complaints is the way to go.

Mr. Durber: Just to follow up on that, one of the difficulties we have at the moment is that the current system is pretty broken. A lot of people really don't see any potential benefit in lodging complaints. To have further barriers in the way to meet exceptions, I think, would send a signal that the Legislature is actually not interested in solving the broken system, if I could be terribly blunt about it.

The Chair: We'll now move on to the NDP. Mr. Kormos will ask his questions.

Mr. Kormos: I read your submission and I see an opening comment welcoming the legislation, but for the life of me—as I had occasion to ask people earlier—the legislation seems to do very little to change the fundamental issue of police investigating police. The vast, vast majority of complaints are going to be referred to, if not the local police force, an adjoining police force, where it's going to be active, on-duty career police officers investigating other career police officers. Why are you and so many others so grateful to this government for this legislation when it does so little to fundamentally address the concern, we're told, about police investigating police? What's going on here?

1200

Mr. Zimmer: It might just be good legislation.

Mr. Kormos: Well, let's find out.

Mr. Baglow: Our group is perhaps not as concerned about this, with the proper framework in place, as some others. I come out of the labour movement myself. I'm familiar with the administrative grievance procedure within the federal public service and that's really internally handled as well, but it's always subject to oversight. It's subject to oversight from a third party. It's subject to review. It's subject even to the court system if you have to pursue it that far.

Those kinds of checks tend to encourage, although not always, a clean process. If it were just the police doing the same thing as before, and investigating themselves and accountable to no one, which is pretty much the case now, I would entirely agree with you. But so long as a police investigation is going to be subject to some pretty harsh scrutiny by outsiders, and so long as you get a hearing in which you can put forward your point of view and find out what the other side has, with all of those checks and balances in place, we don't really have as

much of a problem with an internal police investigation as some others might.

Mr. Kormos: Mind you, things may well have changed, and probably have, since I practised law, but I recall oh, so clearly how, when citizens complained about police misconduct that would amount to a crime, they got a 20-minute lecture at the local police station by the police officer investigating it about mischief charges and about the prospect of being charged themselves if they falsely accuse somebody else of committing an offence. Boy, if that wasn't a deterrent, nothing was. Those people skedaddled so fast out of that police station, you could see the trail of rubber.

John Clarke, well-known and, in some circles, notorious, spokesperson for OCAP, with the assistance of the very capable Peter Rosenthal, a professor of mathematics and a lawyer, just got himself an award, a judgment, for police misconduct. Why aren't groups like yours and others using Small Claims Court, for instance, more frequently to literally seek damages for police misconduct, rather than resorting to what could amount to in-house procedures like that even being proposed by this legislation?

Mr. Baglow: We're a volunteer group, first of all, with no budget—

Mr. Kormos: So is Peter Rosenthal.

Mr. Baglow: —and we don't pursue claims in Small Claims Court. But on top of that, I really have to say that I would prefer a complaints process for the average complainant who is not familiar with the system and is quite intimidated by it. For them, having to take civil action is simply beyond the reach of most people and certainly beyond the reach of marginalized people and beyond the reach of a number of others who have been in the past subject, if I could put it that way, to abusive authority by police.

Paul, you had some things to say?

Mr. Durber: Perhaps I could just add that we agree, Mr. Kormos, that it's very intimidating for people to have to go to police stations. We know a great number of people who don't even want to give their names for fear of reprisal in one way or another. So we think that it's very, very important that there be a good system for intake through the IPRD, that there be a clear presence of the IPRD as close to the ground as possible to stop the very kind of intimidation that people either believe they might suffer from or indeed do.

Mr. Kormos: A final point: What about direct election of police services boards? Wouldn't that be democratic, and wouldn't that generate an accountability that doesn't exist now?

Mr. Baglow: Justice LeSage actually talked about community advisory boards that might be a somewhat better procedure. Once you have an election, it's game over until the next one. His proposal for community advisory boards—and they're not the same ones that are talked about in the bill—would allow dialogue to take place within the communities and would be another avenue to bring out systemic problems with local police forces.

Mr. Kormos: You're right: another LeSage recommendation that wasn't followed.

The Chair: Thank you, Mr. Durber and Mr. Baglow, for your presentation. We'll take your comments as well as your presentation into consideration. We thank you for coming to us all the way from Ottawa today.

URBAN ALLIANCE ON RACE RELATIONS

The Chair: We'll move on to our next presentation, the Urban Alliance on Race Relations. I understand, members of the committee, that instead of Michelle Cho, we have Tam Goossen along with Mr. Dharmalingam—

Ms. Tam Goossen: And Sri-Guggan Sri-Skanda-Rajah.

The Chair: Good afternoon. You have 20 minutes to make your presentation. You've probably heard the rules—that if you don't use it up for your presentation, the members of the committee can ask you questions.

Ms. Goossen: Thank you very much, Mr. Chair. I'm Tam Goossen and I'm the vice-president of Urban Alliance. Audi Dharmalingam is a past president and founding member, and Sri is the president of our organization.

Thank you very much for the opportunity to make this presentation in front of you. First of all, the Urban Alliance on Race Relations formed in July 1975 to promote a stable and healthy multi-racial environment. It's a non-profit organization made up of volunteers from all sectors of the community. Just to emphasize, we're all volunteers donating intensive time for the organization. Through research, education and advocacy activities, the Urban Alliance focuses its efforts on the institutions of our society, including the public education system, the police and justice system, media, employment and human resources policies from different levels of government in order to reduce patterns of discrimination and inequity of opportunity in these institutions.

I'm going to jump right to: In June 2000, the Urban Alliance, together with the Queen Street Patients Council, the Toronto police, the Toronto Police Services Board and other community organizations, held an historic conference called Saving Lives: Alternatives to the Use of Lethal Force by Police. The issues explored included race in police shootings, mental health issues, less-than-lethal technology and barriers to change. The conference proceedings and recommendations are contained in a report bearing the same name. I left two copies with the clerk. The Urban Alliance now participates in a group that is looking at ways to implement the recommendations in that report. This group is being co-chaired by Chief Blair and its membership includes members from the police services board and other community groups.

Not surprisingly, the Urban Alliance was one of the groups that held discussions with Mr. Justice LeSage. Like our colleagues, we supported the principles set out by his report and agreed with many of his recommendations.

We would like to commend the government for appointing Mr. Justice LeSage to do the report in the first place and now, through Bill 103, to make some of his key recommendations a reality.

Because of time constraints, we will focus on a few specific aspects of Bill 103 that we discussed at our conference way back in 2000 and with Mr. Justice LeSage.

First of all, though, I need to emphasize a concern that we share with many of our colleagues that under Bill 103, police are, in essence, still investigating public complaints about the police and that the Attorney General must take necessary steps, including a timely review, to remedy this key shortcoming.

The first thing I want to focus on, actually, is the name change of OCCPS from Ontario Civilian Commission on Police Services to Ontario Civilian Police Commission. In our conference report, under the chapter “Community Policing Defined,” there was intense discussion of the important role that civilian oversight bodies of the police, such as municipal police service boards and OCCPS, should and could play in fully realizing the concept of community policing. The dismantling of the police complaints system by the previous government was seen not only as indicative of the government’s lack of commitment to true civilian accountability; it was also viewed as most troubling for what it reflected about the absence of any regard or recognition for the statutory role of OCCPS.

Conference participants from all constituencies agreed that community policing is not simply for front-line police officers or police service brass; it is also the responsibility of all who purport to hold institutional responsibilities. No agency can maintain credibility with complacency. It behooves all to participate and to reach out to explore the possibilities of true community policing.

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In the LeSage report, in expressing significant frustration with the complexity of the current system, community groups emphasized the fact that they did not understand the role of OCCPS, and criticisms were made of the commission for failing to effectively provide the needed oversight within the complaints system. Further in the report, Mr. Justice LeSage commented on how OCCPS’ many roles—investigative, adjudicative and appellate—may in some cases lead to difficulties.

Our recommendation: It is our opinion that, in addition to a new name change, it is important to review and clarify the many roles and functions of OCCPS and how they relate to the new independent police review director and its office. It’s also important that the finding of this review be made public to the community so that there will be no confusion about the two civilian oversight bodies.

Second is the appointment process of IPRD. One of the key recommendations of our conference report is on transparency and accountability. Accepting that effective and credible leadership is the key to progress in community policing, the report recommends that the com-

munity have an increased voice in the appointment process of key policing positions, including the chair of OCCPS, the director of the SIU, chairs of police services boards and chiefs of police services. The process of these appointments should be characterized by transparency and public accountability and should consist of public consultation hearings by the appropriate minister or police services board prior to such appointment.

For an actual example, prior to the appointment of Chief Blair, the Urban Alliance was one of the community groups that had participated in the public consultation organized by the Toronto Police Services Board to give input on what we expected from the chief of police. The process itself was an important piece in rebuilding the trust between the community and police. We recommend that the Attorney General should seek community input on the criteria for choosing the IPRD. The process used by the Toronto Police Services Board should be used as a “best practice” guide in this respect.

Third is the annual report and review of systemic issues. In the case of the special investigations unit, the individual and collective investigations of the SIU comprise a unique body of information related to the use of force by police officers which could be analyzed and utilized to make observations related to trends in the use of force and recommendations regarding changes or improvements in such usage. The director of the SIU is ideally positioned to undertake analysis and make observations and recommendations for the benefit of the public and the police.

We support that the IPRD will file an annual report with the Attorney General. What we would like to further suggest, though, is that this annual report go beyond the general affairs of the office of the IPRD to include a review of systemic issues that give rise to complaints and make recommendations to the appropriate governing bodies—the Solicitor General, Attorney General, chiefs of police and police services boards. As well, this annual report should contain IPRD efforts to provide public education and assistance about the public complaints system. This expanded annual report and recommendations for action must go to the Legislature and be actively shared with the community in public forums.

Fourth is resources. On the issue of adequate and sustained funding for this new office, the relevant section of the LeSage report bears repeating:

“Almost all of the groups and individuals spoke about the importance of properly resourcing the complaints system.... 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. OCCPS had a budget of \$0.7 million. When the police complaints commission and the board of inquiry were abolished, the OCCPS budget was increased by about \$1 million. As a result, almost \$4 million”—that’s close to 70% of the funding—“was withdrawn from the complaints system.”

Considering that Ontarians pay \$2.8 billion each year for public policing, Mr. Justice LeSage recommended

that 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. Our recommendation: We couldn't agree with him more.

In conclusion, we would like to share with you the words of wisdom of a former Justice of the Ontario Superior Court, George W. Adams:

"Policing is the provision of an important public service. However, unlike most public service providers, the police are given extraordinary powers to detain civilians and, when reasonably necessary, to prevent death or serious injury to themselves or civilians, to use lethal force."

Review and complaint mechanisms are therefore essential to ensure that the police are accountable for the use of those extraordinary powers.

Bill 103 is an important first step towards the rebuilding of accountability, trust and respect between the community and the police, but there remains a lot to be done. Thank you.

The Chair: Thank you for your presentation. Do you want to add anything more or is that basically your presentation?

Mr. Audi Dharmalingam: We can take on the questions.

The Chair: Okay, great; thank you. We have about three minutes per party, and we'll start with the Conservative Party.

Mr. Dunlop: We have no questions.

The Chair: The NDP: Mr. Kormos.

Mr. Kormos: Thank you kindly for your comments. Appointment process: Let's take a minute to reflect on, let's say, the Environmental Commissioner, Gord Miller, or the Ombudsman, André Marin, both of whom are officers of the assembly who were hired as a result of a job posting, applying for the job, being vetted by an all-party committee and being approved by an all-party committee. Both of them are people who have been fearless in the performance of their roles. Let's compare that with Barbara Hall, for instance, who didn't apply to any—the position of commissioner of the Ontario Human Rights Commission: Once the vacancy was there, it wasn't in the Toronto Star jobs column. People didn't apply. She's a political appointment—and not incompetent; far from incompetent. But contrast her behaviour—because when Bill 107 was announced, for instance, she had proverbial pom-poms in her hands cheering on the government with respect to Bill 107. I just say, that's the contrast between an officer of the assembly and a political appointment.

How do we prevent a political hack from enjoying pork-barrel patronage in the appointment? Are you suggesting that the role of IPRD be that of an officer of the assembly?

