

# ***Independent Police Review Act, 2007— Legislative Process and Implementation***

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# Overview

- Civilian oversight of policing is a key component of democratic governance
- Effective civilian oversight typically includes a fair, independent, and transparent process for dealing with public complaints about the police
- The *Independent Police Review Act, 2007* (formerly Bill 103) was passed in May 2007
- When the act comes into force it will amend the *Police Services Act* (PSA) to provide a new public complaints system for Ontario
- The new legislation is the product of consultation process that balances the interests of the community and the police

# History of Police Complaints in Ontario

- Provincial and municipal policing in Ontario is provided by approximately 25,000 officers of the Ontario Provincial Police (OPP) and 60 municipal police services
- In the 1970's there was virtually no civilian involvement in the complaints process
- In 1981, an independent Police Complaints Commissioner (PCC) was created
- The Honourable Sidney B. Linden was the founding PCC
- The PCC's jurisdiction was expanded to the entire Province in 1990 and operated until 1997 when it was replaced with the current system

# Current Complaints Process

- Currently, complaints about the police are made to the relevant police service
- That service classifies and conducts an initial screening of the complaint and investigates the complaint as necessary
- If the investigation reveals misconduct or unsatisfactory work performance, disciplinary action may be taken
- “Not serious conduct” can be resolved through informal resolution
- In serious cases, a disciplinary hearing may be convened
- Hearing decisions may be appealed to the Ontario Civilian Commission on Police Services (OCCOPS) and subsequently to the Divisional Court

# LeSage Review

- In June 2004 the Ontario government asked the Honourable Patrick LeSage to conduct an independent review of the public complaints system in Ontario
- His mandate was to review the police complaints system and provide advice to ensure that the system is fair, effective and transparent
- Mr. LeSage consulted very widely across Ontario with police, community groups and the general public before releasing his report in April 2005
- He made 27 recommendations centered around the creation of a new independent body to administer public complaints about the police in Ontario
- The Attorney General (then the Hon. Michael Bryant) held follow up meetings with key stakeholders between June and November 2005

# Regulation Making Power

- Broad regulation making power will be set out in s.135(1)
- It will allow regulations to be made in a variety of areas including:
  - setting out a process that will allow some complaints to be dealt with locally
  - establishing procedural rules related to IPRD powers, duties, and functions
  - prescribing additional powers and duties of the IPRD

# Bill 103: *Independent Police Review Act, 2007*

## Key Components of Bill 103:

### Part II.1 Establishes Independent Police Review Director

- Director is appointed by the Lieutenant Governor in Council on recommendation of the Attorney General
- Director cannot be a police officer or former police officer
- Organization will be known as the Independent Police Review Office (IPRO)
- Employees of the IPRO to be appointed under the *Public Service Act* and cannot be serving police officers
- Creates a mandatory police liaison officer position
- The Chief of Police retains the responsibility for disciplinary hearings and imposition of discipline

# Police Liaison Officer

- Bill 103 requires that chiefs and OPP Commissioner appoint a senior officer to liaise with the IPRO
- The IPRO is working with chiefs and OPP Commissioner to establish this program
- Liaison officer duties will be operational in nature and will work with IPRO investigators and case managers on a regular basis



# Part V Changes

## Intake

- The IPRO will review all complaints received to determine whether it is policy, service or conduct
- The IPRO is working on establishing a process where minor complaints can be resolved locally and then reported to the IPRO
- The IPRO will not be involved in any internally lodged “chief’s complaint”
- The Director will have discretion to deal with complaints beyond the current deadline of six months and must consider:
  - Is the complainant a minor or under a disability?
  - Was the complainant charged criminally under the circumstances?
  - Is it in the public interest to deal with the complaint?

