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Mardi 30 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
Clerk: Anne Stokes

Président : Lorenzo Berardinetti
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Tuesday 30 January 2007

COMITÉ PERMANENT DE LA JUSTICE

Mardi 30 janvier 2007

The committee met at 1000 in room 228.

The Chair (Mr. Lorenzo Berardinetti): Good morning. I'd like to call this meeting to order. This is a meeting of the standing committee on justice policy. The bill under consideration today is 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'll be holding public hearings today and tomorrow here in Toronto. Clause-by-clause will then be held the following day, Thursday, February 1, 2007. Please note that tomorrow and Thursday, the committee will be meeting in room 151, which is just one floor below here.

SUBCOMMITTEE REPORTS

The Chair: Our first order of business is the motion for adoption of the subcommittee reports. I would ask for someone to read the first report into the record and move its adoption. Councillor Balkissoon—I'm sorry.

Mr. Bas Balkissoon (Scarborough—Rouge River): It's all right. We've known each other too long.

The Chair: I apologize. Mr. Balkissoon.

Mr. Balkissoon: Thank you. Your subcommittee considered on Wednesday, December 6, 2006 the method of proceeding on business before the committee and recommends the following:

(1) That the committee request authorization to meet and to travel within Ontario, if warranted, during the winter recess to consider business referred to the committee.

(2) That the subcommittee meet at a later date to decide its schedule.

(3) That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

Second, your subcommittee considered—

The Chair: We'll just stop at the first subcommittee report. Is there any debate on that? None? I'll now put the question. All those in favour? Opposed? The motion carries.

I now ask that the second report be read into the record and moved for adoption. Mr. Balkissoon?

Mr. Balkissoon: Your subcommittee considered on Wednesday, December 20, 2006 and Tuesday, January 23, 2007 the method of proceeding on Bill 103, An Act

to establish an Independent Police Review Director and create a new public complaints process by amending the Police Services Act, and recommends the following:

(1) That the committee meet for the purpose of public hearings on Bill 103 in Toronto on January 30, January 31, 2007. Dates and locations may change depending on numbers of requests made.

(2) That the deadline for those who wish to make an oral presentation on Bill 103 be 5 p.m. on Monday, January 15, 2007.

(3) That, by the deadline, if there are more witnesses wishing to appear than time available, the clerk will advise the Chair so that a subcommittee meeting may be called to make decisions regarding meeting dates and witnesses to be scheduled.

(4) That organizations and individuals appearing before the committee be given 20 minutes each in which to make their presentation, depending on numbers of requests made and subject to modification by the subcommittee.

(5) That an advertisement be placed on the ONT.PARL channel, the Legislative Assembly website and in a press release.

(6) That clause-by-clause consideration of Bill 103 be held on February 1, 2007. Additional days will be determined if required.

(7) That amendments to Bill 103 should be received by the clerk of the committee by 5 p.m. on Wednesday, January 31, 2007.

(8) That ministry staff provide a technical briefing to the committee for 30 minutes at the beginning of the public hearings.

(9) That the deadline for written submissions be the end of public hearings on Bill 103.

(10) That the research officer provide the committee with a summary of witness presentations, if possible, prior to clause-by-clause consideration of the bill.

(11) That the research officer provide the committee with background information on the LeSage report and on the handling of complaints.

(12) That options for videoconferencing or teleconferencing be made available to witnesses where reasonable.

(13) That the request for reimbursement of reasonable travel expenses for witnesses to attend hearings be subject to approval by the Chair.

(14) That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair: Any debate?

Mr. Peter Kormos (Niagara Centre): I just want to acknowledge the material provided by Mr. Fenson and Ms. Drent. Very valuable, especially the comparison by Ms. Drent of the LeSage recommendations and the respective provisions in Bill 103. Thank you kindly.

The Chair: Duly noted, thank you. Any other debate? None? Is there a motion to adopt?

Mr. Balkissoon: So moved.

The Chair: All those in favour? Opposed? Carried.

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.

MINISTRY OF THE ATTORNEY GENERAL

The Chair: We start public hearings today with staff from the Ministry of the Attorney General who will provide a technical briefing to the committee.

Good morning. You have 30 minutes for your presentation. You may use the entire 30 minutes or use less time and allow members a chance to ask questions. Please ensure you state your name for the record, and please proceed.

Mr. John Twohig: Thank you. Good morning, Mr. Chair, and members of the committee. My name is John Twohig and I'm the senior counsel with the policy division of the Ministry of the Attorney General. Appearing with me this morning is Graham Boswell, who is counsel with the policy division also at the Ministry of the Attorney General.

Just by way of overview, Bill 103 would amend the Police Services Act, the PSA, to provide for a new police complaints system centred around an independent police review director, the IPRD. The proposed IPRD would be responsible for the intake of complaints and determining who should investigate: the relevant police service, another police service or the IPRD itself. Complainants could still choose to go directly to the police if preferred. Following investigations, chiefs of police could refer matters to a disciplinary hearing if there are reasonable grounds to believe misconduct or unsatisfactory work performance had occurred.

The hearing is conducted by hearings officers and appeals to the renamed Ontario Civilian Police Commission would continue. Informal voluntary resolution would be available at any time. The province would set standards for hearing officers.

Policing in Ontario and the Police Services Act: Provincial and municipal policing in Ontario is provided by the Ontario Provincial Police and approximately 60 municipal police forces. There are approximately 22,000 sworn municipal and OPP officers in Ontario. These police services and officers are subject to the PSA. The PSA deals with: part I, responsibility for police services; part II, the Ontario Civilian Commission on Police Services; part III, municipal police services boards; part IV, police officers and other police staff; part V, complaints; part VII, special investigations; part VIII, labour relations; part IX, regulations and miscellaneous; and part X, court security.

A brief history of police complaints in Ontario: An appropriate system for handling public complaints about the police requires a balancing of the interests of the public and the police. In the 1970s, there was virtually no civilian involvement in the complaints process. In 1981, an independent police complaints commissioner, the PCC, was created, with jurisdiction limited to Toronto. The Honourable Sidney B. Linden was the founding PCC. The PCC's jurisdiction was expanded to the entire province in 1990. It operated until 1997, when it was replaced by the current system.

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The current complaints process: Currently, there is no independent civilian complaints office. Complaints about the police are made to the police service complained about. The police service complained about conducts an initial screening of the complaint and investigates the complaint as necessary. If the investigation reveals potential misconduct or unsatisfactory work performance, disciplinary action may be taken. In serious cases, a hearing may be convened pursuant to the PSA. Hearing decisions may be appealed to the commission.

Mr. Graham Boswell: Just to give you an overview of the LeSage review, in June 2004 the government asked the Honourable Patrick LeSage, former Chief Justice of the Superior Court and former chief prosecutor of Ontario, to conduct an independent review of the police complaints system. Mr. LeSage's mandate was to review the system to ensure that it was fair, effective and transparent. He consulted very widely across the province with police, community groups and the general public and released his report in April 2005. Mr. LeSage made 27 recommendations centred around the creation of a new independent body to administer the public complaints system. The Attorney General held follow-up meetings with key stakeholders between June and November 2005.

On April 19, 2006, the government introduced Bill 103, tracking the LeSage recommendations. Bill 103 is intended to foster confidence in the provision of police services by creating a more independent and transparent police complaints system centred around a new IPRD.

Key components of Bill 103: Section 8 proposes a new part II.1 of the PSA. Section 10 proposes a new part V of the PSA.

The proposed part II.1 would provide for the appointment of the IPRD and set out the responsibilities and powers of the director.

Under the proposed part V, the current section dealing with complaints would be repealed and replaced with a new complaints and disciplinary proceedings section.

In terms of the sections establishing the IPRD, under the proposed section 26.1, the IPRD would be appointed by the Lieutenant Governor in Council, on recommendation of the Attorney General. The IPRD could not be a police officer or a former police officer. Employees of the IPRD would be appointed under the Public Service Act and they could not be serving police officers.

There are two main types of complaints, both currently under the Police Services Act and under Bill 103. These are policy/service complaints and conduct complaints. The IPRD would review complaints to determine which category they fit into, pursuant to the proposed section 59.

In terms of a limitation period, the IPRD would have discretion to deal with complaints beyond the current deadline of six months. That would be set out in the proposed subsection 60(2).

The IPRD would be able to decline to deal with a complaint if the complaint meets one of the following criteria, which are under the proposed subsection 60(3): if the complaint is frivolous, vexatious or made in bad faith; if it could be more appropriately dealt with under another act or law; or if it is simply not in the public interest to deal with the complaint, having regard to all the circumstances. The IPRD could also decline to deal with policy/service complaints where the policy or service did not have a direct effect on the complainant.

The process for internal disciplinary action initiated by chiefs of police would not be significantly affected.

In terms of third party complaints, it's important to note that under the current PSA, third party complaints are not allowed; i.e., complaints from individuals who are not directly affected by police conduct. Bill 103 would allow third party complaints where they meet certain criteria.