Mr. Sri-Guggan Sri-Skanda-Rajah: If I may take that question—thank you, Mr. Kormos. That would be the ideal, considering the history of the police complaints process and the manner in which people are being sel-

ected, people who are competent, but the way the process was handled lost the confidence of the community. The community was not satisfied with the way the results were being handled, the adjudications, etc.

Mr. Kormos: While we're talking about that, is there any role for provincial appointments—again, more often than not political hacks to local police services boards, who are really the first level of police oversight, aren't they? It's the first civilian level of police oversight. Why the heck are we tolerating provincial appointments of unelected people—not always, but almost always political hacks—to those very important positions?

Mr. Sri-Skanda-Rajah: Offering an individual perspective, the best way to win the confidence of the community, especially racialized and marginalized communities, is to make this appointment an appointment of the Legislature so that the report comes directly to the Legislature. It also then explains why the Ombudsman doesn't have oversight into this particular matter. I believe there's a way that activity is being excluded. That is, in my view, the best way to regain that confidence. And it will show the commitment of this government if it ventures that route. The director's report filed with the Legislature could be shared with the Attorney General and all other relevant ministries that have responsibility for policing services. That's my recommendation.

My other issue, if I may add to that, is that communities for over 30 years have been demanding civilian investigation, reporting and decision-making, another fundamentally important principle in winning their confidence. A whole number of people just do not go and make complaints.

1220

Sometime earlier on, somebody talked about intimidation and reprisal. When I used to be the legal worker for the black community in the late 1970s, I personally witnessed that type of intimidation, going to assist a person to lay a complaint when the complainant's office was at Lawrence and Yonge Street, and listening to the sergeant basically telling the guy, "Just forget it," and leaving the place without filing a complaint. Of course, his assumption was that I was a typical non-assertive south Asian, whereas I was there to assist the gentleman. It was only after I asserted myself as his agent with the right to file a complaint that the complaint was written down. We have come a long way from there; there are improvements. However, I think we have to go that step further and ensure total independence.

The Chair: Thank you. We'll move to the Liberal Party.

Mr. Zimmer: Thank you very much for your submissions. The Urban Alliance on Race Relations has been around since the mid-1970s—1975. So you've got 30—

Ms. Goossen: Yes, 32 years.

Mr. Zimmer: So 32 years of experience in this. In many ways you are the leader in this—

The Chair: Mr. Zimmer, could you please move your microphone a little bit closer?

Mr. Zimmer: Your organization was one of the early leaders in this field. We've always enjoyed and looked forward to your submissions, which we shall consider carefully.

The Chair: No further questions?

We thank you for your presentation today.

Mr. Dharmalingam: Just a comment, sir.

The Chair: Certainly.

Mr. Dharmalingam: As Mr. Zimmer said, I have been involved with the alliance since its inception, and I have been coming to this organization a number of times, except I find the number has kind of dwindled a little bit. A lot more audience used to come down here.

My concern is the racist issue in the interests of the community and as individuals, basically. What we would like to see is that when we come before this kind of committee the issues are taken very seriously, and the perception you're going to give the community is how you are going to create the trust and confidence. We are not saying the police are bad, but the thing is, there is an accountability factor we're talking about. I have yet to find out who is accountable to whom. I keep asking the questions, and I'm here to get an answer. So I'm saying that when we come before this kind of body, we need to find out who is accountable to whom. Are the police accountable to themselves, or to a body like this, or to the chief? We don't know that. I have been struggling with it for about 30 years, so I would like to go back with a feeling that somebody is listening, somebody is going to do something in a very sincere—the community gets the message: "Hey, they mean business," and that the police get the same message also. They're all good cops, but they need some accountability factor, and you are the body that can do that: that the person you are going to appoint is much more independent, has some guts and backbone to do these kinds of things. Thank you.

The Chair: Thank you very much. We'll take that into consideration as we consider the bill tomorrow on a clause-by-clause basis.

Mr. Dharmalingam: Thank you.

The Chair: So we'll continue our deputations—

Mr. Kormos: Can you assure us of that, Chair, that we'll take it into consideration?

The Chair: I can just speak on behalf of myself that I will take it into consideration.

We are recessed until 2 p.m.

The committee recessed from 1225 to 1406.

PSYCHIATRIC PATIENT ADVOCATE OFFICE

The Chair: I call the meeting of the standing committee on justice policy back to order. We'll continue our public deputations.

Our first deputation for this afternoon is the Psychiatric Patient Advocate Office; Mr. David Simpson, director, and Lisa Romano, legal counsel.

Good afternoon, and welcome. Basically, we're allowing 20 minutes per deputation, and then if there's any

time left after your presentation, we'll just do questions from the three parties.

Mr. David Simpson: Good afternoon. My name is David Simpson. I'm the acting director of the Psychiatric Patient Advocate Office. With me today is Lisa Romano, our legal counsel. We would like to thank the committee for the opportunity to share our recommendations with you in hopes that they will be adopted to strengthen Bill 103 and create a truly independent police complaints process that has the confidence of the people of Ontario.

We are pleased that the government of Ontario is considering establishing an independent police review system. Unfortunately, Bill 103 will not create the independent process envisioned by the people of Ontario, nor will it enshrine necessary and needed civilian oversight and accountability in the review process. By striking out one single word in this legislation, the word "referral," the objective could be achieved—a simple yet monumental change.

We need a police complaints process that has strong civilian oversight, a process that is fair, a process that is transparent and that can withstand scrutiny, and one that will allow the Ombudsman of Ontario, as a last resort, to review concerns raised by the people of Ontario. Let me begin by saying that many of our recommendations are based on the premise that a truly independent commission needs to be established. However, if that is not to be, you will note that we make comment on how to improve the current provisions in Bill 103.

The Psychiatric Patient Advocate Office, a rights protection organization, provides independent and confidential advocacy and rights advice services to consumers of and those seeking access to mental health services. We work to empower consumers to make informed decisions about their care, treatment and legal rights. In 2005, we had more than 25,000 patient contacts and provided service in 48 languages.

Some consumers of mental health services inform our office of alleged police misconduct but fail to complain formally out of fear of reprisal by the police and frustration with the existing complaints process. Our clients complain that the system is dismissive of complaints lodged by individuals with mental health histories or because it is alleged that the complaint constitutes "part of their illness," while others say they are discouraged from filing complaints or that their complaints are not investigated fully or fairly. Due to the vulnerability and discrimination of many mental health consumers, there is a profound power imbalance between consumers and the police. Failure to respond adequately to legitimate complaints of police misconduct fails not only the wronged person but the public, the police and the government. The current police complaints process does not have the confidence of most mental health consumers and their families.

On page 7, you'll see that we talk about the need for an independent civilian body. The fundamental flaw with both the current complaints process and the process articulated by Bill 103 is the lack of civilian oversight.

Many people, including consumers, are reluctant to lodge complaints regarding alleged police misconduct because they do not have faith in the process that permits police officers to investigate other police officers. The process is perceived as being designed to protect the police instead of the public interest.

In April 2005, Justice LeSage released a report regarding the findings and recommendations based on his thorough review of the police complaints system. The number one recommendation was the creation of an independent civilian body to administer the public complaints system in Ontario. The Attorney General committed to doing so, but sadly, he has failed with Bill 103.

In our opinion, the proposed legislation does not represent a significant change from the current regime, and it is not independent. Although an independent police review director is established to deal with complaints, there is no guarantee of an independent investigation because the director can refer complaints to the police, who will then investigate themselves. The PPAO believes the potential exists for the director to refer the majority of cases to police forces due to funding and external pressures, thus undermining the independence promised to Ontarians.

Bill 103 also endorses a two-tiered system where there are different procedures for complaints respecting officer conduct versus policies and services. The PPAO recommends that all complaints should be handled in the same way. Policy complaints are as important as misconduct and work performance complaints, as policies can potentially affect the lives of many people. As you heard yesterday, the ARCH Disability Law Centre agrees that there should not be a distinction between conduct and policies, as “the conduct of officers is often a reflection of a policy within the police services.”

On page 10 of our submission, you’ll see our comments regarding the independent police review director. Instead of being appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General, the director should be responsible to the Legislative Assembly. The PPAO would support any move to increase the autonomy of the director, as it would provide him or her with the necessary independence to work without interference or the potential of real or perceived conflict of interest.

The patient advocate office is in agreement with restrictions on employees of the new body requiring that they not be police officers, but we feel it should be bolstered to preclude former police officers from being employees. Our rationale is that former police officers may feel obligated to protect those officers being investigated due to their similar and shared experiences.

You’ll note that we also comment on the review of systemic issues. The director has the ability to “examine and review issues of a systemic nature” pertaining to public complaints and to make recommendations to various organizations and government bodies. While the PPAO supports the examination and review of systemic issues, we are concerned that this power will be akin to a

toothless tiger if the director is not required to investigate systemic issues. The director must also have the ability to conduct own-motion investigations and have authority to enforce recommendations. Any recommendations should also be made available to the public, either through special reports or the annual reporting process.

Ms. Romano will now continue with the remainder of our submission.

Ms. Lisa Romano: The first topic I am going to speak about is access to the complaints system. This can be found on page 12 of our submission. The complaints process needs to be as user-friendly as possible to make it accessible to all Ontarians. There are several ways in which this can be accomplished.

The first means of achieving accessibility is to ensure that third parties are able to make police complaints. Third parties should specifically include community organizations and advocacy groups. Currently, Bill 103 is unclear and confusing about the role of third parties. The PPAO has heard of many complaints that go unchecked simply because the individual does not have the capacity or ability to make a complaint in their own right due to their illness or disability. Many consumers of mental health services may not always recall the details surrounding their interaction with police. On the other hand, friends, family members or staff at community organizations who were either present during the incident or made aware of the details shortly afterwards may be in a position to assist.

Some consumers may have more pressing issues in their life to address than police complaints, such as finding accommodation or employment or focusing on recovery. Some consumers don’t have a fixed or permanent address, so it’s difficult for them to receive correspondence or to be kept informed of the progress of their complaint. Involving a third party would take care of some of these concerns.

Individuals should be given the opportunity to have a person of choice to provide support and assist with their complaint from initiation to resolution. Many consumers would appreciate having this support, as the process can be stressful, intimidating and overwhelming.

The PPAO also believes that police officers and staff should not be prohibited from bringing complaints as they are in a unique position to be aware of possible wrongdoings committed by other officers or problems arising from egregious police policies.

Whistle-blower protections should also be put in place to safeguard the rights of an individual who has the courage to step forward to report inappropriate police actions.

Another way to increase accessibility is to permit complaints to be made by a variety of means and with linguistic assistance. Instead of only allowing written complaints, individuals should be able to submit them verbally by telephone or in person. A writing requirement makes the system inaccessible to those with special needs, such as those people who are functionally illiterate or who are unable to communicate in English or French.

The LeSage report noted the linguistic and cultural diversity in the province and the need for accommo-

dation. We believe that there should be service provision in a multiplicity of languages at no additional cost to the complainant for such things as complaint forms, written materials, support services and translation at hearings. Education and outreach programs must also take the language, communication and cultural needs of individuals into account.

Education is a powerful tool to effect social change. Many consumers of mental health services either are fearful of or do not trust the police. This trust must be re-established, and one of the easiest ways to do so is to have police officers undergo regular education about interacting appropriately with persons with mental illness and being sensitive to the stereotypes and stigma that many consumers live with on a daily basis.

We also recommend the establishment of various advisory groups respecting vulnerable populations to assist with the education of police and the public, in addition to analyzing systemic issues endemic to these groups and providing advice to the director.

Education for consumers, families, service providers, advocates and other stakeholders regarding the police complaints process, how to access it and how to make complaints is also essential. The LeSage report advised that public education about the system had been virtually non-existent for several years but is critical to fostering understanding and public confidence in the system. People must be aware of their rights before they can exercise their rights.

Although Bill 103 says that the director shall provide publicly accessible information about the process and arrange for the provision of assistance to the public, it doesn't provide any details as to how this will be accomplished, nor does the government commit to any public funding. Both details and funding are necessary.

The PPAO also supports the LeSage report's recommendation that individual police services must participate in educating the public. At a minimum, each police force should appoint an officer or multiple officers to disseminate information to the public and respond to public inquiries and complaints.

All Ontarians must also have access to the complaints system, irrespective of their location or where they live. The LeSage report acknowledged the need to recognize the geographic diversity of Ontario. However, Bill 103 does not fully support this recommendation and merely says that the director "may" establish regional offices.