# Third Party Complaints

The Director may decide not to deal with a third party complaint if the complainant was not one of the following:

- a person at whom conduct was directed
- a person who saw conduct or its effects because they were present
- a person in a personal relationship with the person at whom the conduct was directed AND suffered loss, damage, distress, danger or inconvenience
- has knowledge of the conduct, or has possession or control of anything, that the Director feels constitutes compelling evidence establishing misconduct or unsatisfactory work performance

## Other Screening Powers of the IPRO

- A complaint may be dismissed under section (60) if it is :
  - Frivolous, vexatious or in bad faith
  - Complaint could be dealt with more appropriately under a different act or law
  - Not in the public interest to deal with complaint
- Director can accept or deny a complaint at his/her discretion

# Policy/Service Complaints

- The IPRO will be required to refer policy/service complaints back to the police
- Complainants will have the right to ask the appropriate police services board for a review
- All policy/service complaints will be the subject of a written report and that complainants and the IPRO will always be notified of disposition

# Conduct Complaints

- Complaints about the conduct of officers other than chiefs and deputy chiefs may be investigated by the IPRO, the service in question or another service
- When determining who investigates, the IPRO will consider the nature of the complaint and the public interest
- There will be an emphasis on mediation and trying to settle complaints through an assisted resolution process

# Conduct Complaints

- At anytime during an investigation the Director has the power to:
  - direct the chief to deal with the complaint as he/she specifies
  - assign the investigation to another police service
  - take over the investigation
  - direct the chief to take other actions as he/she deems necessary or take the action him/herself

# Results of an Investigation

- Where a complaint is sent to a police service for investigation the chief of the service generating the complaint will decide whether it is:
  - substantiated/unsubstantiated
  - serious/less serious

# Results of an Investigation

- Where a chief believes on reasonable grounds that misconduct or unsatisfactory work performance occurred, he or she must order a hearing if the conduct was of a serious nature
- Where the conduct is less serious the matter may be resolved informally if the officer and complainant consent
- The officer and complainant have a 12 day cooling off period to withdraw consent after informal resolution agreements



# Results of an Investigation

- Where the IPRO has investigated, they will report the findings to the chief stating:
  - whether the complaint was unsubstantiated or on reasonable grounds that there was misconduct
  - in the opinion of the Director the conduct was “not of a serious nature” (less serious)
  - where the conduct was serious in nature the chief must hold a hearing
  - if the conduct was determined by the Director to be less serious the matter may be resolved informally if both the officer and complainant consent

# Review

- A complainant may request a review:
  - Within 30 days of a chief's decision that the complaint is unsubstantiated or "not of a serious nature"
  - IPRO will endeavour to complete the review in 30 days
  - The result of a disciplinary hearing by the police service to OCPC
  - To the police services board if they do not agree with a chief's decision about a policy or service complaint
  - There are no appeals or classifications or investigations conducted by the IPRO

# Reviews

- Upon review the Director may:
  - confirm the decision
  - direct the chief to deal with the complaint as he/she specifies
  - assign the investigation to another service
  - take over the investigation
  - direct the chief to take other actions as he/she deems necessary or take action independently
- The Director will notify all parties of the decision

# Conduct Complaints: “Reasonable Grounds”

- Where a chief believes on reasonable grounds that misconduct or unsatisfactory work performance occurred, he/she will order a hearing: s. 66(3)
- The “reasonable grounds” requirement for ordering a hearing is a new requirement and is based on one of Mr. LeSage’s recommendations
- Mr. LeSage wrote:
  - Some chiefs of police argued for a “reasonable and probable grounds” test
  - Chiefs noted that given the relatively high standard of proof of “clear and convincing evidence” used at hearings, the low threshold (“air of reality” test) for the ordering of hearings results in disproportionately few findings of misconduct
  - While the application of the “air of reality” test appears to have resulted in more hearings, these hearings have often yielded findings that the complaint was not substantiated which has led to feelings of frustration by all involved

# Search and Seizure

- IPRO investigators will have the power on notice to enter and search police premises or vehicles where it is deemed necessary
  - Investigator may:
    - search, examine or seize data, records or things
    - use police equipment to search for data, records or things
    - require a person to produce data, records or things
    - be accompanied by an expert or professional in their field