Under the proposed subsection 60(5), the IPRD would have the power to decline to deal with a complaint if the complainant is not: a person at whom the conduct was directed; a relative or friend of the person at whom the conduct was directed and who suffered some sort of loss, damage, or distress; a direct witness; a person who possesses things or knowledge constituting compelling evidence of misconduct that would likely be admissible in court.

Mr. Twohig: The handling of policy/service complaints: The IPRD would refer policy/service complaints as follows:

—Complaints about municipal police policies or services would be referred to the municipal chief. This can be found in proposed subsection 61(2).

—Complaints about local OPP policies would be referred to the local detachment commander. This is found in proposed subsection 61(3).

—Complaints about OPP services or provincial policies would be referred to the OPP commissioner. This is found in proposed subsection 61(4).

In the case of municipal policy/service complaints and complaints about local OPP policies, complainants would have the right to ask the appropriate police services board to review the disposition of the complaint.

Enhanced provisions would ensure that all policy/service complaints would be the subject of a written report and complainants would be notified of the disposition in all cases.

Investigation of conduct complaints: Under proposed subsection 61(5), complaints about the conduct of officers other than chiefs and deputy chiefs may be (a) referred for investigation to the chief of police in charge of the officer to whom the complaint relates, or (b) referred to another chief of police for investigation, or (c) retained by the IPRD for investigation.

When determining who investigates, the IPRD would be required to consider the nature of the complaint and the public interest. This can be found in the proposed subsection 61(6).

When referring complaints to police for investigation, the IPRD would be able to provide direction on the handling if required.

IPRD investigations: The proposed section 26.5 would allow the IPRD to appoint investigators. The IPRD and investigators would have the powers of a commission under part II of the Public Inquiries Act, the PIA.

The IPRD investigators would have search and seizure powers for the purposes of complaint investigations. Search and seizure powers were available to the former PCC. Search and seizure powers are available to a wide variety of regulatory bodies in Ontario. The proposed investigatory powers have been drafted with an eye to balancing the need for effective investigations with the rights of officers.

Part II, Public Inquiries Act powers: The IPRD and appointed investigators would have the powers of a commission under part II of the PIA. Part II PIA powers include the ability to summon witnesses to give evidence on oath or affirmation, and the ability to require production of documents and other things required.

Part II of the PIA provides protection against self-incrimination. Witnesses giving answers that incriminate them or establish liability shall be deemed to have objected to answer, and no answer given is receivable against them in subsequent civil proceedings. Witnesses shall be cautioned that they have the right to object to answer any question pursuant to section 5 of the Canada Evidence Act, which provides protections against subsequent use in criminal proceedings.

Searches of police premises, proposed section 26.6: Investigators may enter police premises on notice to the chief of police or detachment commander. The IPRD powers on entry include: (1) to require production of

records, things, data or information related to the investigation; (2) to search for the above; (3) to use data storage, processing or retrieval devices or systems to obtain the information requested. Persons are obligated to assist an investigator, and no force may be used.

Proposed subsection 26.6(6): A justice of the peace or a judge may issue an order authorizing entry and search where there are reasonable grounds to suspect that an investigator has been prevented from exercising the previously noted rights of entry or is likely to be so prevented.

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Mr. Boswell: In terms of searches of other premises, you should note that under the proposed section 26.7, a justice of the peace or judge may issue orders in relation to a place other than police premises where satisfied that the investigation relates to the conduct of a police officer. The justice of the peace or judge must also be satisfied that there are reasonable grounds to believe that the conduct constitutes misconduct or unsatisfactory work performance. Further, there must be reasonable grounds to believe that there is in the place a record, thing, data, or information related to the investigation. Finally, it must be in the best interests of the administration of justice to issue the order, having regard to all relevant matters, including the nature of the place. A justice of the peace or judge would have to specifically authorize entry into a dwelling, and a search order could only be exercised between 6 a.m. and 9 p.m. unless the order specified otherwise.

There is a return process set out as well. Receipts must be given for anything removed during any search. Those records or things may of course be detained. The records or things must be returned within a reasonable time if they are no longer necessary, however. Where a record or thing is removed during a search of non-police premises, the investigator must make a report to a justice of the peace or judge. At that time, the judge or JP would be authorized to order that the thing be returned. Any person having an interest in a record or thing detained may bring a motion for access to it or for its return. Orders made upon such motions may be appealed in the same manner as appeals of offences commenced by certificate under the Provincial Offences Act.

In terms of conduct complaints post-investigation, following police investigations a written report would be submitted to the relevant chief of police. The chief would take no further action if he or she determined the complaint to be unsubstantiated. Where a chief believed on reasonable grounds that misconduct or unsatisfactory work performance occurred, he or she would then order a hearing. However, if the misconduct or unsatisfactory work performance was determined to be not of a serious nature, the matter could be resolved informally if officer and complainant consent. A police chief's decision that a matter is unsubstantiated or is not serious could be reviewed by the IPRD. Where the IPRD conducted the investigation, the IPRD would determine whether or not the matter was substantiated and whether or not it was of a serious nature and submit a report to the chief of police setting that out.

In terms of complaints about chiefs, deputy chiefs, the OPP commissioner and the OPP deputy commissioners, there is a different process in place. Complaints about municipal chiefs and deputy chiefs would be referred to the respective police services board for an initial review. The police services board would then ask the IPRD to cause the complaint to be investigated, if necessary, and the IPRD would then report back to the board. Where the IPRD believes that misconduct or unsatisfactory work performance had occurred, the police services board would hold a hearing or it would refer the matter to the commission 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 would continue to be conducted by hearing officers, but Bill 103 would allow regulations to be created setting qualifications, conditions or requirements for those hearing officers. Currently, officers or retired police officers of the rank of inspector or higher can conduct hearings, as can judges or retired judges. Bill 103 would allow regulations to prescribe other persons or classes of persons who would be able to conduct disciplinary hearings. The disciplinary hearing results could still be appealed to the commission, but most appeals to the Divisional Court would be eliminated.

There are some changes in relation to penalty and offence provisions. Certain disciplinary penalties would now be combinable—for example: demotion and forfeiture of pay. New offences would be created, namely harassment, coercion or intimidation in relation to a complaint. Intentionally hindering or obstructing or providing false information to the IPRD or to an investigator would be an offence. Similarly, attempts to do either of the above would be offences as well. No prosecutions of these offences could be commenced without the consent of the Attorney General.

In terms of regulation-making power, there is regulation-making power set out in proposed subsection 135(1). Regulations could be made setting out a complaint process that would allow complaints to be made directly to the police. Regulations could establish procedural rules related to the IPRD powers, duties and functions. Regulations could establish additional persons or classes of persons who may function as hearing officers. Regulations could also set standards for those hearing officers.

One other issue—and this isn't specifically addressed in the slides: First Nations policing in Ontario is provided pursuant to tripartite agreements between various First Nations, the federal government and the province. First Nations constables are not included in the definition of "police officer" under the PSA. As such, First Nations constables are not subject to part V of the Police Services Act. That said, First Nations police are required to provide complaints and oversight mechanisms. Although First Nations policing is not explicitly noted in Bill 103, Bill 103 is designed to allow First Nations police who wish to find arrangements with the IPRD for complaints

processing to do so. Any arrangements would, of course, require extensive consultations with First Nations, the First Nations policing community, the Ministry of Community Safety and Correctional Services and the federal government.

In terms of next steps, if the Independent Police Review Act, 2006, is passed by the Legislative Assembly, an implementation phase would commence. Next steps would include appointing an IPRD, designing and operationalizing the new directorate and creating necessary regulations. Obviously, liaising with the community and the police about the above would also be of the utmost importance.

I think that wraps up our presentation. We can take any questions you may have.

The Chair: Thank you. That leaves us just over 12 minutes of time. We'll start with the official opposition.

Mr. Robert W. Runciman (Leeds–Grenville): How much time do we have? About four minutes each? Is that what you're saying?

The Chair: That's about four minutes per party.

Mr. Runciman: Thank you for the briefing. I'm just looking at the next steps. You're talking about appointing an IPRD. How would that process work? Could you give us an indication of how you're going to search for someone to fill this position and what the processes would be? Would it be an order-in-council appointment subject to review by government agencies? Just give us an idea how that process will evolve.

Mr. Boswell: It would certainly be an order-in-council appointment, obviously. I don't think we really have any specific information on how that process would play out, though.

Mr. Runciman: If you look at all of your next steps, do you have any kind of a cost forecast for this process?

Mr. Boswell: I believe that the cost—and these are only preliminary estimates—would be approximately \$1.3 million in terms of start-up, and ongoing would likely be in the area of \$6 million to \$8 million per year for staff, offices etc.

Mr. Twohig: I would add, Mr. Runciman, that in coming to those estimates, we are guided in part by the cost of the previous PCC. We're trying to project what we think would be the number of complaints. I believe also we did look at the English experience to see how their system unfolded. So this is how we reached those projections.

Mr. Runciman: When you say you're trying to project the number of complaints, what conclusion did you reach in terms, say, of what we currently deal with? Are you looking at some marginal increase, or what did you project?