One final method of increasing accessibility concerns limiting the power of the director to refuse complaints, which can be found on page 15 of our submission. The director is afforded broad powers to refuse to deal with public complaints under Bill 103. We are concerned that meritorious complaints will be dismissed for reasons of administrative efficiency or lack of education or discrimination concerning mental illness.

Individuals have no mechanism of appeal if the director rejects their complaint. Thus, we recommend that complaints be dismissed only if the complaint is clearly without merit and there is no likelihood that further

investigation will establish merit. Complainants should have a right of reconsideration by the director, a right of appeal to the Ontario civilian police commission and, as a last resort, a right to appeal to the Ombudsman.

If the proposed legislation isn't amended to reflect our recommendations, at a minimum, definitions should be provided for "frivolous and vexatious," "made in bad faith" and "public interest," terms that are used with respect to refusing complaints.

I'm now going to turn to the topic of limitation periods, which is found on page 17 of our submission. Bill 103 says that a person can only bring a complaint within six months of the alleged misconduct. We feel this time frame contravenes the general limitation period of two years for most civil actions, as found in the Limitations Act.

A short limitation period is particularly onerous for consumers of mental health services. Due to the cyclical nature of many mental illnesses, some clients may not be able to assert their rights for an extended period of time. Due to the stigmatization and lack of respect for the rights of persons with mental illness, some victims may not realize that they've suffered an injustice. Others may realize that their rights were violated, but they were initially too vulnerable to take action or were concerned that it would impact on their level of access to services and supports in the future. Thus, the short time frame precludes many individuals from exercising their rights, and we feel it should be extended to two years.

1420

I'm going to speak for a few moments about informal resolution, and that can be found on page 18 of our submission. Bill 103 permits informal resolution in certain circumstances when a complaint is thought to be "not of a serious nature." While the PPAO agrees that informal resolution can be useful, we must be mindful of the inherent power imbalance in such a process. Complainants may feel compelled to agree because otherwise their complaint may be rejected. Forced mediation can also have the effect of revictimizing the complainant.

Several changes should be made, in our opinion. First, it should be the director who should suggest the use of informal resolution. Second, the term "not of a serious nature" should be defined, otherwise the referral of such complaints is susceptible to subjectivity and abuse. Third, there should be a written acknowledgement prior to engaging in informal discussions to indicate that the complainant was informed of the process. Fourth, the mediators should be neutral parties with no ties to the police. Fifth, statistics should be maintained about the numbers and outcomes of times when informal resolution is used. And finally, complainants should be able to receive legal advice and assistance.

On page 21 of our written submission, we discuss our position regarding the rights of persons making complaints, that they would be better protected with the additional oversight of the Office of the Ombudsman. Unfortunately, section 97 of Bill 103 explicitly prevents the Ombudsman Act from applying.

André Marin, the Ombudsman of Ontario, has spoken about the dangers of not allowing his office to have jurisdiction over police complaints. He has asked, “Who will guard the guards themselves? Who will keep this new provincial body in check and independently investigate complaints against it?” He also points out that Ontario will be the only province without external accountability of its complaints system. The PPAO agrees with the assertions made by the Ombudsman and that the Ombudsman should have jurisdiction over the police complaints process.

The last topic I will discuss is police identification, and that can be noted on page 23 of our submission. To initiate a complaint, individuals must provide some sort of identifying information about the police officers who are the subject of the complaint. This can be a huge obstacle. Some clients may have difficulties seeing or remembering the four- or five-digit badge number of the officer, especially if they are agitated or if it’s dark where they are. It can also be hard for clients to report sufficient details about an officer’s physical description due to the fact that some officers will look the same in their uniform. Many complainants are too intimidated to ask officers at the time of the incident for identification. When PPAO clients have asked for an officer’s name or badge number, they are often denied such information.

The need for name tags was recognized by both the LeSage report and various police forces across the province, including the Toronto Police Service, who now require officers to wear name tags. Thus, the PPAO recommends that the legislation require officers to wear visible name tags as it will heighten accountability.

Mr. Simpson will now conclude our submission.

Mr. Simpson: The Psychiatric Patient Advocate Office is pleased that the government is changing the province’s police complaints system. However, there are many flaws with the proposed system under Bill 103, most notably the failure to establish a truly independent civilian body. This is extremely disappointing given the input from Ontarians and the resulting LeSage report.

We encourage the standing committee on justice policy to consider our recommendations and to implement them to strengthen the police complaints process and bring justice to those who are most vulnerable and marginalized.

As the proposed legislation represents an opportunity to shape the delivery of one of our most important civic services, we urge you to seriously consider adopting our recommendations, to the benefit of all Ontarians.

The Chair: Thank you. We have about a minute left. Is there anyone who has a pressing question?

Mr. Kormos: Yes, I do.

The Chair: All right. Mr. Kormos.

Mr. Kormos: First: just an incredibly articulate, bold, thorough and intelligent analysis, and I appreciate it very much.

Informal resolution: That’s not new. That existed in the 1997 legislation, and the language is identical. I think one of the most frustrating things is that they’re not

talking specifically—that is to say, the government—about, let’s say, a mediation program. Lord knows, after they abolished the Human Rights Commission, which is of course what they just did with Bill 107, and all of the great potential for mediation that was contained within that, I’m worried that the informal resolution, without the disciplines and safeguards that are inherent in a professionally functioning mediation structure, is not mediation.

Mr. Simpson: I guess that’s part of our concern as well: Is it going to be an informal process just to make complaints go away without careful review? I guess that’s our concern. There are things at times that do go to mediation that would be better to go to investigation because of the importance of the issue or the possibility to make systemic change. So I think that’s why we think that this section needs more attention.

Mr. Kormos: Which is why I’ve presented a motion that requires that the director approve the informal resolution if it’s being proposed by a chief of police, that it has to be approved before it can be engaged in by the director, which implies the process as well.

Mr. Simpson: Right.

The Chair: Thank you. We’re out of time, but, Mr. Zimmer, you have a very brief question?

Mr. Zimmer: Yes, just an observation. Your last sentence was that you wanted to see a system that was fair for “all Ontarians.” I’ve listened very carefully to your submission. I have in my mind that the psychiatric patients are whom you represent, and on the receiving end of the complaints, of course, are the police officers. But I’d be very interested in any observations you might have about ensuring that the people on the receiving end of the complaints receive a fair shake in this process. It seems to me that we’ve just heard it from one side of the equation, so how do you balance it off to ensure that the police officers on the receiving end of the complaints, in very difficult circumstances, in a lot of cases, dealing with psychiatric patients—that their rights, if you will, are guarded?

Mr. Simpson: I guess I would say that we’ve got to remember that our clients are very vulnerable, and there’s often a power imbalance between them and the police officers. But if you look at the cover letter to our submission here, I think we recognize what you’re saying, that the police need to be able to do their job unimpeded by concern that their actions will come under unwarranted scrutiny. That’s some of that. But again, it’s about educating police officers, having consumer survivors part of that education, having local police departments set up advisory committees to work with police where there’s that intersection of policing and mental health issues so that the public is well served. Hopefully, our comments haven’t been taken as a swipe at the police, because that’s not what’s intended. Our whole presentation—I hope that what you’ll get from this is the need for this system to be truly independent, that complaints not be referred back to local police departments for investigation and referral because that’s no different than what

we have right now. So let's make it truly independent and strike out that word "referral" to local police departments.

The Chair: Thank you. Just to be fair to the—

Mr. Dunlop: We're fine.

The Chair: You're fine? Okay, thank you.

Thank you for your presentation.

Mr. Simpson: You're welcome.

ONTARIO ASSOCIATION OF CHIEFS OF POLICE

The Chair: The next deputation is the Ontario Association of Chiefs of Police. I think there's been a change here. We have Deputy Chief Chuck Mercier, Bruce Brown and Brian Fazackerley. I hope I got that correct.

Mr. Kormos: Chair, while they're being seated, I want to thank Mr. Fenson. It is a very, very good and thorough briefing note on the issue of "clear and convincing," and a good read. Thank you kindly.

Mr. Avrum Fenson: You're welcome.

The Chair: Good afternoon, and welcome. So again, the rules are basically that you have 20 minutes to present, and in any time that you don't use during your 20 minutes the three parties will have an opportunity to ask you questions.

Mr. Chuck Mercier: Thank you, Mr. Chair. The Ontario Association of Chiefs of Police, the OACP, is pleased to make its submission with respect to Bill 103, An Act to establish an Independent Police Review Director and create a new public complaints process by amending the Police Services Act. We were involved throughout the consultation process that led to this legislation and we remain keenly interested in it.

1430

With me today are Bruce Brown, director of legal services for the London Police Service, and staff inspector Brian Fazackerley of the Durham Regional Police Service. We have come here today as representatives of Ontario police leaders who are responsible for administering and overseeing the operations of police services across the province. Of particular interest to us is the manner in which we interact with and serve our communities in that context.

Our statutory mandate at section 41 of the act, which will remain unchanged, includes "ensuring that members of the police force carry out their duties in accordance with this act and the regulations and in a manner that reflects the needs of the community, and that discipline is maintained in the police force." This may be contrasted with the roles and interests of other stakeholders, including police bargaining agents who, while having a vested policy interest in the fairness and effectiveness of the process, bear no statutory responsibilities for and play no direct role in the day-to-day performance management of police officers as do we, the police chiefs.

It is up to you, our elected decision-makers, to enact good public complaint legislation that serves the interests of all the communities, including the men and women

who serve as police officers in Ontario. We are here to comment on areas of the legislation where positive changes are proposed and to outline areas that we feel need to be reconsidered. Let me be clear: Police leaders in this province support a complaints process which is fair and effective. Any process which seeks to distance us from the people we serve in the area of public complaints will not be supported by the Ontario police leaders.

The OACP has long been a proponent of civilian oversight in the complaint process. The OACP favours a complaint process that is effective, efficient and, above all, fair in both substance and appearance for the complainant and the involved officers, as well as to their police service. We expressed this opinion to Mr. LeSage as well as to Minister Bryant on a number of occasions. There seems to be a widespread misconception that civilian oversight in the complaint process does not currently exist. This is not true or accurate, in our view, and we feel that, overall, the experience of the past 10 years with the current system amply supports our position.

The legislative policy direction in Bill 103 seeks to make the role and function of the independent oversight aspects of the process more obvious and apparent. To accomplish this, distance is being placed between the chief of police and the members of his or her community at the precise point where that community member becomes aggrieved with police services, policies or officer conduct.

Efficiency, effectiveness and timeliness of a police chief's direct response to a citizen's complaint will clearly be affected by this system. This is because the complaint must first be processed and screened by an independent police review director before the chief ever sees it. The spontaneity and personal touch that might now attend local complaint intake is being supplanted by the policy requirement to ensure independent oversight at the earliest point of the complaint initiation. We feel that this systemic cost is unwarranted in the vast majority of police complaints.

A general comment is that there will be administrative confusion in dealing with civilian oversight of complaints, since the administration of the public version will rest with one minister of the crown while another minister continues through a commission to oversee internal complaints as well as the statutory appeal function.

We do recognize, and we so indicated to Justice LeSage and Minister Bryant, that some changes were necessary in the civilian oversight process. One change that was made which we endorse is found in sections 66, 67, 68 and 69. The test for holding a hearing into misconduct is now "reasonable grounds to believe" rather than the former test of "may constitute misconduct." We believe that this measure will reduce the number of unnecessary hearings.

Subsection 85(6) states that sick time credits may no longer be used for a disposition without a hearing penalty pursuant to clause 85(1)(e). The OACP is in agreement with this measure. Having said this, the OACP seeks to bring your attention to some anomalies and procedural

problems that we believe can only be addressed in the legislation itself and cannot be corrected later by regulation.

Standing of complainant: One significant difference between the proposed legislation and the existing scheme is that any member of the public may now file a complaint regarding police conduct, not just someone directly affected. The OACP asks, “What will happen if a genuine complainant is later identified and comes forward in the course of the investigation? Would this person who initiated the complaint then remain as a full party to the complaint and any entailed proceedings, or will the real complainant then assume that role?” This is not explicitly spelled out in the legislation.