# Search and Seizure

- A justice of the peace or a judge may issue an order authorizing entry and search of a police premise or vehicle based on reasonable grounds
- Investigator may use force to execute
- May call upon a police officer for assistance

# Search and Seizure

- A justice of the peace or judge may issue search orders relating to a place other than police premises on reasonable grounds that:
  - Investigation relates to conduct of police officer
  - Conduct constitutes misconduct
  - Material is related to the investigation
  - In the best interest of the administration of justice including the nature of the place to be searched

## Part II, *Public Inquiries Act Powers*

- The Director and appointed investigators will have the powers of a commission under Part II of the PIA
- Part II PIA powers include the power to summon witnesses and the ability to require documents be produced
- Part II of the PIA provides protection against self incrimination



# Complaints about Chiefs, Deputy Chiefs, OPP Commissioner, OPP Deputy Commissioners

- Complaints about municipal chiefs and deputy chiefs will be referred to the respective police services board after an initial review
- The police services board will ask the Director to investigate if necessary and the Director will report back to the board
- Where the Director believes misconduct or unsatisfactory work performance occurred, the police services board will hold a hearing or refer the matter to the Ontario Civilian Police Commission (OCPC) for a hearing
- Complaints about the OPP Commissioner and Deputy Commissioner would be referred to the Minister of Community Safety and Correctional Services

## Disciplinary Hearings: Standard of Proof

- Mr. LeSage declined to make a recommendation that the standard of proof set in the statute be replaced by a straight civil “balance of probabilities” standard
- Mr. LeSage seems to have taken the view that “clear and convincing” standard was distinct from and slightly higher than the civil standard
- This standard is not a matter that will be determined by the IPRO

# Disciplinary Hearing Officers and Appeals

- Disciplinary hearings will continue to be conducted by hearing officers appointed by chiefs of police
- Currently, officers or retired officers of the rank of inspector or higher can conduct hearings, as can judges or retired judges
- The new amendments will allow Cabinet to create regulations to prescribe other persons or classes of persons who would be able to conduct disciplinary hearings
- Disciplinary hearing results will still be appealed to OCPC, but appeals to the Divisional Court will generally be eliminated – except where OCPC conducted the original hearing

# Publication of Disciplinary Hearing Decisions

- Mr. LeSage was concerned with ensuring that disciplinary hearing decisions are available to the public
- Under the new s.86, police chiefs and police services boards will be required to provide copies of such decisions to the IPRO
- The IPRO will be required to post these decisions on the internet and our website will become a repository for disciplinary hearing decisions issued throughout Ontario

## Other IPRD powers

- Complaints about chiefs:
  - can direct the board to deal with complaint as specified
  - assign the conduct of a hearing to OCPC
  - direct the board to take other actions as he/she deems necessary or take the action independently
- Conduct investigations into systemic issues
- Conduct audits on how services are dealing with complaints

# Penalty/Offence Provisions

- Certain disciplinary penalties will be combinable
- New offences will be created:
  - Harassment, coercion, or intimidation in relation to a complaint
  - Intentionally hindering or obstructing or providing false information to the IPRD or an investigator
  - Attempts to do the above
- No prosecutions of these offences can be commenced without the consent of the Attorney General

# Director's Resource Committees

- IPRO will have Regional Coordinators
- Regional and other advisory committees will be established with membership from the police and community groups
- Committees will be able to speak to IPRO regional coordinators on a regular basis
- Director will meet with committees once or twice a year

# Transition Process

- IPRO is working with the ministry to design and operationalize the new office (e.g., detailing business process set out in legislation, locating office space, hiring staff)
- IPRO transition team is working to develop procedural rules, and internal policies
- Working with Ministry of the Attorney General to develop appropriate regulations – however, ultimately regulations are the prerogative of the Lieutenant Governor in Council
- Liaising/consulting with the community and the police
- Director has already reached out to the PAO, association presidents, OACP, police chiefs, OPP commissioner and community groups



# Contact Information

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