Mr. Boswell: There would probably be a somewhat significant increase in the first year or so. I think that's the experience that they had in the UK, and I believe it was the experience that Ontario had when it moved to a province-wide PCC back in 1990. That said, the numbers seemed to decline somewhat after that and stabilize.

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Mr. Runciman: When you say "significant," are you talking about a 50% increase, a 100% increase?

Mr. Boswell: I really don't think I could—

Mr. Runciman: Your colleague said that you based your cost estimates on a projection of the number of complaints, so there must have been something. You just indicated there was.

Mr. Boswell: Just simply, I don't have the numbers right at hand. It certainly wasn't 100%.

Mr. Runciman: We'd appreciate you getting back to us with it because your colleague indicated that that projection was available and you based your cost estimates on it.

With respect to the IPRD, there was a column in the media today—Christina Blizzard in the Toronto Sun—equating this position to be parallel to that of the Ombudsman. Do you share that view, that this position would be parallel to that of the Ombudsman of Ontario?

Mr. Boswell: Certainly it seems to me like it's a specialized Ombudsman role. The Ombudsman doesn't have jurisdiction over police complaints and, as I understand, has not since 1981.

Mr. Runciman: That's not my question. My point was: Is it parallel to that of the Ombudsman? The Ombudsman, as you know, is an officer of the assembly. What you're talking about here, I gather, is what I would describe as a political appointment versus an independent officer of the assembly. What I'm trying to get from you is some clarification if you agree with the contention that this position would be parallel to that of the Ombudsman.

Mr. Twohig: I would think that the significant difference is just what you mentioned. This officer reports to the Legislature through the Attorney General rather than the Ombudsman, who is an officer of the Legislature and reports directly to the Legislature. In that respect they're different. In many other respects some people might say they're the same.

Mr. Runciman: I guess—

The Chair: That's the time.

Interjection.

The Chair: Unfortunately.

Mr. Kormos?

Mr. Kormos: Thank you, gentlemen. Section 58, subsection (2), paragraphs 5 and 6: Why can't a police officer complain to the director about the conduct of another police officer in that same service?

Mr. Boswell: I think you're referring to concerns about whistle-blowing and that sort of thing. As I understand it, whistle-blower protection would be provided to the OPP under the recent Bill 158. In terms of municipal police services, it's simply not something that we were in a position to deal with in Bill 103.

Mr. Kormos: I'm not talking about whistle-blower protection. You're barring—correct me if I'm wrong—a member of a police service from making a complaint about another member of that police service to the director. We're not talking about whistle-blower protec-

tion here. You're barring that police officer or employee from doing that. Why?

Mr. Boswell: I think one of the reasons for that would probably be: This is a public complaints process that is set out in the bill. Police officers, as I understand it, can make a complaint. If an officer in one jurisdiction had a complaint about an officer in another, he could make a complaint about that person, but presumably, if the officer has a complaint about his or her own police service, they would go through some sort of internal process.

Mr. Kormos: Why would you bar that officer access to the independent director, the arm's-length director? If a police officer has concern about, let's say, a malignancy within his own police service, surely the independent arm's-length director is a suitable destination for that concern if, in fact, the concern is about a malignancy that could well interfere with, impede or obstruct that police officer's complaint. Why are you barring access by that police officer to the director? Not you; the government.

Mr. Boswell: I guess one of the answers would be: It was not an issue that was addressed in the LeSage recommendations. Bill 103 is about implementing the LeSage recommendations. It is not a wholesale review of the Police Services Act or even the internal complaints process.

Mr. Kormos: All right. Let's move to section 97. Why—or, rather more significantly, why not—Ombudsman oversight?

Mr. Boswell: I guess our response is basically that since 1990, the Police Services Act has provided that the Ombudsman does not have jurisdiction to get involved in complaints about the police. The Independent Police Review Act wouldn't change that.

Mr. Kormos: Pardon me. See, I haven't got a whole lot of time. We're not talking about the Ombudsman getting involved in complaints about the police.

Mr. Boswell: Well, perhaps indirectly.

Mr. Kormos: We're talking about the Ombudsman getting involved about the director and his or her office—far different from complaints about the police—or police officers appealing to the Ombudsman who may feel that they weren't treated fairly by the director and his or her office. Why?

Mr. Boswell: I guess our view on that is that the independent police review director would play an Ombudsmanlike role in relation to complaints about the police. The independent police review director reports to the Attorney General. It would be an arm's-length body. Some of the feeling on this is that making the director subject to the Ombudsman could add an unnecessary layer of oversight and could create some inefficiencies in the new system. It would basically be like having an oversight system for an oversight system, and that's—

Mr. Kormos: Yeah.

Mr. Twohig: And again, Mr. Kormos, this bill is about implementing Mr. LeSage's report, and I don't believe he addressed that, nor were submissions made to

him, in the exhaustive consultation he undertook, about that aspect.

Mr. Boswell: It's also important to note that IPRD decisions would be subject to judicial review by the Divisional Court as well.

The Chair: That's the four minutes.

Mr. Kormos: Thank you kindly.

The Chair: I'll move on now to the government. Mr. Zimmer.

Mr. David Zimmer (Willowdale): The idea behind the legislation is to ensure that serious complaints and complaints that should be looked into are dealt with, while at the same time ensuring, as you've said, that frivolous and vexatious and inappropriate complaints don't clog up, clutter up, the system. Can you give us your thoughts or observations on how this process of screening out the vexatious and inappropriate complaints that are just designed to be mischievous is going to play out and how you've struck the right balance between screening out inappropriate complaints and proceeding with complaints that should be heard?

Mr. Boswell: Sure. I think one of the issues to keep in mind is that currently there are criteria that allow frivolous, vexatious or bad-faith complaints to be struck out at an early stage. I don't think many complaints fit into that category, but there certainly are some that do.

We would add some new categories in Bill 103 if it's passed. Complaints could be struck out if they could be more appropriately dealt with under another act or law and, I think even more significantly, complaints could be struck out if they are not in the public interest, having regard to all the circumstances. One of the reasons behind having a criterion like that is as follows: Lots of individuals may make a complaint where they are not being frivolous, they're certainly not being vexatious, they're certainly not acting in bad faith, but they simply may not understand police procedures. The fact is that it can sometimes be quite offensive to those complainants to have their complaints struck out on the grounds of being frivolous or vexatious. I think "not in the public interest" would allow the new IPRD to deal with complaints in a more appropriate manner.

Mr. Zimmer: Am I correct that if someone was unhappy with how IPRD categorized a complaint—that is, they said it's not in the public interest or it's frivolous or vexatious—there would be a review to Divisional Court of that decision?

Mr. Boswell: There would be no statutory right of appeal. I couldn't say for sure how it would play out in the courts, but certainly there's no privative clause there designed to limit judicial review.

Mr. Zimmer: Thank you very much.

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The Chair: Thank you. That completes the questions. I wonder—

Mr. Runciman: On a point of order, Mr. Chair: just to reiterate the request for the information. I think it would be helpful. The witnesses indicated that the cost estimates were based on projections of complaints for the future. If we could have that information provided.

The Chair: Can you provide that to us, then?

Mr. Twohig: We'd be happy to. We know the number of complaints that the PCC handle; we know, from the British experience, the increase that they saw. So we put those two together, and we can provide that.

The Chair: And would that be by the end of the day, perhaps, or sometime tomorrow morning?

Mr. Boswell: Perhaps tomorrow, if that's possible. We can try for the end of the day.

The Chair: Thank you.

Mr. Kormos: On a point of order, Chair: Again to legislative research, I'm at a loss, because I can't find anything where Mr. Bryant says that this bill is about merely implementing the recommendations of LeSage. I would ask legislative research to please assist in that regard and locate comments by the Attorney General or other members of the government that indicate that the sole function of Bill 103 was to be a vehicle for the recommendations of Judge LeSage and nothing more.

Sorry, Ms. Drent. It's early in the day, but I know you'll rise to the occasion.

The Chair: Thank you. We'll try to stay on schedule here. Thank you, gentlemen.

POLICE ASSOCIATION OF ONTARIO

The Chair: The next scheduled deputant is the Police Association of Ontario. If you could please come forward and identify yourselves.

Good morning. You can begin your presentation. You have 20 minutes.

Mr. Bruce Miller: Good morning, and thank you, Mr. Chair. My name is Bruce Miller and I'm the chief administrative officer for the Police Association of Ontario. With me to my left is Karl Walsh, the president of the Ontario Provincial Police Association. Beside me on my right is Bob Baltin, the president of the Police Association of Ontario, and on the far right is Mr. David Wilson, the president of the Toronto Police Association.

The Chair: Welcome.

Mr. Miller: Also with us today in support of our position are association leaders from across the province, including the following police associations: the Brantford police association, the Brockville police association, Durham regional, Halton regional, Hamilton, Hanover, London, Niagara region, North Bay, Ottawa, Peel regional, Peterborough, and the Waterloo Regional Police Association.