Not of a serious nature: The words “not of a serious nature” continue to be used in the new legislation to delineate formal from informal procedural options for resolution. We have found this to be an issue with many complainants. The perception on the part of the complainant when the conduct is found to be “not of a serious nature” is that we are minimizing or diminishing the significance of the behaviour. It makes communication difficult. We would recommend a revision of those words to “conduct that may appropriately be dealt with other than through a formal hearing,” or words to that effect.

Suspension with pay: Subsection 89(5) prohibits a suspended police officer from exercising his or her powers and authority vested in him or her. It is not obvious to us that this would have the same legal effect as declaring the power and authority of a police officer under these circumstances suspended, rather than simply saying they are enjoined from exercising these for the time being. The language of this section should be made clearer.

Administrative response to unsatisfactory work performance continues to be problematic under the proposed legislation. Subsections 89(1) and (2) continue to restrict suspension with pay to suspicion of misconduct under section 80 but not suspicion of unsatisfactory work performance. This is an anomaly, and suspension should be available for gross incompetence as well as for malfeasance. This is repeating a mistake made in the last overhaul in 1997. It should be fixed if we ever hope to effectively use the concept of unsatisfactory work performance.

Internal complaints: The bill separates completely the processes for public versus internal complaints, leaving oversight of the latter with the renamed Ontario Civilian Commission on Police Services under the Ministry of Community Safety and Correctional Services. In replicating features of the present process, a mandatory attempt at informal resolution was left in place in the internal complaints process prior to moving to disposition without a hearing, subsection 76(10). This really makes no sense in the context of a strictly internal process without a public complainant. A chief should have the authority in any case to deem informal resolution to be inappropriate based on his or her knowledge of the situation and to move directly to disposition without a hearing.

1440

Appeal decisions: Pursuant to clause 87(8)(d), the Ontario Civilian Police Commission would be given the power, on appeal, to order a new hearing before the chief rather than confirm, vary, revoke or substitute their decision for the decision below, which are the present options. For municipal-regional police services, the cost of a repeat administrative hearing complete with court reporter on a conduct issue would be significant, and to this point we have managed without it.

In conclusion, the OACP again wishes to express its appreciation to Justice LeSage, Minister Bryant and members of this committee for extending to us the opportunity to have input on significant legislation that impacts a core aspect of our daily function as police leaders.

We have listed a number of other technical issues and anomalies that we have identified in the attached appendix. Subject to any questions from the committee members, we leave our comments with you and trust they will be of assistance to you in your important deliberations.

The Chair: Thank you for your presentation. We have about nine minutes left, and we start with the Liberal Party for questions.

Mr. Crozier: Thank you, Chief, for your presentation. It’s good to have you with us today—and, through you, thanks to the OACP.

There has been some difference of opinion when it comes to the question of independence and therefore the need that some see to have the Ombudsman involved in this complaints process. In fact, the Ombudsman was referred to in a recent article in the *Toronto Sun*. It’s mentioned that Marin wants oversight of the office, which he claims falls under his jurisdiction, and is quoted as saying, “You”—I guess it would be the government—“are creating this new commission that falls under my jurisdiction, but you are removing oversight by the Ombudsman with this nasty section.”

I would differ with him in that it doesn’t come under his jurisdiction, because the act explicitly says it doesn’t. Secondly, it’s not without precedent, in that the Ombudsman doesn’t have authority—it says in their own material—when it comes to hospitals, long-term-care facilities, children’s aid societies, universities, school boards and municipalities. So here is our difference of opinion. Some say the Ombudsman should be involved; some say not. Any comment to that?

Mr. Mercier: I can appreciate the comments, the opinion of the Ombudsman. Policing affects every citizen of this province and every aspect of our society. This is what makes your challenge very difficult. What’s happened in the past, in changing the style of legislation, is that everybody wants a piece of it but nobody wants responsibility over it. To make it blunt, there are too many cooks in the kitchen and it fails, and people wonder why. As I indicated, the chiefs of police under the act are specifically mandated to be responsible for conduct within their police services. We challenge anyone who is dissatisfied with that to approach us and we will do the best we can to address those needs. We work very well with

all aspects of our society. To introduce another aspect or another dimension of the public complaints system at this stage of the game, with an introduction of another oversight body of the Ombudsman's office, to me just complicates the issue that you're trying to resolve.

The Chair: Thank you. We move to the Progressive Conservative Party.

Mr. Dunlop: Thank you, Deputy Mercier, for being here today and for your presentation. I noticed, as I went through the presentation, that you made reference to some changes that should be made and it's also referred to in the appendix. If the government would not adopt recommendations or any amendments to the legislation, can you live with the legislation the way it is directly put towards you now?

Mr. Mercier: I think what's going to occur with the legislation is, again, we are changing the public complaints system. As we know, historically, every time we change that system, it becomes very—there are many grey areas within the legislation that make it confusing. It's going to impact the men and women on the front line. I can see it causing difficulties with relation to delays. Officers view that as an area of unfairness. I think, as it evolves, the mechanism of trust will present itself, as it always has in the past. What police service leaders of Ontario have always asked for was proper investigative practices, and this is not found everywhere. Do not try to hire dentists to do surgical work. It's always very complicated.

So I would think we have to proceed very cautiously. The success of this legislation will depend on the individuals involved making this process work out of fairness for everyone: the complainants and the police officers.

Mr. Runciman: Deputy Chief, I don't have a list of the complaints. I know it has been compiled for us. I'm just wondering about the Durham experience over the last two years. Have you ever done an analysis—I know there is a breakdown of the dismissed complaints and so on for your area. I just wondered if you have ever done a breakdown. We were told by the Attorney General's staff yesterday that, based on the British experience, they expect, initially at least, a surge in complaints as a result of the passage of this legislation. You talked about officer time, etc. I wonder if you've done any kind of analysis on what that means to your service.

Mr. Mercier: We are not afraid whatsoever with the number of complaints or where they come from or from who, as long as they are presented to us in a logical way. Last year in Durham region—I can speak for Durham region—we answered close to 200,000 calls for service, and we had 100 public complaints. Of those complaints in the year 2006, 12 were found to be frivolous and vexatious or in bad faith; 21, after investigation, were found to be unsubstantiated; 43 were resolved; four were past the six-month time period; two were third-party complaints; two were informally resolved. Those were the dispositions of those complaints.

We do have a highly trained and respected professional standards unit. I would think, when you look at all

of the feedback we get from our community in Durham region, we are well respected by our public. Public opinion poll after public opinion poll shows that people in our community feel they have accessibility to our police service. They feel that they are able to communicate openly and honestly, particularly with the police leaders, when they have issues surrounding complaints. I'm trying to comprehend why people feel that they have an issue with lodging complaints. I think our reputation in Durham, which is reflected throughout the province, is of openness and fairness.

Mr. Runciman: I think public opinion polls reflect that the public at large are very supportive and have a great deal of confidence in the police services in the province of Ontario.

Mr. Mercier: And our data is no different than the data supported by the special investigations unit.

The Chair: We'll move on to the NDP. Mr. Kormos?

1450

Mr. Kormos: Thank you kindly. I don't know if you saw the recent—newspapers retain pollsters who do these polls from time to time on, "Who do you trust most?" Never mind police; do you know where politicians ranked? Really, it was cold down in that basement, and dark.

Your first paragraph on page 3, "This may be contrasted with the roles and interests of other stakeholders, including police bargaining agents who, while having a vested policy interest," blah, blah, blah: I don't see this as adding to your submission at all. What are you telling us?

Mr. Mercier: I think it's very clear that, under the act, police chiefs have responsibility over this.

Mr. Kormos: Yes, but you're saying as compared to what? The Police Association of Ontario or local police associations?

Mr. Mercier: They are responsible for the membership and their interests. Basically, we are just highlighting the difference between—

Mr. Kormos: So what are you warning us about here?

Mr. Mercier: Well, we feel that we're responsible and we have responsibility from a cost factor, from a human resource factor, in managing our service. We're just telling you that the police associations do not have an interest in those operational issues.

Mr. Kormos: All right. Therefore?

Mr. Mercier: Therefore, we don't believe that they should be there at the front door when complaints are received. We've heard their submissions that they want to be notified and have a time period when public complaints are first received, and we don't really find that that is of any importance or relevance in this service. Officers who have complaints have the freedom to contact their associations, and we find that works.

Mr. Kormos: Okay. On page 7, "Not of a serious nature"—because the informal resolution is the same language as exists in the 1997 law. Some people are reading stuff into it, and I wish it were true. Can you illustrate or give us some examples of what informal resolution has meant in terms of your experience, a for-example?

Mr. Mercier: The statement itself of “not of a serious nature”—people find it serious.

Mr. Kormos: Yes, I hear that, but I’m talking about the informal resolution part.

Mr. Mercier: The informal resolution works quite well.

Mr. Kormos: Tell us about it.

Mr. Mercier: Most of the complaints that we receive are complaints of behaviour, interpretation of officers’ actions.

Mr. Kormos: Okay. A police officer calls me a “shiftless, useless politician who should be ashamed of himself for taking taxpayers’ money.” I complain about that.

Mr. Mercier: Absolutely. So you come in and we sit with you, and one of the pieces would be, “What are you looking for from this officer?” In most cases, the complainant is looking for an apology. A lot of times, they’re looking for the officer to understand their complaint and what their point of view is.

Mr. Kormos: And you conduct this session?

Mr. Mercier: Yes.

Mr. Kormos: And what’s the outcome, in your experience?

Mr. Mercier: I find in the majority of cases the officers will fully understand the point of view. It will be explained that, “This complaint has come in about your action.” There’s always a difference in opinion on what transpired, but you core it down to the main issue of understanding the other person’s point of view. To me, the whole concept of the resolution is to form a respect for one another’s point of view in understanding where they are coming from, and, if your behaviour was not appropriate, that you understand that and you adjust your behaviour. That usually is very satisfying to the complainant. Most of them do not want officers to be charged under the police act; they just want that behaviour to cease.

Mr. Kormos: I appreciate that.

The Chair: Thank you for appearing before the committee today.

Mr. Crozier: Chair, just to correct the record, I wasn’t trying to give the deputy chief a promotion, although he might deserve one, when I called him “Chief.”

Mr. Mercier: Thank you very much, sir.

JO-ELLEN WORDEN

The Chair: Our next deputation is Jo-Ellen Worden.

I think you know that we are generally following a rule of 20 minutes for your presentation. Take your time, and afterwards, the three parties can ask you questions. If you need water, there’s water right there too.

Ms. Jo-Ellen Worden: Thank you very much. Ladies and gentlemen of the standing committee on justice policy, honourable ministers, members of the opposition, third party members and other honoured guests and speakers, firstly, I wish to acknowledge Justice LeSage for his efforts in conducting inquiries into our province’s current Police Services Act.

Secondly, I wish to thank the Honourable Michael Bryant, the Attorney General of Ontario, for his attention to a surmountable obstacle the people of our province have been facing for some time; namely, the inadequacy of the current Police Services Act in addressing various pressing needs of the citizens and adherents in the province of Ontario.

It is my understanding that it is the Police Services Act that governs the duties, expectations and code of conduct for those individuals who interact with some of the most marginalized and vulnerable populations of our province, i.e., law enforcement personnel.

I am going to speak to an issue I have found that many officers and civilians in the province of Ontario reluctantly acknowledge not only exists but apologetically, and anonymously of course, admit is widespread in our nation. Unfortunately, despite our surreptitious awareness of this crisis as not only a frightening reality for many spouses and children of police officers who daily suffer in silence, fear and shame, this crisis is also an ugly scar on the reputations of the thousands of members of our police services in this great country who endeavour to conduct themselves with the utmost of integrity, honour and courage in both their professional and personal lives. It is a crisis in this nation that no one seems able to effectively resolve and even fewer have the courage to publicly confront.

Members of the standing committee on justice policy, I believe that you can demonstrate your firm commitment to eradicating this crisis by mustering up the courage for the sake of the province to formally and publicly address this plague at its core and ensure its abolition. This terrifying epidemic that is infecting our municipalities, provinces and nation is that of police-perpetrated domestic violence.

For those of you members who may not be familiar with this term, it is a syndrome referred to in a document sent to me by the Ministry of the Attorney General’s office to describe domestic violence that occurs at the hands of men and women who have been trained in the tactical manoeuvres of intimidation, interrogation, manipulation, deception, power and control. It is the term used to describe the workplace harassment and the domestic violence that occurs at the hands of the very officers bound by oath to serve, protect and uphold the law.