The Police Association of Ontario represents over 30,000 police and civilian members from every municipal police association and the Ontario Provincial Police Association. Our association is on record as supporting civilian oversight of policing. We have worked closely with successive governments over the years to ensure that the various oversight systems in place have the confidence of both the members of the public and the members of police services. We were full participants in the review of the current system of police complaints by retired Chief Justice Patrick LeSage.

Police personnel in Ontario are highly trained professionals. Our job is to identify, respond to, and deal with people engaged in unlawful activities.

Police personnel are currently subject to rigorous public oversight. This oversight function is provided by members of local police services boards; elected municipal and provincial officials; special-purpose bodies, including the special investigations unit, the Human Rights Commission, and the Ontario Civilian Commission on Police Services; and coroners' inquiries, public inquiries, and criminal and civil courts.

Ontario's system of civilian oversight is based on best practices available from across the country. The PAO believes that an effective and transparent public complaints system must satisfy reasonable members of both the public and police communities. Ontario's system of oversight must:

- ensure access to the complaints process for all Ontario citizens;
- provide fairness to all parties;
- provide meaningful, structured opportunities for the informal resolution of complaints; and
- have as its core goal remedial, as opposed to punitive, measures.

We believe that Ontario's present civilian oversight system offers a strong foundation for moving forward. Building on the merits of the current system and making improvements only where necessary sends an important signal to members of the public that, by and large, Ontario's system of civilian oversight is working.

The Police Association of Ontario supports the principles embodied in Bill 103. The PAO believes that the legislation can be strengthened and improved by addressing several key issues.

First and foremost are amendments that we strongly believe are needed to the informal resolution process. The proposed legislation will change both the police complaints system as well as the entire discipline process for police officers. Bill 103 will allow a chief of police to informally discipline an officer without holding a hearing if both the officer and, in the case of a public complaint, the complainant agree.

This informal discipline process for officers must explicitly include a representative role for the local police association. It is common practice in employee-employer relationships that a union or association that represents employees has an expressly defined representation role in the discipline process. Indeed, unions have "carriage" rights for grievances that challenge employer discipline.

While police associations should be entitled to similar grievance provisions, we have opted instead to advocate for an association role in the discipline process. Protecting the rights of front-line police officers through their association should by any reasonable standard be a hallmark of a fair, open and transparent process.

Association representation and assistance will help safeguard the interests of police officers and may assist the parties to arrive at an informal resolution. Members of the public understand that police officers, like other

members of the community, will seek trusted advice to help them navigate these difficult situations. We simply do not believe that the public interest is served by excluding the association from assisting its members during the informal resolution process.

The second area that we would like to address is the need for independent adjudication. Bill 103 does not address the long-standing failure of legislation concerning police discipline to provide for independent adjudication. This has been a significant shortcoming for decades in the discipline process for police officers.

Successive governments' legislative amendments to the police discipline process have failed to address the inherent unfairness of a process of discipline that has the chief of police directing the investigation, invoking the discipline process, appointing both the prosecutor and the hearings officer or, indeed, acting as the hearings officer, and then imposing the penalty. There is no similar process in any other employment environment or sector that permits such real or perceived bias.

The PAO acknowledges that the public has expressed concern that senior police personnel are appointed to oversee the actions of police officers. To ensure that a balance is maintained between protecting the interests of the public and police officers, we believe that independent adjudicators should be used as the alternative. These independent, professional adjudicators would improve public confidence that discipline matters are receiving due diligence while at the same time assuring police officers that no real or perceived bias exists.

The final area that we would like to comment on concerns third party complaints. These will be reintroduced to the public complaints process with the passage of Bill 103. The legislation will allow the independent police review director to exercise his or her discretion to deny hearing a complaint by a third party in circumstances where the third party is unrelated to the facts of the complaint or to the person directly affected. However, the director may also exercise his or her discretion to consider any third party complaint made by someone unconnected to the complaint.

1050

The PAO believes that the scope of inquiries under the discretion of the director should be confined to persons affected or to persons connected to the person to whom the facts of the complaint apply. Our proposal will permit the director to deal with a complaint from a person who, although not necessarily affected by the subject matter of the complaint, nevertheless has a connection to the subject matter of the complaint.

In closing, we would like to note that many important areas of the legislation will need to be addressed by regulation. We welcome the opportunity to be involved in the important process of developing the regulations. As an association committed to excellence in policing, we are always willing to participate in a process that ensures that all Ontarians have faith in their police service and the system of civilian oversight. We have put forward specific amendments that we feel will achieve

the balance between safeguarding the rights of officers and ensuring that public confidence in the complaint system is maintained. A copy of our recommendations is attached in the brief.

We appreciate the opportunity to provide input into this important process. We'd like to thank you for the opportunity to be here today, and we'd be pleased to answer any questions that you may have.

The Chair: Thank you. We have 12 minutes left, so four minutes per party. We'll start with the NDP.

Mr. Kormos: Thank you, gentlemen. I agree with you 100% in terms of your comments about the need for independent adjudication. One is hard-pressed to see the chief or a police officer whose last function was a managerial function perceived as neutral or impartial. I will be asking leg counsel to prepare amendments consistent with your proposal today. I suspect the Conservatives either will do the same or rely upon those same amendments, and I look forward to government acquiescing to this concern of yours.

This is not rocket science, like the guy on the cooking channel says. It's just so obvious, because we're not talking, Mr. Zimmer, about managerial rights, management rights in terms of internal discipline; we're talking about a complaint made by somebody, as it is, not even from within that same police force. It's so obvious, it seems to me it's—I'd love to hear your argument against it. If you can persuade me not to waste our time with the amendments, feel free to do so. I'd love to hear your arguments against that proposition.

Thank you, gentlemen.

Mr. Miller: We certainly appreciate your support, number one, because I've been fighting the flu. We do believe that independent adjudicators will only add confidence to the system and do away with any real or perceived bias that exists.

Mr. Kormos: It makes it better for everybody, for the police officer, for the complainant—the whole nine yards.

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

Mr. Bruce Crozier (Essex): Good morning, Mr. Miller and colleagues. It's a pleasure to see you here. I've listened very carefully to the recommendations you've made, and the report you've given to us is complete, but I want to ask your opinion on something that isn't mentioned specifically in your report but has been brought up, in fact, already this morning. I expect that the Ombudsman, in appearing next, may bring this issue to the fore.

The Ombudsman has spoken publicly that he feels this independent police review director, and the act, should be subject to the Ombudsman's jurisdiction. Do you have any opinion or comment on that?

Mr. Miller: I think the important thing to realize is that Bill 103 is about civilian oversight and accountability. At what point do levels of oversight end? Are we going to put oversight in place for the Ombudsman's office? Are you going to keep adding layer upon layer?

This is nothing new in Bill 103. The Ombudsman's office has always been excluded from the legislation, and

that's something that has been recognized. Currently, as I mentioned before, we already have significant civilian oversight in place: members of local police service boards, elected municipal officials, the special investigations unit, the Human Rights Commission, the Ontario Civilian Commission on Police Services, coroners' inquiries, public inquiries, criminal and civil courts. At what time does this whole process end? We have elected members of the provincial Legislature who are, at the end of the day, the ultimate oversight body. We certainly have full confidence in those members to maintain the integrity of the system. So the short answer to your question, Mr. Crozier, is, we just don't see the need to keep extending oversight in what can become almost an endless process.

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

Mr. Garfield Dunlop (Simcoe North): Thank you for being here. Based on the existing system we have today, in terms of numbers, you're representing 30,000 employees of police services. How many complaints would you get in the course of a year? Have you got that kind of data available?

Mr. Miller: That's probably a question that's better asked of ministry staff. I don't have that data available. We also have complaints against individual officers and complaints against policies, but certainly it would be limited. I couldn't tell you the exact number per year.

Mr. Runciman: Gentlemen, the witness following you, the Ombudsman of Ontario—and there's been some comment and some discussion with reference to that. I'm just wondering what the police association's position or view is with respect to the Ombudsman's interest here concerning the independence of the IPRD and its role, which you should be providing oversight for. Do you have a position on that?

Mr. Miller: Certainly with the IPRD, the independent police review director, being appointed by government, we see a strong independence there. We've seen it in other positions, such as the director of the special investigations unit, where there was a strong independence, and certainly Mr. Marin held that post for some time while he was there. But I have to go back to my original position—

Mr. Runciman: The SIU is subject to Ombudsman oversight.

Mr. Miller: Actually, it's my understanding from the act that the SIU is not subject to oversight by the Ombudsman.

Mr. Runciman: I'm basing it on a news column this morning.

Mr. Miller: It's something that was recognized during a previous Legislature, a process you were involved in back then as well.

At some point, oversight has to end. We have members who are subjects of public complaints. People aren't satisfied through that process; they turn around and go through the Human Rights Commission. They're not satisfied—

Mr. Runciman: Okay. You don't support it. That's all; I just wanted a "yes" or "no."

Mr. Miller: It just keeps continuing from one process to another.