Members of the standing committee on justice policy, although Bill 103 goes a long way in attempting to address many of the inadequacies of the current Police Services Act by establishing an independent police review director and creating a new public complaints process, it does nothing to either acknowledge or publicly address the harassment, discrimination, exclusion, humiliation and gender-based violence numerous female police officers are forced to endure on a daily basis at the hands of their colleagues.

Furthermore, Bill 103, on its surface, appears to do tragically less for the thousands of spouses, ex-spouses and child members of an incestuous subculture who are

attempting to escape the police-perpetrated domestic violence with their physical and emotional well-being intact.

As distasteful as this subject matter is for politicians to acknowledge, for those who daily experience the violence, it is far worse to endure. May I respectfully suggest a modification to Bill 103 that specifically identifies and addresses the issue of police-perpetrated domestic violence as an existing and previously ineffectively addressed reality in our province.

Members of the standing committee on justice policy, there must be a legislated mechanism in place to expose and deal with this issue as 100% intolerable in our province and nation. This hushed known reality is a complete violation of our citizens' trust, our citizens' safety, the Police Services Act, the Ontario Human Rights Code, the Criminal Code of Canada as well as victims' constitutional right to equal protection under the law.

I beseech this committee to understand that for any proposed amendments to the Police Services Act, part V, to be maximized in their effectiveness, they must include a mechanism for addressing specific complaints related to allegations of police-perpetrated domestic violence as an entity unto itself. These changes must be a legislated amendment of the Police Services Act and incorporated directly as a modification or addition to Bill 103's substitution of the repealed Police Services Act, part V, not merely understood as being included as a part of some regulatory requirement, policy or procedure.

1500

I am going to cite an example of an ineffective regulatory requirement that indeed addresses the expected police response to domestic violence but does not include adequate provision for the victims of domestic violence that occurs at the hands of law enforcement personnel. My example is the legislated/regulatory requirements of the adequacy standards regulation. In a 12-page document entitled LE-024, contained in the policing standards manual, 2000 edition, required by the Solicitor General, these regulations or guidelines do not adequately:

- recognize that law enforcement personnel and their families are members of a subculture with its own family dynamics, different from other traditional family units;

- label police-perpetrated domestic violence as an entity unto itself that is different from the domestic violence that occurs at the hands of non-law-enforcement personnel;

- address police-perpetrated domestic violence as a syndrome of both active and passive behaviours, including the often cascading residual effects of repeated victimization at the hands of police officers and the current resolution protocol;

- declare that this type of abuse often includes a number of actions perpetrated by police officers that may appear insignificant, trivial or even petty when viewed in isolation, but that collectively often form a carefully premeditated, tactically executed series of events that amount to continuous revictimization and abuse.

To quote the document, "Section 29 of the adequacy standards regulation requires a police services board to

have a policy on investigations into domestic violence occurrences. In addition, section 12(1)(d) requires the chief of police to develop and maintain procedures on and processes for undertaking and managing investigations into domestic violence occurrences."

However, in the document, LE-024, as incorporated into the professional standards manual, there is a mere one sentence that vaguely gives reference to allegations of domestic violence that involve police officers. I recognize that in the 21st century we don't like using labels for just about anything. However, if there is not a legislated acknowledgment of this epidemic, I guarantee that there will be victims of police-perpetrated domestic violence who have been sentenced to a lifetime of abuse and revictimization by these officers and the existing complaints process.

The primary piece of this puzzle is for the government to acknowledge, prior to the upcoming election, that police-perpetrated domestic violence not only exists in Ontario but is even facilitated by some colleagues of the abusers and by the justice system itself. Victims of this type of abuse often suffer in fear for their own lives and their children's safety. They often suffer in complete, paralyzing silence and isolation. This government needs to recognize that under the current legislation, and even with the proposed amendments outlined in Bill 103, attempts by victims of police-perpetrated domestic violence to file a complaint often fall on furious and profoundly deaf ears.

Police-perpetrated domestic violence needs to be identified in the Police Services Act. Moreover, officers need to be firmly cautioned that any behaviours that can be seen as either aggressive or passive attempts to abuse members or former members of their families will automatically be investigated by a team of individuals who have expertise in the area of repeated tactical victimization.

Victims need assurances in their province's legislation that police forces will not be permitted to slough these matters off as family court disputes or custody and access issues. Furthermore, police services in our province must be put on notice and mandated to be forbidden to attempt to influence or coerce victims of police-perpetrated domestic violence to informally resolve their issues without an official investigation.

I suggest modifications to the portions of Bill 103 related to part V of the current Police Services Act to specifically address the complaints of police-perpetrated domestic violence as follows:

- (1) Complaints of police-perpetrated domestic violence are an entity unto themselves and need to be addressed in a classification separate from traditional complaints about officers' conduct, services sought or received.

- (2) Victims ought to have appointed, by the director, a point person representing their best interests and the best interests of their families who has the responsibility to keep them apprised of the investigation.

- (3) There needs to be a zero-tolerance policy of domestic violence involving police officers, and when a

complaint is made involving an officer, there must be the immediate relinquishing of all service weapons, including guns, batons, pepper spray and handcuffs, until such time as the director is satisfied that the allegations have been appropriately addressed as either substantiated or false.

(4) The director must also bear in mind that unsubstantiated allegations of police-perpetrated domestic violence do not inherently mean they were false or vexatiously made allegations.

(5) There ought to be a mechanism in place, legislated into Bill 103, that specifically acknowledges complaints of police-perpetrated domestic violence as automatically referable to two separate professional standards criminal investigation bureaus. I suggest that the first involve the independent police review director and its commission, and that the second separate, parallel investigation must involve the special investigations unit of the Ontario Provincial Police or the equivalent unit of the Royal Canadian Mounted Police. Further, these investigations must be conducted independent of the involved forces' own professional standards investigation in allegations of police-perpetrated domestic violence.

(6) In addition, there needs to be the legislated establishment of a specialized unit under the direction of the independent police review director that has specialized training in the investigation of the tactics and effects of police-perpetrated domestic violence as outlined in the Wetendorf handbook, provided to members of the standing committee on justice policy. This specialized unit under the director must be established within six months of Bill 103's approval and royal assent.

(7) This portion of the bill needs to include the legislated implementation process of local programs in all jurisdictions of the province that specifically address complaints of police-perpetrated domestic violence. I have provided a handbook for the standing committee on justice policy that describes the development, implementation and administration of programs to address domestic violence involving law enforcement personnel. This handbook was created as a result of numerous tragic events. Most noteworthy to families of officers sworn to uphold the law is the case of the murder of Crystal Brame, victim of police-perpetrated domestic violence and wife of the Tacoma, Washington, chief of police.

(8) As this is legislated as a prophylactic measure in addressing complaints of police-perpetrated domestic violence, I suggest that all supporting family members—of age, of course—of police officers should be respectfully approached by perhaps the chaplain of the involved family member's force and given a written copy of their force's policy, procedure and important contact numbers pertaining to domestic violence involving police officers.

(9) Also, there needs to be incorporated into this bill legislated accountability requirements for police service boards to protect the families or former family members of the officers they trained in the tactical combat manoeuvres found in many cases of police-perpetrated domestic violence.

(10) Included in Bill 103, the director should be mandated to enforce a fixed fine against officers found guilty of police-perpetrated domestic violence that is in addition or runs consecutive to all criminal court convictions.

Finally, I challenge the honourable members of the standing committee on justice policy with the commission to ensure that there be legislated accountability for the Office of the Independent Police Review Director, to undertake within two years of the creation of this office to spearhead a campaign to see that police-perpetrated domestic violence is identified as an indictable offence under the Criminal Code of Canada.

Modifications to Bill 103 as set out above should prove for some to be an act of mercy towards these officers, who have a yet-unnoticed propensity towards violence, as they are encouraged to examine their own conduct and are reminded of the position of trust and social responsibility to which they've applied. By legislating changes to the Police Services Act in this way, the government will prevent many incidents of police-perpetrated domestic violence before they even occur.

1510

Police-perpetrated domestic violence is a carcinogenic violation of the intimate trust of the some of the most vulnerable citizens of our province who desire only to encourage and support our honourable, noble and truly courageous men and women in uniform. Thank you.

The Chair: Thank you. We have six minutes left. That's two minutes for each party, and we start with the Progressive Conservatives.

Mr. Runciman: Thank you for being here. I know it takes some courage to appear before a committee and, in some ways, without getting too personal about it, giving us your experiences with respect a very significant issue. This is the second time during the course of these deliberations that we've heard these concerns expressed, so I think it's very worthy of the committee's consideration and I thank you for bringing it to our attention.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you kindly. I've had some considerable experience with this phenomenon through my constituency office. It is indisputable that a police officer who is an abuser in a domestic violence context doesn't have, by the very nature of being a police officer, and his or her role in the criminal justice system being what it is, a status at the very least that makes him or her distinguishable in some respects. Abusers are abusers, violent people are violent people, and people who engage in violence upon their family members and partners are people who engage—you understand what I'm saying. Your point is incredibly well made.

Most of the Wetendorf handbook is American-sourced at this point, but there's been an incredible amount of research done on this, well beyond what you've been able to provide us with today, so it's an important issue. I'm not sure that this particular bill is the means by which the special circumstances that the victim of a police officer as a domestic abuser faces—I'm not sure. You've made some proposals, some suggestions. There's legis-

lation here in the province of Ontario—Mr. Runciman will recall it—that gave 24-hour-a-day access to a justice of the peace to protect a partner who is threatened with violence, in terms of getting an immediate restraining order, a next-party restraining order. I remember the committee hearings on it. Legislation unfortunately has never been declared. The absence of that legislation, the absence of the proclamation of that legislation, is in and of itself a matter of serious concern, because what it gave a victim of potential violence or violence—a victim of threat or actual violence—was, pursuant to legislation, entitlement to access a JP, regardless of the day or night, to get an immediate restraining order. Then you unravel the stuff later, but you save lives that way. As I say, that law is on the books. It hasn't been proclaimed. Perhaps it illustrates the lack of real interest even now by Legislatures—I don't say "legislators"—in making the adequate investments to address these sorts of things in a meaningful way. I wish I could say something to you that would give you perhaps more optimism about something happening here and now. I can't do that. Your point is well made. Thank you for participating.

The Chair: Thank you, Mr. Kormos. We'll move then to the Liberal Party.

Mr. Zimmer: Thank you for your submission. It's very detailed and very lengthy. I'll read it through carefully. Thank you for bringing it to the committee.

The Chair: Thank you for appearing before that committee today.

REGIONAL MUNICIPALITY OF PEEL POLICE SERVICES BOARD

The Chair: We'll move then to our next deputation, the Regional Municipality of Peel Police Services Board: Emil Kolb, the chair, and Michael Metcalf, chief. Once again as a reminder, the process is that we have 20 minutes per deputation. Feel free to use up as much of that time to make your presentation. If there's any time left, we'll allow the members of the different parties to ask you questions.

Mr. Michael Metcalf: Thank you, Chair.

Mr. Emil Kolb: Good afternoon. I'd like to first introduce myself. I'm Emil Kolb, regional chairman of Peel since 1991 and a member of the police services board since 1991. I've been chair of the police services board since 1995 and was just re-elected for the 12th year. I believe that makes a little difference, in that I have been one of the longest-serving board chairs in Ontario, allowing me to bring you a unique perspective to this. I remember the birth and the end of the public complaints commission, I remember the problems with the SIU when it was started, and I believe I have something to offer in this debate.

With me today I have Chief Metcalf, a 37-year-old veteran of our police services and our chief for the past nine years.

You'll be happy to know that I'm not going to read all my comments and remarks, but I have given written

submissions that have been handed to the clerk. You can review the contents of that with a number of observations. However, in the interests of time, I'd like to make three key points and then ask the chief to speak to put my comments into the real world that the chief operates in. Then, at the end, I'd like to make two final recommendations and welcome any questions if we have time left.

As an open comment, the Peel police services board believes in effective civilian oversight. It has always mystified me as to why we've never had civilian oversight of our provincial force and our Canadian force, the RCMP. However, to be effective, civilian oversight must include the issue of resources, it must be targeted to achieve societal and organizational results, and it must place accountability with those in the position to achieve the first two goals. In my view, the legislation does not meet the last objective.

In terms of governance, most important is the relationship between the board and the chief. Witness the fact that you have a board chair and a chief here today. We need to work together, we need to understand the roles, and we have to have clear accountability of the chief to the board.