Mr. Runciman: Thanks. We're talking about costs too, and we tried to get some figures from the previous witnesses. They seem to be feeling their way in the dark on what this is going to result in in terms of numbers of complaints. I guess I'm curious about the other indirect costs associated with this. We're talking about a surge; we don't know how big this surge will be. I direct this question to President Wilson, because I think a lot of this has been generated because of the Toronto Star's allegations about the Toronto Police Service a number of years ago. I'm just curious about what this means to your officers, because there is an implication here for taking officers off the street as well with these numbers of complaints, their time being devoted to other matters. Do you have any idea what the impact might be? We're looking at nothing specific, but there has to be some kind of an impact in terms of your service with a surge in complaints, which is being projected by the ministry.

Mr. David Wilson: Sorry, just to clarify, the surge in complaints having the effect of taking officers off the street? Is that the question?

Mr. Runciman: You have some idea, I would assume, in terms of time devoted—when a complaint is filed, obviously the officer has to be involved with respect to responding to that complaint and going through the process. I guess what I'm saying is, do you have any idea what this might mean to your ability to police the community?

1100

Mr. Wilson: As far as timelines, when the complaints come in, they are dealt with at the lower level. Obviously it can escalate through from the station level to internal affairs, and the chief has the ability to appoint—and then we go into the oversight outside the police service. As far as time commitments, we have officers assigned full-time to deal with the lower level complaints. The officers themselves have to respond within a certain time window, but I won't be able to give you a breakdown of how many hours per complaint at this point.

The Chair: Thank you. That uses up all the time. Thank you for your presentation.

OMBUDSMAN ONTARIO

The Chair: We move on now to the next deputant, the Ombudsman of Ontario, André Marin. Good morning. Welcome to the committee. Please identify yourself for the record.

Mr. André Marin: I am André Marin, the Ombudsman of Ontario. Thank you very much, Mr. Chair. It's an honour to be here this morning and to share my office's thoughts on Bill 103.

I would like to say at the outset that the government of Ontario deserves credit for introducing Bill 103, which reforms the public complaints process and establishes the

office of the independent police review director, a new police oversight agency with wide-ranging powers to oversee and investigate police complaints.

Independent civilian oversight of the police enriches democracy by enhancing accountability. It also encourages our constabulary to constantly strive for best practices. The new government body, however, is just that: a government body. No matter how independent or arm's-length of the rest of government it may be, it reports back through a boss which is part of the executive branch of government.

In Ontario, we are fortunate enough to have an office reporting to the Legislative Assembly that provides independent oversight of all government bodies. Since 1975, all provincial ministries, boards, commissions and agencies, including the SIU, have been under the purview of the Ombudsman of Ontario, an officer of the provincial Parliament. For over 30 years, the process of oversight and accountability in this province has been principled, consistent and predictable. The Ombudsman has been there for tens of thousands of Ontarians, overseeing government involvement in every aspect of their lives, from womb to tomb, from cradle to grave, and standing up for them when they encounter problems.

But the office of the Ombudsman won't be there for anyone who might want to complain about the workings of this powerful new government body. As parliamentarians, that should disturb you. You should ask yourselves what causes the government to create an exception to this rule. What is the overriding and overarching principle that would support parking the province's main accountability vehicle at the door when we are talking about a new police review body? I can think of no such principle.

In that same vein, you should also ask yourselves: "If not the Ombudsman, who will oversee this new agency?" Indeed, the history of police complaints bodies in Ontario, as mentioned by the PAO a moment ago, is not a happy one and cries out for oversight. It is a history replete with allegations of bias, plodding bureaucracies and inefficiencies. These bodies have come in and out of vogue over the years, like the flavour of the month. We can only hope that history will not repeat itself. But if it does, who will investigate this new super-agency? Quis custodiet ipsos custodiet: Who will guard the guards themselves? Who can the police or the public turn to if someone is dissatisfied with the delicate decisions this government body will make regarding complaints against the police? The answer is, no one. Buried deep in the entrails of this bill is a particularly troublesome provision, section 97, which provides that the Ombudsman Act shall not apply to the bill. This section effectively prevents the Ombudsman, and by extension the Legislative Assembly, from overseeing how this government body conducts its business of investigating complaints. This, in my view, is a grave flaw that must be addressed and corrected. It is bad news for the public in general and bad news for the police in particular, who would otherwise enjoy the benefits that come from independent oversight by an officer of Parliament.

Let me put it in context. The independent police review director will be a potent arbiter of disputes between citizens and the police, with extraordinary authority, including the ability to issue summonses, enter premises and seize evidence. The director will wield tremendous power over chiefs of police, all Ontario police officers and, of course, citizens who complain to him or her, but will enjoy a privileged enclave accountable only internally to the Attorney General of Ontario. No court can reach into the director's filing cabinet; no court can receive the director's testimony or try the director civilly. No complaint about the processes, practices and policies of the director's office can be independently investigated or resolved through shuttle diplomacy, and no recommendations can be made for reform in cases where a complaint against the director is valid.

As I stated at the outset, in Ontario, by default, every provincial government organization, whether it's the Ministry of the Attorney General, the special investigations unit, the coroner's office or even the soon-to-be-reinvigorated Ontario Human Rights Tribunal, is subject to the statutory oversight of the Ombudsman, who is an officer of the Legislature. It is the legislated function of the Ombudsman of Ontario to investigate and to make recommendations if a government body conducts its business in a way that is contrary to law, unreasonable, unjust, oppressive, improperly discriminatory or just plain wrong. However, the independent police review director has been sheltered from this external and effective oversight.

Coming back to the fundamental question for you to ask yourselves as parliamentarians, what public policy would justify the removal of this government body from being accountable to you through the Office of the Ombudsman? Why should there be two different accountability regimes for the provincial government—one for the police complaints body and one for everybody else?

I have monitored with interest the debates in the Legislature over section 97. A member of the Legislative Assembly, speaking on behalf of the government, justified the section's existence on the basis that a similar provision existed in 1990 and, in any case, oversight still exists in the form of judicial review if someone is not happy with the decisions of the director. My answer to the first argument, with the greatest of respect, is, so what? If the whole rationale for passing this legislation is to provide a new complaints commission from the ground up, why would you feel compelled to hang on to a relic from the failed past? Why allow a provision that should not have been there in the first place to somehow muddle the present?

The exclusion of the Ombudsman in the Police Services Act is in fact an accident of history, carried over from the time when a police oversight body was initially created on a pilot basis for the Metropolitan Toronto Police in 1981. At that time, one of the primary reasons for excluding the Ombudsman was the municipal nature of the police force. When civilian oversight of police was extended throughout the province in 1990, this provision

was simply replicated without any further thought. It has existed not for sound public policy reasons, but solely by happenstance. It has managed to cling on, unchallenged, from one era to the next, from one Police Services Act to the next.

The Honourable Patrick J. LeSage's April 2005 Report on the Police Complaints System in Ontario, commissioned by the government, speaks for itself. At no time does the report recommend a break from the provincial accountability regime or the role of the Ombudsman in providing oversight on behalf of the Legislative Assembly. If, somehow in your deliberations, this honourable committee's final judgment on Bill 103 hinges on whether or not, as has been suggested by a government member, Mr. LeSage really intended for the Ombudsman to retain oversight of this body, I would suggest that you invite Mr. LeSage to come forward and testify before you. You will then be able to ask him the very question I have put to him and satisfy yourselves as to what he truly intended.

As for the argument that you don't need Ombudsman oversight because you can always go to court, this, with respect, is a red herring. You can always bring to court any government body on a myriad of issues. It's not a substitute for the role of the Ombudsman. Going to Divisional Court is a narrow and technical affair, a costly enterprise and an adversarial process; upon reflection, I am sure you will agree with me that that is not the answer you would want to provide to constituents who are unhappy with the course of their complaints to the IPRD.

You might be asking yourselves what happens in other provincial jurisdictions when dealing with oversight of police complaints. In Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Quebec and Saskatchewan, either the provincial Ombudsman or another specialized officer of Parliament has jurisdiction to intervene. In all of these jurisdictions, the respective Legislative Assembly retains the power and ability to involve itself in the investigation of complaints against the police through an officer of Parliament. If this bill passes, Ontario will have the dubious distinction of being the only jurisdiction where police complaints are outside the reach of parliamentarians; it behooves you to not let that happen.

What can you do? It's simple: Delete section 97 of the bill.

1110

The Chair: We have about nine minutes left, so there will be three minutes per party. We'll start with the NDP.

Mr. Kormos: I appreciate your participation here today.

The Chair: I'm sorry. I think the government is first.

Mr. Kormos: I was in your hands. I was simply being compliant—take it when you can get it.

The Chair: My apologies. Go ahead, Mr. Crozier.

Mr. Crozier: Something you brought with you this morning just struck me as I looked at it. On the letterhead and on this folder, it not only says "Ombudsman of

Ontario," but it also says "Ontario's Watchdog." Is that an official title?

Mr. Marin: It's not in the statute. It's the motto of the office.

Mr. Crozier: Did you establish that motto?

Mr. Marin: Yes.

Mr. Crozier: We'll get on to something more serious. You alluded to the fact that you feel Justice LeSage did not purposely omit the Ombudsman and your authority from his report. I'll go out on a little thin ice here, in that there is a newspaper report by Christina Blizzard in today's Sun that says, "Sources say LeSage didn't want the Ombudsman to have oversight because he wanted there to be some finality to decisions made by the independent police complaints process." That in fact was echoed by our first witnesses this morning. If that's the case, what would lead you to disagree with Mr. Justice LeSage?

Mr. Marin: I spoke to him directly. Secondly, I read the report. It's not in his terms of reference, and he was very careful in his report not to go beyond his terms of reference. I can assure you that the passage from the unnamed source in the Sun report does not reflect the conversation I had with him.

Mr. Crozier: What was your conversation with him?

Mr. Marin: It was a private conversation, but I can assure you that—

Mr. Crozier: No, you've entered that as a comment. What did he say in his conversation with you?

Mr. Marin: I can unequivocally tell you that the comment attributed to him in the Sun today is disingenuous, wrong and misleading.

Mr. Crozier: With all due respect, that's not the question I asked. What did he say?

Mr. Marin: He told me that it was not in his terms of reference. He told me that it was not an issue that he considered in writing the report and it's not an issue that was presented to him and it's not a question that he deliberated. If you want further clarification, I would ask you to invite him here.

I heard the testimony by the officials from the Ministry of the Attorney General. I disagreed with what they said. I've contacted the ministry and advised them that that wasn't Justice LeSage's comment and invited them to call him up and verify it. It suggests to me that that wasn't done, and I think to say that LeSage considered it and rejected it is wrong.

Mr. Crozier: Okay.

The Chair: Thank you. Let's move on.

Mr. Crozier: Time moves so quickly.

The Chair: I know, especially when we're having so much fun.

To the Conservatives.

Mr. Runciman: Welcome. With this limited time, I'd appreciate brief responses.

Clarification: The previous witnesses, the PAO, as I understood, said you do not have oversight with the SIU. Do you or do you not?

Mr. Marin: We do, and I want to add that I don't disagree with what the PAO stated in their official position. I think there's a misunderstanding of the role of the Ombudsman. We would not be investigating complaints against police once again. We'd be investigating the body that investigates police complaints.

Mr. Runciman: Thanks for that clarification.

One of the things the police are concerned about—and I share the concern—is this whole issue of timelines and leaving an officer twisting in the wind, for example, with no definitive end to this in sight. The fact that you might have the opportunity to review a decision, I gather, would encourage that kind of concern.

If you ultimately had this authority, would you also be supportive of some kind of deadline? There's a deadline in terms of a complaint that's embodied in this legislation. Would you also be supportive of some kind of finality to the process?

Mr. Marin: Absolutely. Time is of the essence in these cases because police officers' careers hinge upon how these things turn. Complainants need answers. I would refer back to examples given by the PAO about issues that concern them, including the example of too much discretion embodied in the discretion of the director in allowing third party complaints. Those are all typical Ombudsman issues: bias, delays, looking at evidence overlooked in adjudication, unfair/unjust processes. Just think MPAC.

Mr. Runciman: I have a final question. Your view with respect to third party complaints: I'm very concerned about the way the legislation is worded. I share the PAO's concern with respect to this. They're talking about a third party complaint. There has to be some connection with respect to the alleged offence and the person lodging that complaint. I'm just wondering what your perspective is on that.

Mr. Marin: I'm all in favour of providing proper criteria to exercise that discretion. Again, I would emphasize that if the office was overseeing this body, those are the kinds of complaints that we would be entertaining, whether there was an abuse of discretion. You can't go to Divisional Court with that. There would be no other outlet for anyone to consider remedies.

The Chair: Thank you very much. We'll move now to the NDP.

Mr. Kormos: Once again, thank you, sir. I appreciate your participation in these hearings. It was frustrating, because even at the very onset of today, speaking to ministry staff about section 97, the comment was made—and you've referenced this point of view—that we don't need yet another body overseeing the conduct of police. I had to respond and say, but that's not what the interest is in having the Ombudsman perform an oversight role with respect to the director and his or her office and process.

The impression is being created by some who oppose your proposition that you are but another level of appeal, so to speak, such that recourse to the Ombudsman can be used for dilatory purposes. Can you explain how you work and address that concern?

Mr. Marin: I think that if the Ombudsman had overseen the police complaints commission, it might still be around today. I could see that the Ombudsman could well be the best ally the police will ever have in ensuring that the bureaucracy is tight and operates the way it should.

I've talked about the lack of public policy reasons for the exclusion. I'd like to talk briefly about the public policy reasons for the inclusion. First is the extensive powers and discretion vested in that office. Second, the extensive immunities provided to the director. Third is that the director has only one master, and it's a political master. Fourth, it is inconsistent with the oversight mechanisms that we've set in this province.

The Office of the Ombudsman oversees hundreds of quasi-judicial tribunals and agencies. Why create this exception? It runs against the grain.

Mr. Kormos: Thank you, sir.

Chair, I move that this committee invite the Honourable Patrick LeSage to appear before it respecting Bill 103, or, in the alternative, provide written submissions regarding section 97 and the non-application of the Ombudsman Act to part V of the bill.

A written copy of that motion has been provided to committee members.

1120

The Chair: Do we need to vote on this motion?

Mr. Kormos: May I address it briefly?

The Chair: Yes.

Mr. Zimmer: Chair—

The Chair: Let him address it first, and then we'll allow some debate.

Mr. Kormos: It's a point of order, Mr. Zimmer.

The Chair: Let Mr. Kormos briefly speak to it.

Mr. Zimmer: I'm going to ask for a 20-minute recess. I don't know if it's appropriate to ask for that now or after.

Mr. Kormos: At the point of calling the vote, or now? Do you want one now?

The Chair: Let him make his submission, I would suggest with the greatest of respect.

Mr. Kormos: If I may, very briefly. Look, the Ombudsman has been very fair and very clear. If people indeed want to hide behind the robes of Patrick LeSage with respect to section 97 of the bill, so be it, but let's hear it from Patrick LeSage himself. Words are being attributed to him, perspectives are being attributed to him, rationales are being attributed to him in a way that may or may not be justifiable. It's a simple matter: Ask the man himself to resolve this concern. Apparently, there's a press report that would purport to present LeSage's perspective on section 97 in a particular way. Mr. Marin says that that's not quite the way he understands it, and I'm being very liberal in my interpretation of Mr. Marin's comments. Let's hear from Patrick LeSage. It's still up to the committee to decide whether or not, when it comes to section 97 and what it does with section 97—let's clear the air.

I'll tell you why—in the interests of Patrick LeSage as well, because it's not fair to him to have him caught up in

this little whirlwind, in this little storm of debate around the section. It's not fair to him at all to attribute to him things that he may not want to be associated with whatsoever. It would take but a few minutes to do that. It would clear the air, and as I say, people could then proceed with all the best available information. What a rational way to address legislation: to proceed with all the best available information. What a novelty that would be, wouldn't it, Chair?

The Chair: I'm not allowed to comment. Mr. Runciman?

Mr. Runciman: While the official opposition will support the motion, it seems to make eminent good sense to have Justice LeSage appear, and certainly reinforced by Mr. Crozier's concerns earlier with respect to Justice LeSage's views with respect to the Ombudsman having oversight here. So I don't see any difficulty proceeding with this.

The Chair: Mr. Crozier?

Mr. Crozier: Just a recommendation that may save the committee and delegation's time and so forth: If we could deal with this motion at a point in time, say, sometime after lunch, or whenever would be appropriate, those of us who want to discuss it could talk about it at lunch and we won't interrupt delegation time.

The Chair: Is that okay, Mr. Kormos?

Mr. Kormos: I have no qualms about that whatsoever. It's not an unreasonable—it's either that or have a 20-minute recess now, which means that people cool their heels in here when they've been waiting to make submissions.

Mr. Crozier: That's what I'm trying to avoid.

Mr. Kormos: I appreciate that comment by Mr. Crozier.

The Chair: So we'll deal with it sometime after lunch. Is that okay with everybody, then?

Mr. Kormos: Thank you, Chair.

Mr. Crozier: The first order of business?

The Chair: As the first order of business after lunch.

Thank you, Mr. Marin.

TORONTO POLICE ACCOUNTABILITY COALITION

The Chair: We'll move on. The Toronto Police Accountability Coalition; Mr. Sewell.

Good morning.

Mr. John Sewell: Thank you, Mr. Chairman.

The Chair: You might want to just wait a moment; there's a lot of noise in the background behind you. I won't deduct it from your time.

Okay, you may proceed.

Mr. Sewell: The Toronto Police Accountability Coalition has been active in Toronto for the last six years, focusing on police policy issues. We've maintained, throughout our short life as a group, that a new complaints mechanism is absolutely necessary, and we were pleased that Mr. Justice LeSage was appointed to make recommendations on the matter. We believe that his pro-

posals were a good and strong step forward and we would be much happier if all of his recommendations had been incorporated into Bill 103. As it stands, Bill 103 is a modest improvement to the current complaints process, but to be completely fair and open with you, we don't think it's nearly as useful to the public as it might be. We don't understand why the government decided to omit some of the important changes proposed by Mr. LeSage.