Bill 103, in clause 56(1)(b), limits the authority of police boards to establish guidelines for dealing with public complaints, and it impacts our relationship with our chief. The chief's accountability is to the board. A board's authority is to establish policies for the chief, and the police services shouldn't be impacted by the bill.

I speak about this important relationship. Linked to it is the fundamental principle that is the cornerstone of policing in Canada: the independence of the chief in operational matters and his or her ability to administer the day-to-day operation of police services.

I have been involved since 1974, as regional councillor, mayor and chair, in establishing police budgets. I've seen them go from \$9 million to \$240 million over that period of time. I've seen police policies being established that monitor the performance of the chief, which allowed the chief to work without us interfering with him.

We strongly believe that the chief of police must have full authority over the internal complaints and disciplinary process. Section 78 of the bill unduly restricts that right. It gives the new complaint body the right to direct the chief as to the manner in which he is dealing with a purely internal matter, and it appears to open up the internal discipline process without any legislative triggers. We believe this is a significant restriction on the chief of police, and it is without precedent. It also forces the chief to potentially relocate any resources without consideration for other matters.

We don't think you meant that outcome, but that's the way we read it, and we need certainty that this will not be allowed to happen.

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Other aspects of the bill also impinge on the role of chief as currently set out in the legislation, and these are in our written submission.

My first point: Let the boards do the job with their chief, without unnecessary interference.

My second point: Ensure that chiefs retain their operational independence. This is very important.

My third point is all about money. I was there when the SIU was formed and I remember them struggling when they first started out because they didn't have enough funds to do what the legislation asked them to do. The SIU lost a lot of credibility with the community and also they lost a lot of ground as a result. Today, we have a very good relationship with the SIU because it has the proper mandate and sufficient funds to do its job.

It is vital that the new complaints body be properly funded from the outset to fulfill its mandate. Equally, it cannot meet its mandate if it is seen as a downloading on municipalities. I have in our written submission how this can occur. The last thing you want is Mayor McCallion, one of my mayors, and other politicians calling this a downloading from provincial government. It doesn't help us, it doesn't help you and it doesn't help the community.

I have two final recommendations that I'd like to make at the end. Now I would ask Chief Metcalf to relate some of his experiences and thoughts on the legislation.

Mr. Metcalf: Thank you, Mr. Kolb.

I just wanted to take a couple of minutes. I've had my job for about a year now. I always promised the board that we would have a transparent organization. I am truly a firm believer in the fact that people are responsible and accountable for what they do. I've vowed to the board that I will do that, and I think over the last year that I've shown that.

We've made a concerted effort internally to educate our officers in relation to public complaints and offer an analysis and the reason why. We have made some progress. For example, in 2003, we had 219 public complaints. We reduced that to 180 in 2004. In 2005, they went down to 158 and, as of 2006, we had 130. I think that is an improvement. I think people within the region feel comfortable with it because I've told them publicly that I will deal with their complaints. An example I would use is not something we're really proud of, but we've been recently in the paper with several officers who were found drinking in a public place, behind a furniture store. Unfortunately, 24 officers were charged on that. That's not something we really want to be proud of, but every officer who attended that so-called party was charged and that's subsequently before a hearing officer right at the moment.

I guess when I look at the legislation, my main concern is in relation to subsection 61(5) as it refers to referral to an external agency. I think we've been very fair in the region of Peel. We've helped OCCPS on several investigations, but that's when I've had the staff to help them out. We've helped out Halton and several other agencies heading up north. My concern is that the director can basically contact me and redirect my resources. I don't know if that's the spirit of the legislation, but that certainly is my concern. I have a lot of other issues. This is an important issue, but I have a lot of

other issues, and I wouldn't really feel comfortable with somebody else redeploying the resources from the region. Basically, that's my concern.

Mr. Kolb: I want to thank the committee for hearing us out today on this legislation. I want to make two final recommendations, but first I want to say that no matter how hard everyone tries, it is unlikely that we'll get it right the first time. I've been around for a long time and I know how difficult that is to do.

Our first recommendation, then, would be that there be an automatic review of the working of the IPRD by the Ontario Legislature no later than five years after it's put into place.

My second recommendation has to do with what isn't in Bill 103. Many groups during the consultation asked for changes to the Police Services Act, including section 47, which speaks to the accommodation; and also requesting the right of a chief to suspend an officer without pay. My perspective is there is more in the Police Services Act that needs to be looked at. Why do I say that? I say that because policing is a big business. The combined budget for the Peel Regional Police and the Toronto Police Services Board—the two largest municipal police services in this province—is over \$1 billion per year. If it's big business, it is also a complex business, even more so since 9/11. Yet, the Police Services Act is 16 years old and has not been reviewed or even been looked at for over a decade.

My second recommendation would be that the provincial government plan a review of the Police Services Act to create a model and a framework for policing that would look at Ontario for the 21st century. I know that that is not your concern today, but for this committee I would say that if you could discuss this with your caucus members and look into the future, it would be very, very helpful for our communities.

Again, I want to thank each and every one of you for giving us the opportunity on behalf of the police services board of Peel and the chief, and I welcome any questions. But I do want to leave you with one thought, and that is: How many oversight bodies do we really need?

The Chair: Thank you for that presentation. We have about nine minutes left. So we'll start with the NDP for three minutes or so, and then we'll go around.

Mr. Kormos: Clearly, we haven't had enough, or they certainly haven't been adequate. It's entirely inappropriate to speak about the allegations around the Peel police officers who are in the midst of having their allegations dealt with. And no criticism of you, Chief Metcalf, but surely, when an incident like this takes place and when it is discovered, as it appears, by accident, with the possibility that it wasn't a one-of, doesn't that compel some introspection and reflection on the part of the force, its management, the board? However pleased you might be about apprehending police officers who engage in inappropriate or illegal conduct, the real question is, what kind of climate, culture, in what kind of Petri dish does this sort of behaviour grow and survive? That's my concern, I suppose in a very broad context, because Bill

103 doesn't address that either, does it? It doesn't address it at all. It gives an opportunity for complainants to point the finger with respect to a given incidence and then trying to develop the best possible scenario for dealing with it.

So I put this to you—and you're a long-time police officer; you're a long-time board member: It's naive to suspect that if, in a given police service—disregarding your particular scenario of Peel—certain police officers are engaging in certain activity that they get caught doing, they're the only police officers who are engaging in inappropriate behaviour because they are but the ones caught doing it. Because the first level of oversight is the police board, isn't it? That's the first level of civilian oversight. And again, there's a tendency for boards to say, "Oh, well, no. We don't micromanage. It's none of our business. We set policy and budgets, and then it's up to the chief of police to run the show. Don't have civilians coming to the board complaining about the police. There's a process internally." How do you, as a long-time police officer, a competent one, a capable one, a sincere one and now at a top level of management—what have been your thoughts about that sort of thing? How do you deal with it? How do you get reflective about that?

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Mr. Metcalf: You don't ignore it, Mr. Kormos. I think, first thing, you can't ignore it at all. I don't really agree with you that it's not an example that I should bring here. This was just—

Mr. Kormos: No, I said I don't want to speak to it.

Mr. Metcalf: Okay. I just brought that as a simple example that I take the actions of my officers, specifically, very seriously, and I'm not going to tolerate this type of behaviour. I think they know now. It might take a while, but they're going to know that I'm serious about this.

Mr. Kormos: Isn't there something wrong with the climate in which this even took place?

Mr. Metcalf: Well, 37 years—that's a tough question to answer. It's like socialization amongst politicians, I guess; it's like socialization with bankers. It's just the social aspect of being together after work. But there are licensed premises to do that in, as I said in the press.

Mr. Kormos: But that's not the issue.

Mr. Metcalf: No, it isn't, but the issue is—

Mr. Kormos: Mr. Zimmer and I have never shared a drink after our work here at Queen's Park.

Mr. Metcalf: And you've never in a parking lot, at a soccer game or a baseball game?

Mr. Kormos: No, no; I don't go to soccer games. Mr. Zimmer offered me the flask and I turned it away.

Mr. Metcalf: Well, you have to keep it all in perspective—I did ask some reporters who were on to me about that—in relation to the officers' conduct. I said to the reporter, "Have you never had a beer in a parking lot after a baseball game, basketball game or soccer game, whatever it is?" He finally said yes, with a lot of hesitation. But that is not the issue; I agree.

Mr. Kormos: Am I shocked and horrified by it? No, because you're right: It's not planting evidence; it's not beating the hell out of suspects. At the end of the day, I'm not outraged by it. I'm asking you about the climate, though, in which that sort of stuff can take place. How can a force or service at its board become sufficiently reflective upon it to build a climate in which people wouldn't think of doing that?

Mr. Kolb: I'd like to jump in as the chair of this board. It's a very appropriate question you ask, but I think I was quoted once in the paper and said, "We stand 100% behind our chief." It is true that it happened and it happened in Peel. Are we proud it happened? No, we aren't. But you know what? All these people are human beings, even though they are police officers.

We take great pride in a small thing like that that really didn't have maybe—on the part of them, there may be two or three issues there that should not have happened, but in most of the case, it didn't interfere with anything. So sometimes you have to stand behind your people. We take great pride in writing stories all about this, but what about the good things that a police officer does every day out there on the street? Should I not stand behind them? Of course I should. Should I condemn the union? Of course not.

The Chair: Okay. We've gone beyond the three minutes here.

Mr. Kormos: We don't need Bill 103 for the good cops, do we?

The Chair: Thank you, and don't say I never gave you enough time, Mr. Kormos, because I gave you lots of time.

Mr. Kormos: I took the time.

The Chair: I know, but I gave it to you and I accommodated you.

Mr. Kormos: You're a decent and fair-minded Chair.

The Chair: Thank you. I'm going to use that in my campaign literature.

We'll move on, then, to Mr. Zimmer.

Mr. Kormos: "Kormos calls Berardinetti decent and fair-minded."

The Chair: I like that—front page of my campaign literature.

Go ahead.

Mr. Zimmer: In the interests of getting the rest of the people here who want to speak, I'll forgo my time, but we've got to keep an eye on the clock. It's not fair to—

Mr. Kormos: But there is no clock in this room.

The Chair: All right. We'll move on to the Conservatives.

Mr. Runciman: Yes, we are running behind. I want to thank you both, Mr. Chairman and Chief. For a 37-year-old man, we can see how much stress there is in policing.

Mr. Metcalf: I only wish.

Mr. Runciman: Despite some of the challenges you may be facing now, I have to say that both the police service and the board have been leaders in policing for many, many years and have a great deal to be proud of. Once again, thank you for being here.

The Chair: Thank you for your presentation.

ONTARIO COUNCIL OF AGENCIES
SERVING IMMIGRANTS

The Chair: We'll move on, then, to our second-last presentation this afternoon, the Ontario Council of Agencies Serving Immigrants.

Ms. Debbie Douglas: Justice committee, my name is Debbie Douglas. I'm the executive director of the Ontario Council of Agencies Serving Immigrants. I believe that our brief is being handed out. I am joined by Sri-Guggan Sri-Skanda-Rajah, who is a board member of OCASI, and my policy and research coordinator, Roberto Jovel. Roberto will be doing the presentation.

But before we start I did want to add my voice to Hansard supporting what Jo-Ellen Worden said. I not only felt she was brave, but one of the things that she didn't let you know is that she is the previous wife of a cop who left her for dead at one point and she didn't go away. So I do want to add OCASI's voice to supporting the issues that she raised in terms of how we address, whether it's through Bill 103 or through one of the various services acts, police-perpetrated violence against women. I thought that was the most politically brave thing I've seen in a long time, to have her come here.

I will turn the microphone over to Roberto.

Mr. Roberto Jovel: Thank you, Debbie. Good afternoon, everyone. The Ontario Council of Agencies Serving Immigrants would like to thank the standing committee on justice policy for this opportunity to raise our suggestions for improvement on Bill 103.

We welcome the bill's general thrust towards an independent mechanism for police review that is grounded on civilian oversight. We do see the current form of the bill as a significant step in the right direction towards building public trust in the police services in Ontario and offering the public a meaningful and accessible mechanism for complaints and reparation.

That said, OCASI thinks that there is room for solid improvements to the bill. We want to bring your attention back closely to Judge LeSage's report. Some of the recommendations that we are going to raise today mirror somehow Judge LeSage's work and some are our own recommendations.