Our comments will focus on just three changes we wish to see made to the bill. First, the need for an independent investigation: The bill does not guarantee that an independent investigation will be done. In fact, the assumption of the bill is that most complaints will be referred by the independent police review director to the police force involved and be investigated by that force, a process which hardly differs from the present situation. Since speed and early response are important to accurate investigations, this is a reason for concern. It is of little assistance to know that after the police have completed their own investigation, perhaps taking two or three months, the police report will be submitted to the director, who can then wonder whether the investigation has been done in a satisfactory manner. By that time, so much time has passed that it will be impossible to then expect another investigation to uncover what exactly occurred.

We believe that the bill should guarantee that in all but complaints determined "minor" by the director, an independent investigation should be undertaken. A minor complaint would be, as an example, that a police officer swore at somebody or used foul language. In all but those minor situations, we think an independent investigation should be undertaken, and we think that the appropriate amendment could be made to the bill—we're suggesting, in subsection 61(5) on page 13.

Secondly, the need for independent investigators: As most everyone knows, police culture is very, very powerful and makes it very difficult for an officer to speak out or take action independent of other officers. This is one of the reasons why independent investigation is so critical. That police culture also affects former officers, which is why Mr. LeSage had suggested that no more than half of the investigators be former officers. The bill contains no such limitation. It is silent about the percentage of investigators working for the director who are former police officers. We believe that to ensure reasonable independence of investigation, no more than one third of the investigators be former officers. We think that change could be made as well, and we suggest where.

The third area we wish to address is one of accountability. Mr. Justice LeSage had proposed local advisory boards responsible for public outreach and local accountability, generally acting as civilian overseers to the director. The bill contains no provisions for such boards. Instead, virtually all of the complaints process, including the extent to which the public knows about it, seems to depend on the decision of the director. Given the difficult experience in Ontario with complaints against the police,

it does not seem wise to leave the workings of the process in the hands of a single individual appointee.

Instead, local advisory boards consisting of community representatives should be appointed. These boards will not be competing with, nor their functions overlapping, existing police service boards whose job it is to manage local police forces. These boards would only be concerned with public access to, and the public legitimacy of, the complaints process. Appointments to these boards should be made by the Attorney General or by the cabinet, hopefully after consultation with local organizations. We think there's a place for that change to be made as well.

We think these three amendments are critical to the success of the bill. They're issues that Mr. Justice LeSage dealt with, and we think these changes should be made: first, a requirement of independent investigations; second, an assurance that the investigators will largely be independent and not infected with the police culture; and third, that there will be some accountability structures established.

Thank you very much.

1130

The Chair: Thank you. We'll begin with the Conservative Party. We have approximately 11 minutes, so four minutes per party.

Mr. Dunlop: Thank you very much, Mr. Sewell, for being here today. I just have one quick question, and that's the makeup of the coalition that you represent in terms of what organizations and the number of people you would be representing coming to the committee here today.

Mr. Sewell: I don't think we represent a lot of people. We have a steering committee of half a dozen people. We meet monthly. We hold public meetings a couple of times a year. We have an electronic bulletin that we send out to a mailing list. About 325 people have asked to be on that. We're just a small, little body that's trying to deal with police policy issues.

One of the great problems in Ontario and many other places as well is that people are not willing to speak out on police policy issues—politicians particularly, but most other members of the public aren't willing as well because they fear that they're going to be attacked or hurt by the police, and we have a lot of evidence of that. That's why we've got a relatively small organization. We've been around, as I say, for six or seven years.

Mr. Dunlop: When I asked a question earlier to the Police Association of Ontario, I didn't realize that sitting on our desk was a document that the research department had provided for us, dealing with all the different types of police complaints over the last two or three years in the province of Ontario for the different police services. I want to put that on the record and I thank legislative research for providing that to me. I didn't realize it was on my desk when I actually asked the question, and it may be information that you would like as well.

Mr. Sewell: Yes, I'd be delighted to see it. Is it available?

Mr. Dunlop: Yes, I think it is.

Mr. Sewell: If it is, I'll get a copy. Or if you can't, maybe somebody can e-mail it to me. Thank you very much.

Mr. Runciman: Chair, I'll continue, if we've got time. Thank you as well, Mr. Sewell, for being here. Some of the comments you make in your submission: I don't know how people reach this conclusion—it would be interesting to know the science behind it. But when you talk about the need for independent investigators—and I don't take issue with that—it's stronger than a suggestion. What's put down here essentially is a stated fact that so-called police culture affects former officers, so that you're recommending that only one third of the investigative staff be people who have some experience in policing and police investigations. I have difficulty with that in terms of competency and also, of course, with the basic assumption here that somehow a former police officer cannot approach a complaint from an independent perspective. Where do you get that? What's this based on?

Mr. Sewell: Let me say two things: Firstly, there are many individuals who are very capable of doing good investigations—many. You don't have to be a police officer to know how to do a good investigation. Lots of people do them all the time. It's not as though that's the only place we can choose investigators from.

The second thing is that there is a police culture. The "blue line" is something that people have talked about and written lots of books about, and there is this notion that police should stick together and shouldn't criticize their own. I think that's something that most everyone recognizes exists and it's a very powerful pressure on police officers. It shapes the way they think and the way they look at things. We know that from the individuals who do try and speak out. I certainly have run into officers who have, and the way they're penalized is really shocking.

I believe that culture shapes an individual, and while you might leave the organization, you're still going to think in that kind of way, just as the culture of being an accountant shapes your life after you stop being an accountant.

Mr. Crozier: Oh, now, be careful.

Laughter.

Mr. Sewell: I realize that—for the better, obviously, and that's all I'm saying. What we'd like to do is get away from that as much as possible. Since there are many other good investigators around, my feeling is that we should be saying, "Hey, let's hire them."

One of the reasons people say that you need former police officers or police officers themselves to do the investigation is because the police have such a powerful culture that they won't let others into. That's the whole problem, and that's the problem we have to get around. I happen to believe that it would be better for police officers if we could really explode that culture so it wasn't there. I think many new officers are appalled at this culture that they've had to absorb when they thought they

were going to go out and do good in society and they find they're part of this big organization. So that's a cultural thing. This mechanism isn't going to solve it, but it's something that we have to recognize. If we don't recognize it, we're going around with blindfolds.

The Chair: Thank you.

Mr. Runciman: Just to put on the record that I'm unconvinced and I think the dangers of having people who are not competent in very significant investigations that affect people's lives is a greater persuader for me.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you, Mr. Sewell. I have no questions, Chair.

The Chair: The government?

Mr. Zimmer: Thank you, Mr. Sewell, for your thoughtful presentation.

The Chair: Thank you, Mr. Sewell.

HARVEY SIMMONS

The Chair: Our next deputant is Harvey Simmons.

Mr. Harvey Simmons: Good afternoon.

The Chair: Good morning, still.

Mr. Simmons: Thank you for the opportunity to appear before the committee. My name is Harvey Simmons. I'm appearing as an independent presenter, but I'm also a member of the Toronto Police Accountability Coalition. I have a brief presentation which hasn't been circulated, but I would like to make it available afterwards for copying.

My approach is slightly different from those of the previous presenters. What I did to prepare this was very simply look at complaints statutes in other jurisdictions to see whether there was anything that they had that perhaps Bill 103 could benefit from. I've arranged it in a series of brief statements of how other jurisdictions handle their complaints, with a series of suggestions that follow from that. I'd like to go through that very quickly.

First, British Columbia has a provision as follows: "If the police complaint commissioner suspects that the notice of withdrawal [of a complaint] may have been made under duress [the police complaint commissioner] must ... make reasonable efforts to determine if duress was involved."

The New South Wales Police Integrity Commission Act mandates the commissioner to "protect the safety" and to protect from "intimidation or harassment" any person assisting the commission in its investigation.

My recommendation is as follows: Given the past history in Toronto, and perhaps elsewhere in Ontario, of civilian complaints against police being withdrawn under suspicious circumstances, such a provision should be included in Bill 103.

By the way, British Columbia's legislation and the New South Wales legislation are referred to in Justice LeSage's report, although these particular provisions do not appear there.

On support and information for complainants, the BC statute says, "The police commissioner must make

available a list of support groups and neutral dispute resolution service providers and agencies" to "assist complainants with the informal resolution process." In other words, BC states that people who make complaints get some help in resolving the process from outside agencies.

My recommendation is that although Bill 103 does refer to helping people make complaints, there's no provision for arranging for assistance for people who wish to resolve their complaints during the informal process.

Extending the complaint time to 12 months: In BC, a complaint can be made up to 12 months after the incident. Neither the RCMP nor the New South Wales police place any time limit on filing complaints. By contrast, Bill 103 states that the IPRD "may decide not to deal with a complaint made by a member of the public if the complaint is made more than six months after the facts on which it is based occurred." In the interests of fairness and justice, perhaps the time for making a complaint might be extended under Bill 103 to more than six months, perhaps to a year or even beyond that.