So I would like to start very briefly by indicating a little bit of what the immigrant and refugee perspective can bring into this discussion. You may have been hearing from other not-for-profit organizations or social justice organizations or other equity-seeking organizations that have participated in this consultation about the issue of systemic barriers that inform the functioning of different governmental institutions. Also, school boards, the media, corporations and different areas of our society and of our institutions show that there are systemic barriers which need to be addressed. In the case of immigrants and refugees, these barriers become visible when individuals interact with the institutions, and thus the differential treatment that may be linked to the migratory status may combine with racism, with gender injustice, with poverty, with religious discrimination, ableism,

illiteracy, discrimination on grounds of sexual orientation or gender identity or expression, and lack of sufficient English-language skills, among other forms of oppression.

By way of quick examples of how this has affected the communities that we work with and that we serve, racial profiling—you may have heard of this a couple of times during the last interventions—has been a problem when it comes to racialized newcomer youth.

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Islamophobia after September 11, 2001, has also affected communities who have their origins in the Middle East, South Asia and North Africa. So there are concerns about how these systemic issues play towards the communities that we serve, not only within the police. It's not a matter of singling out a particular form of services, but of course within the police services this is also something that needs to be addressed.

Coming to our analysis of the bill and the recommendations for improvement that we want to make, we would just like to remind everyone here that we subscribe to and support the full set of principles that frame Justice LeSage's work as part of his terms of reference. To quote them briefly, there are four:

“—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.”

So there are four aspects or areas on which we would like to focus today, though, as Debbie has already said, we are supportive of the recommendations and the analyses that have been presented earlier today and yesterday, as well by organizations like the Metro Toronto Chinese and Southeast Asian Legal Clinic or the Urban Alliance on Race Relations from earlier today. So we make those recommendations ours too.

But we're going to focus on four particular areas. I'll try to brief so that we can also have an exchange.

The first one has to deal with the fact that Bill 103 says that the independent police review director may start investigations regarding systemic issues. For the population that we work with and the population that we serve, dealing with systemic issues shouldn't be something that is left to the decision of “may.” We do think that this new independent police review director should have it as part of their mandate to actually have a work plan to deal with these issues. There are a number of issues. I already made a list of the kind of forms of operation that may be having a negative effect through police services.

So the recommendations are as follows:

(1) Bill 103 should ensure that expertise on systemic issues is brought to the independent police review

director by making it a requirement that the IPRD, the IPRD staff and the appointed investigators have demonstrated expertise in addressing systemic issues effectively—so in dismantling them too.

(2) Bill 103 should further ensure that operational mechanisms to dismantle systemic barriers are integral to the IPRD's description and functioning.

(3) Bill 103's commitment to tackle systemic issues should inform the work plan of the directorate by requiring that the IPRD plan ahead its investigation endeavours that will be specifically geared towards addressing systemic issues that are relevant for equity-seeking communities.

(4) The IPRD, through his or her yearly reporting procedures, should highlight what has been done to counter systemic barriers and also list the trends in the field of systemic issues that will need to be addressed in the next year.

So that's the first area.

The second area has to do with the consultation with equity-seeking communities that is needed to make this new mechanism work properly. As you know, the report by Judge LeSage recommended the use of several advisory groups in the different regions that would be composed of members of the public and of the police as a key device for the workings of the new mechanism of independent police review. This is, of course, a key element in maximizing public trust and the community's trust of the new mechanism and the way it will work.

Since the knowledge about the various ways in which policing affects members of equity-seeking communities lies within the leadership of the communities themselves, we believe that this advisory group, or advisory groups, should have proper presentation of the knowledge that is out there in the leadership of the communities at stake. So OCASI recommends that Bill 103 should create an advisory group, making sure that it will be a meaningful and effective consultation process which is inclusive of community experts, who, as a result of their combined expertise, can cover systemic issues on grounds of race, culture, gender, sexual orientation, gender diversity, ability, literacy—the whole list of issues of concern.

Further to that, we are recommending that the advisory group be consulted by the IPRD in the context of hiring and appointment processes, in the context of developing the work plan of the IPRD, including the parts of the plan regarding investigation of systemic issues and in the establishment of procedural rules and the design and delivery of public education strategies.

The third aspect in which we want to make a recommendation has to do with dealing with the complaints on grounds of their importance for equity, regardless of who the complainant is. The concern is about subsection 60(4) of the bill, that says that when it comes to complaints regarding policies or services, the IPRD may decide not to deal with the complaints if the complainant was not directly affected by the policy or service in question. So, again, OCASI thinks that regardless of who the complainant is, a policy or service-related problem

brought to the attention of the IPRD may have sufficient merit as to be considered a matter of equity and of public interest. So we are recommending that the current subsection 60(4) be removed from the bill.

The final aspect we want to raise today has to do with the strict independence or the strict arm's-length approach to investigations that are going to be carried out. We believe that no referrals of complaints should be made in a manner that compromises the independence of investigations. Bill 103 gives the IPRD the power to refer complaints to police chiefs for investigation, and while OCASI appreciates that such an aspect of the bill fosters ownership by police forces of the fairness agenda, we consider also that such a transfer of responsibilities is a loss of independence. Under such referrals, the investigation becomes an internal investigation, even if the IPRD requires a police chief to deal with a complaint and carry an investigation according to precise instructions. So this is not a comment, again, on the police forces of Ontario; it is a comment on method and on methodological guarantees of independence.

So OCASI is recommending that all investigations in the context of the IPRD should be carried out by investigators that are external to the police services and no referrals should be made that render investigations an internal police investigation. We'll stop there.

The Chair: Thank you. We have about seven minutes, and we'll start with the Liberal Party.

Mr. Zimmer: On the issue of how to structure the advisory councils, you told us the kinds of persons or stakeholder groups that should be on the council. Any idea on how to go about choosing the actual persons—who should do the choosing, how should that be done, and so on?

Ms. Douglas: Our sense is that, given that one of our key issues is that the director reports to the Legislature, a committee of MPPs be struck, whether or not it's from the justice committee, including other staff within the Attorney General's office, and that it's an open call—very similar to what we did with pulling together Ontarians to look at our political system. We are very serious about this. We believe that if we are going to build trust about police oversight, then from the get-go we have to show that all of our processes are open and transparent. So what we are suggesting is that the committee that gets together be made up of people from Queen's Park and/or other justices who have been involved in this issue. We would expect an all-party committee, for example, to be setting the criteria and those kinds of things, and then we will expect an open call across the province.

Mr. Zimmer: That committee that you suggest would issue a call for—

The Chair: Excuse me, Mr. Zimmer. Can you just get a bit closer to the microphone?

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Mr. Zimmer: So that committee would issue a call, if there was an advisory council, say, for some jurisdiction in northwestern Ontario, "Who would like to sit on the

advisory council?" Their names would come in and we'd sort them out.

Ms. Douglas: Yes. There would be an all-Ontario call with criteria set so people know that this is what we're looking for: These are the criteria. Equity is an issue. You would list all of the kinds of things that Roberto talked about and then you would vet names.

Mr. Zimmer: Thank you.

The Chair: We'll move on to the Progressive Conservative Party. Mr. Runciman.

Mr. Runciman: Thank you for the time and effort put into this contribution to our hearings. It's very much appreciated. I have to say, I certainly agree with your perspective on reporting to the Legislature. I think that is the appropriate way to deal with this and I think it is the recommendation of Justice LeSage as well.

Following along the lines with respect to the advisory committee, though, the wording that you've incorporated in your submission is rather narrow in terms of the individuals and groups that you feel should be participating. It strikes me as kind of Toronto-centric, as someone who represents small-town and rural Ontario. In fact you're not emphasizing, although you did in your response to Mr. Zimmer talk about representation from across the province, but there's no—

Ms. Douglas: Absolutely. Geographical representation is part of that.

Mr. Runciman: Certainly there should be regional representation, but I think it should be much broader than what you're suggesting there. That's my view. I see nothing wrong with having someone who's had significant and extensive experience in the policing community being part of that advisory committee as well, because I think it would be helpful in terms of giving that perspective to other participants. Thank you.

Ms. Douglas: Absolutely, but I don't think it's policing history in and of itself. I think it's the person who has demonstrated not only a policing history but a sense of how they believe policing should work within a democracy who should be given some sense within that.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you kindly. I appreciate your highlighting of section 57: the power of the director "to review systemic issues." The language of "may" has been raised at least once before by submitters. But it's even more restrictive than that, because when you take a look at it, he "may examine ... issues of a systemic nature that are the subject of, or that give rise to, complaints." So that really ties his or her hands in terms of being proactive, especially when you've got systemic issues that are part of the undercurrent, you see. So victims of it may not even know that they are victims of it, such that they can't complain about it. Yet the director, with his or her powers and the tools available, could be in a position to have suspicion about them to warrant enough inquiry to determine whether or not that suspicion is then substantiated, so that she or he can then move on.

The other part of that, of course, the reason that "may" is critical from the government's point of view, is that if

it said "shall," then funding would become dictated by the needs of the director and his or her staff. When it says "may," the extent to which the director exercises his or her power under this or, quite frankly, any other section—you see, the ability to slough stuff off to local police forces is a way of triaging and a way of getting rid of stuff that the director's office simply can't handle because it's underfunded.

These are the red flags that are raised that frighten me and cause me a great deal of concern about how much civilian oversight there's going to be, because at the end of the day the vast, vast majority of complaints, and increasingly so in an underfunded system, are going to be referred back to the police forces in which those complaints originated.

Ms. Douglas: That's an issue on both levels. One of the things we will continue to speak about to our chiefs of police around the province is that they don't recognize the economic implications for their own budgets on this stuff. They have to look at that. Once you refer back, it becomes part of your prioritizing within the police services within whatever geographical area. So it has economic implications, the use of police, and I think they need to look at that outside of the decision-making. But the bigger picture is what you are saying. Yes.

Mr. Kormos: Thanks for your contribution today. I appreciate it.

The Chair: Thank you for your presentation and for being here today.

Mr. Sri-Skanda-Rajah: Before we rise, may I add my voice to Debbie Douglas's recommendation? I'm picking up on Mr. Kormos's indication—

The Chair: We've got to be careful with our time here. I'm under pressure.

Mr. Sri-Skanda-Rajah: Fifteen seconds—that the Alan presentation referred to a very particular and special area. It appears that the Legislature has passed legislation but not declared it. It will be a tremendous asset to this justice committee if it can pull it together even though it may have been legislated in a previous government's auspices or in a previous session. To retain the credibility of progressive work is to band together and recommend the declaration of that legislation.

The Chair: Thank you very much for your time today.

ABORIGINAL LEGAL SERVICES OF TORONTO

The Chair: We'll now move on to our last deputation, Aboriginal Legal Services: Brian Eyolfson, senior staff lawyer.

Mr. Brian Eyolfson: Good afternoon, committee members. My name is Brian Eyolfson. I'm a lawyer at Aboriginal Legal Services of Toronto. I thank you for the opportunity to provide submissions and to present today.

I realize I don't have a lot of time, but I thought before I got to some specific provisions in Bill 103 I would like to just say a little bit about Aboriginal Legal Services of

Toronto, the agency I work for, and some of the issues that we deal with in the context of policing.

First of all, ALST is a provincially incorporated non-profit organization established in February 1990 to meet the needs of Canada's largest urban aboriginal population. One of the objectives of ALST is to assist the aboriginal community to exercise control over justice-related issues that affect it, and one of the main issues that ALST has concentrated on over the past 16 years is the manner in which police services are provided to aboriginal peoples, both on and off reserve.

ALST has developed a fair bit of expertise in delivering programs such as its legal aid clinic, its Gladue case-worker program, the aboriginal criminal court worker program, the victims' right program, and the community council diversion program.

In addressing issues of policing and the aboriginal community, ALST was an active member of the Community Coalition Concerned about Civilian Oversight of Police and the Coalition Against Police Violence. ALST also appeared before the Ontario standing committee on administration of justice to address the community's concerns with respect to police oversight in light of Bill 105, the Police Services Amendment Act, 1997. In October 2003, ALST appeared before the police services board's joint working group on race relations to comment on the group's report. ALST is also currently represented on the special investigations unit director's resource committee.

ALST, through its daily contacts with the aboriginal community, has had, and continues to have, clients who report being mistreated by police services. These allegations include such things as being subjected to random stops, and physical and verbal abuse. ALST has assisted numerous clients with filing complaints against the police pursuant to the Police Services Act, and with other sorts of complaints, such as human rights complaints. Recently, ALST was a party at both the evidentiary and the policy portions of the Ipperwash inquiry examining the events surrounding the death of Dudley George, who was shot and killed in 1995 by an Ontario Provincial Police officer.

There are a couple of main systemic themes that we see a lot in our work around policing and the aboriginal community. One is overpolicing, and the other is overvictimization of aboriginal people and underpolicing.

In the Golden case, a case in which ALST intervened, the Supreme Court of Canada recognized that aboriginal people are overrepresented in the criminal justice system, and they are therefore likely to represent a disproportionate number of those who are arrested by police and subjected to personal searches, including strip searches.

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The Report of the Aboriginal Justice Inquiry of Manitoba and the Royal Commission on Aboriginal Peoples reports are two reports that identify overpolicing as one source of systemic discrimination against aboriginal people. The Royal Commission on Aboriginal Peoples, in its report entitled *Bridging the Cultural*

Divide, also noted that the aboriginal community experiences the extremes of both overpolicing and underpolicing. "Underpolicing" refers to situations where the police choose not to act or act inadequately where there is evidence that crimes have been committed against aboriginal people.

In light of these findings, ALST has a particular concern regarding the delivery of police services to the aboriginal community and any complaints mechanisms providing for the oversight of police and the delivery of police services. ALST supports the creation of an independent and impartial civilian oversight body. ALST also believes it's important that any complaints system be accountable, accessible, fair and responsive to the aboriginal community in order to be effective and instill confidence.

There are many aspects of Bill 103 that propose a significant improvement over the current police complaints system. Part II.1, of course, creates the appointment of an Independent Police Review Director and the establishment of his or her office, including the creation of regional offices, and also provides significant powers to the director to conduct investigations into public complaints about police conduct. The new part V prescribes that the independent director receives and reviews all complaints and may retain for investigation complaints about police conduct having regard to the nature of the complaint and the public interest. The director may also review issues of a systemic nature in some circumstances. Bill 103 also appears to permit the filing of third-party complaints in some limited circumstances. These are all improvements.

However, there are a number of areas in the proposed legislation which, in ALST's submission, could be improved in order to create a more effective police complaints system and better instill confidence and trust in the public, including the aboriginal community.

The first thing I wanted to address is the issue of accountability. The last presenters addressed this issue as well. There does not appear to be anything in the proposed amendment that would actually assist in ensuring accountability to marginalized communities such as the aboriginal community. ALST submits that the amendments should include provisions creating mandatory advisory groups or committees to the director, such as an aboriginal advisory group. Advisory groups could assist the director in carrying out his or her mandate more effectively by ensuring that the director receives valuable input from communities affected by particular systemic issues relevant to the director's mandate.

By way of example, I've referred in my submissions to section 7 of the Legal Aid Services Act, which explicitly provides that the board of Legal Aid Ontario shall establish advisory committees in particular areas of law and may also establish other advisory committees that it considers appropriate. Also, section 31.5 of Bill 107, the Human Rights Code Amendment Act, 2006, provides that the chief commissioner "may establish such advisory groups as he or she considers appropriate to advise the

commission about the elimination of discriminatory practices that infringe rights under this act.”

The Honourable Justice LeSage recommended in his report on the police complaints system, at page 66, “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.”

With respect to the aboriginal community in particular, Justice LeSage stated at page 83 of his report, “I believe that the new body should give special consideration to the needs of aboriginal communities in Ontario.” At page 84, Justice LeSage recommended that the new body “should make special efforts at outreach to the aboriginal communities in Ontario.”

Therefore, ALST recommends that a provision be included in Bill 103 for the establishment of advisory groups, including an aboriginal advisory group, to assist the director in carrying out his or her mandate.

I just wanted, also in terms of accountability, to briefly address the issue of review by the Ombudsman. Bill 103 includes proposed amendments that, in ALST’s view, would detract from the accountability of the new police complaints system. Bill 103 grants significant powers to the director; however, at the same time, section 97 explicitly removes anything done under part V of the proposed legislation from review by Ontario’s Ombudsman. ALST submits that this should be amended to permit the application of the Ombudsman Act.

With respect to police officer resignations, I note that section 90 proposes that no further action shall be taken in respect of a complaint about the conduct of a police officer if the police officer resigns. ALST submits that police officers should not be able to avoid complaints about their conduct by resigning. The provision could also leave a complainant with no access to justice. In addition, there could be systemic issues or aspects to a complaint regarding police conduct which would then not get addressed as a result of this section. So ALST submits that complaints should continue if an officer resigns, irrespective of whether or not the officer is again employed by a police force within five years.

In terms of fairness, I wanted to address the term “the public interest” that’s referred to a couple of times in the proposed legislation. A key section, subsection 61(6), proposes that the director “shall consider the nature of the complaint and the public interest” in deciding whether to refer or retain complaints about the conduct of a police officer. ALST has concerns regarding the manner in which this section, and in particular the reference to “the public interest,” will be interpreted and applied by the director when deciding whether or not to refer or retain complaints. It’s not clear what factors may be considered by the director in determining what is in the public interest.

On this issue, Justice LeSage, in his report, at page 72 recommended that consideration should be given to “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” or referred.

ALST is concerned that the interests of its client community may not necessarily be included in interpretations of “the public interest.” ALST also submits that the seriousness of a matter should also be considered as a relevant factor weighing in favour of the complaint being investigated by the director’s office. ALST also submits that complaints that include allegations of discrimination, racism or hate are of a serious nature and should always be retained by the director for investigation.

In addition, the public interest should be considered in light of factors that instill public confidence and trust in the police oversight process, such as accountability, independence, fairness and transparency.

ALST is also concerned that costs may be a factor in decisions about whether to retain or refer a complaint, particularly if the director’s office is not adequately resourced to carry out its mandate. These cost factors could have the potential to erode the proposed legislation’s goal of providing independent investigations.

Also, whether or not a complainant would consent to having his or her complaint referred could be a factor to consider in the decision.

In summary, ALST submits that “the public interest” in subsection 61(6) should be qualified and interpreted in light of factors that would instill public confidence and trust in the police oversight process, such as accountability, independence, fairness and transparency. ALST also submits that complaints including allegations of discrimination, racism or hate are of a serious nature and should always be retained by the director for investigation.

The term “public interest” also arises in another section of the act, paragraph 3 of subsection 60(3). This proposes that the director may simply “decide not to deal with a complaint made by a member of the public if, in his or her opinion ... having regard to all the circumstances, dealing with the complaint is not in the public interest.” Again, there are no factors to guide a determination of what is in the public interest. ALST submits that paragraph 3 of subsection 60(3) is simply too broad, given that other provisions would provide the director with the broad discretion to decide to not deal with a complaint that is “frivolous or vexatious or made in bad faith” or that “could be more appropriately dealt with, in whole or in part, under another act or other law.”

I also wanted to address some issues of accessibility, in particular, third-party complaints. Justice LeSage, in his report, recommended that any person should be permitted to file a complaint, including third parties. Bill 103 appears to permit third-party complaints, but the circumstances in which they can be made appear to be quite limited.

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Subsection 60(4) proposes that the “director may decide not to deal with a complaint made by a member of

the public about a policy of or service provided by a police force if the policy or service did not have a direct effect on the complainant.” This section appears to effectively preclude third-party complaints when it concerns the policies of or services provided by a police force.

In addition, subsection 60(5) proposes that the “director may decide not to deal with a complaint made by a member of the public about the conduct of a police officer if the complainant is not one” of a prescribed class of persons. Many of ALST’s clients who are subjected to mistreatment or abuse by police often feel that there’s no point in filing a complaint against the police as they’re not likely to be believed, or they fear for their safety. Many of these clients are disadvantaged and marginalized members of the community who have frequent interaction with police. Nevertheless, ALST submits that being accountable means being accountable to the entire community, including the disadvantaged and marginalized people of Ontario, and it’s important that third-party complaints be accepted.

Also, organizations that work with potential complainants who may not be able to bring forward an individual complaint on their own should be permitted to file third-party complaints on behalf of individuals. Accordingly, terms such as “member of the public” and “person” in subsection 60(5) of Bill 103 should be qualified to make it clear that organizations as well as individuals can file complaints. In addition, organizations that work with disadvantaged and marginalized communities are particularly well-positioned to identify systemic problems in policing, particularly with respect to policies of or services provided by police, so it’s our submission that subsection 60(4) should be amended to permit third-party complaints in relation to police policies and services as well.

I also wanted to address the limitation period in the proposed legislation. Justice LeSage in his report identified the current limitation period as a key concern in the context of a discussion of systemic barriers that impede the filing of complaints. Justice LeSage noted that the current “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.”

ALST submits that the six-month limitation period is simply too short. In ALST’s experience, clients are often dealing with criminal matters in relation to the same incident that may give rise to a police complaint, and these criminal matters often proceed quite slowly. Justice LeSage in his report, in recognition of this, recommended that the limitation period for filing complaints remain at six months. However, he also recommended that if a complainant is charged and a complaint relates to the circumstances upon which a complainant is charged, the six-month limitation period should run from the time when the charges are finally disposed of. ALST submits that this recommendation should be adopted. Alter-

natively, ALST submits that a one-year limitation period would be more appropriate, and it would also be in keeping with recent legislative amendments such as subsection 34(1) of Bill 107, the Human Rights Code Amendment Act, 2006, which will extend the time for filing a human rights complaint in Ontario from six months to one year.

Lastly, I’d like to address systemic issues. Section 57 of Bill 103 proposes that the director “may examine and review issues of a systemic nature that are the subject of, or that give rise to, complaints made by members of the public.” ALST submits that addressing issues of a systemic nature is extremely important, as many of the complaints that our clients deal with regarding police conduct and the provision of police services are systemic in nature. ALST submits that section 57 is an important provision in the new legislative scheme. However, we’re concerned that section 57 may be unduly limiting in terms of which systemic issues can be dealt with. It appears from the language of section 57 that the director would be limited to examining and reviewing issues of a systemic nature only if such issues “are the subject of” or “give rise to” complaints made by members of the public, so the ability of the director to examine systemic issues appears to be dependent upon members of the public raising such issues in public complaints.

Individuals who file complaints about police conduct, policies or services may not necessarily recognize and raise systemic issues relevant to their complaints. ALST submits that organizations should be able to raise complaints of a systemic nature directly with the director. As previously submitted, organizations that work with disadvantaged and marginalized communities are particularly well-positioned to identify systemic problems in policing. Particular organizations, such as the SIU, should be able to file systemic complaints, as the SIU gathers information that allows the identification of systemic issues in policing.

The Chair: Mr. Eyolfson, you’ve got about one minute left. If you could just wrap up, I’d really appreciate it.

Mr. Eyolfson: Okay. Then I’ll just conclude by saying that ALST recommends that section 57 should be amended to clarify that organizations can file complaints of a systemic nature with the director.

The Chair: Thank you. That concludes our time.

Mr. Kormos: Chair, before you adjourn, I have a matter I want to raise.

The Chair: Does it involve Mr. Eyolfson?

Mr. Kormos: Well, he’s welcome to stay to hear me raise it.

I’m putting this to the parliamentary assistant: If he could, when we’re doing clause-by-clause tomorrow—because the “not in the public interest” provision again raised red flags for me as well. I would appreciate if you or ministry staff could give us some idea or sense of what’s being contemplated here and whether it’s a negative or a positive. In other words, if somebody complains that they saw an undercover police officer smoking a joint in the course of a drug investigation, would it not be

in the public interest to pursue that as misconduct, notwithstanding—what is it?—section 23 or so of the Criminal Code? Is that what’s intended, or is it “not in the public interest” because it isn’t of sufficient significance? I really don’t know. Surely the drafters contemplated something when they gave the director that power, and I think it’s important for us to understand what’s being contemplated.

The Chair: Mr. Zimmer, do you want to address that?

Mr. Kormos: No, no, I don’t expect him to address it.

Mr. Zimmer: I’ll take the matter under advisement.

Mr. Kormos: We’re going to ask when we get to that section. If staff could be ready to give us an answer, we’d appreciate it.

The Chair: Thank you. The committee stands adjourned until tomorrow at 10 a.m. in the same room, when we’ll start clause-by-clause.

The committee adjourned at 1617.

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