Deadline for investigating complaints: In BC, an initial report has to be filed by their police complaint commissioner within 45 days after the initiation of an investigation, and follow-up reports after that. My recommendation is as follows: Bill 103, it seems to me—I may be wrong on this—is unclear on whether or not there is a deadline for investigating complaints within a certain deadline. The only provision I could find was that in investigating municipal force policies, the chief has to report within 60 days of a complaint. But it seems to me that this refers only to municipal force policies, not to individual complaints. My recommendation would be that if it doesn't exist—I haven't seen it—there should be some deadline whereby an investigator has to report to a complainant, say, within 45 days.

1140

Decision on not to deal with a complaint: Bill 103 states that the IPRD may "decide not to deal with a complaint made by a member of the public if, in his or her opinion ... the complaint is not in the public interest." My recommendation is as follows: If you look at the BC legislation, the term "public interest" only occurs when it is in the public interest to hold hearings or to open up public discussion. In other words, the term "public interest" in BC is the grounds for broadening, not restricting, inquiry. Why, then, would one leave it up to the IPRD to decide alone on what or is or is not in the public interest, and why are there no grounds provided for a complainant to appeal against this decision?

One minor point is the clarification of the term "board." The Police Services Act stipulates that the term "board" refers to "a municipal police services board." However, in Bill 103 on at least one occasion, the term "board" refers to a complaints board—part V, clause 56 (1)(b)—and yet throughout Bill 103, matters are referred to boards. It's not clear, to me at least, whether when a matter is to be referred to a board under Bill 103 it refers

to a police services board or to that one mention of a board of complaints.

There are a couple of other things. I want to leave time for questions.

Specify contents of annual review: Under Bill 103, the IPRD must submit an annual review. The content of that review is not specified. If you look at the New York Police Department's Civilian Complaint Review Board, there's some specificity about what should be contained in the annual report. I think the same should be the case in Bill 103.

Finally, anonymity of complainant: The Los Angeles police state that they cannot guarantee anonymity to complainants. My recommendation would be that in fact Bill 103 should guarantee anonymity to complainants, the reason being that they not only might fear retaliation, but this is a multicultural city and I remember at least one instance of a person who complained to the police and was subsequently deported because she was under illegal status. I don't think the fact that in this case the person had some sort of immigration problem should militate against people laying complaints against the police.

There are other things in here that the members can look at when this is circulated, but I think I'll stop here. Thank you.

The Chair: Do you want to give a copy of that now to the committee clerk? Thank you. We will start with Mr. Kormos. Five minutes each.

Mr. Kormos: Thank you very much, Mr. Simmons. I appreciate your contribution. I'm looking forward to getting your submission so that I can read through it after having heard you submit it. Thank you.

The Chair: We'll move on to the government. Any questions? Mr. Crozier.

Mr. Crozier: Just a very quick question, and I think the printed copy of your report will give me, like others, a chance—you mentioned this referral to complaint boards, and I think you referred to a section of the act. What section was that? Do you remember?

Mr. Simmons: It's gone to be copied. You'll find it.

Mr. Crozier: That's one I'd like to have a look at, that's all.

Mr. Simmons: It does add to some confusion.

The Chair: We'll move on to the Conservatives. Mr. Runciman?

Mr. Runciman: Thank you for being here. You expressed your desire to see the protection of anonymity of complainants. I'm just curious. You cited the one example of retribution. Where can we get details? Was that proven to be the case or is this anecdotal?

Mr. Simmons: Yes. This was a newspaper article some months ago about a woman who made a complaint or was involved in a complaint and was later deported because of her immigration status.

Mr. Runciman: Was there a clear linkage between them? Was this ever proven, or is this just an—

Mr. Simmons: Yes, I think so. I must admit, I don't have the actual facts, but the principle of anonymity

seems to me to stand above this question of whether or not there have been individual incidents.

Mr. Runciman: I don't argue with you with respect to that, just the fact that you're basing your case on an example that obviously is an allegation.

Mr. Simmons: Yes.

Mr. Runciman: Okay. Thank you.

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

CANADIAN CIVIL LIBERTIES ASSOCIATION

The Chair: We'll move right along, then, to the Canadian Civil Liberties Association, Mr. Alan—

Mr. Alan Borovoy: Try Borovoy.

The Chair: Borovoy. I should know the name; I've read it so many times. My apologies.

Mr. Borovoy: Thank you very much. I appear here on behalf of the Canadian Civil Liberties Association. A document, I believe, had been pre-circulated to you.

This province has endured a system of police complaints for almost a decade that we believe is deeply flawed. In fact, I describe it as "cop heavy," and that is that the police have dominated virtually every stage of the process. The problem with that is that no matter how fair in fact the handling of any complaint might be, there's no way it can appear fair, because those police officers have departmental interests to protect and collegial relations to maintain. This is a classic conflict of interest. Everywhere else in our society, we are making bold moves to eliminate or at least reduce conflicts of interest. It is critical that we do so here as well.

Bill 103 makes a number of welcome moves in this direction, and to this extent, the Canadian Civil Liberties Association commends the initiative. Unfortunately, however, there is still more police domination of the process than there ought to be. Even though there is a system in place now for some kind of external review of those police decisions, the great risk you are likely to encounter is the number of people with grievances against the police who will not file complaints because they don't want to put themselves through a police-dominated complaint handling system.

On that basis, the Canadian Civil Liberties Association is proposing a different approach, or at least an amendment, at each stage of the process. We start with investigations. The bill provides for a continuation of the initial investigations by police themselves. It does provide for alternatives, but in our view, this is a flawed way to begin. We are concerned that these investigations will be perceived as serving the interests of the police. As I say, no matter what the facts are, that is likely to be the perception. There will be apprehension that evidence may be concealed, ignored or even distorted. That's going to be the suspicion that people will have when you have that kind of situation. Again, you're not likely to have all the grievances come forward when people know that they

have to deal with colleagues of the very officer against whom they have a complaint.

1150

I notice that there is a provision for referring these investigations to another police department. The difficulty with that was answered by an RCMP sergeant way back at the time of the Donald Marshall inquiry in Nova Scotia. You'll remember that this man was jailed for a murder he did not commit because of what appeared to be a flawed investigation by the Sydney, Nova Scotia, police. The RCMP was trying to explain on the stand why they pulled their punches when they reviewed the Sydney police investigation. The RCMP officer said, "Police officers are like a fraternity. You feel a certain loyalty to one another." Now, that is when one police force is investigating another, and that's why that system is not adequate either, all of which leads me to the recommendation that the bill be recast so that the initial investigations will generally be done by the director and the director's staff rather than by any police force.

You then come to the point where, once the investigation is finished, there is an evaluation of it to determine whether the matter is going to be treated as a serious matter, the subject of a hearing; a non-serious matter, the subject of attempted informal resolution; or whether it will be dismissed as unsubstantiated. Who makes the initial decision in this bill? The chief of police. If the chief decides that it's not serious, that it could be the subject of attempted informal resolution, who oversees it? The chief of police. Ultimately, if there's going to be a disciplinary hearing, who presides and who decides what, if any, penalty to impose? The chief of police. The difficulty with that is that you cannot expect the civilian complainants to have adequate confidence in that kind of arrangement.

If I go back, the declaration or the finding that it's unsubstantiated—it's hardly going to be surprising to civilians to see the chief of the very force against which they have a complaint dismissing it as unsubstantiated. But then, if they decide to attempt informal resolution, I would suggest to you that conciliation often involves attempts—you have to goad people; you implore them; you pressure them. It is not wise to put the chief of police or the chief's designates in the position of trying to promote informal resolution. That is fraught with the risk that it will be perceived as a police-pressured solution, whatever the reality is. As far as adjudication is concerned, again, to put people through all of this and at the end of the day have a hearing presided over by the very department, or even another department, is not going to inspire confidence.

We suggest that the evaluations at the end of the investigation be performed by the director, that the attempts at informal resolution be managed by the director, and that the disciplinary hearings—when it comes to that, you could either create a tribunal such as there was in the system before 1997 or you could skip the chief of police and go straight to a hearing before the new civilian commission. Those are the ways that we think change should be made along the way.

A couple of other points: The classification of complaints as "policy" or "conduct." It seems to imply that there is going to be only one solution: policy or conduct. It's possible for numbers of complaints to involve policy and conduct. Moreover, there is no way that that classification can intelligently be done initially, before there is even an investigation.

I take you back a few years in the city of Toronto. There were allegations—indeed, there were admissions—that the police had been conducting surveillance of the leaders of the black community. First of all, you have to investigate to find out if those allegations are true. Then there's a question of: Who ordered it and who authorized it? It may very well be that regardless of whether or not it was a policy matter, somebody might be at fault for ordering it and authorizing it, in which case you could have a conduct complaint and a policy complaint. This leads us to the suggestion that the bill be recast to reflect that possible reality and also that the decision to classify the complaint come after an investigation and not beforehand.

Finally, we recommend, as we have been for many years, a system for independently auditing police policies and practices. Without waiting for complaints, an agency with ongoing access to police records, police facilities and police personnel should be empowered to look at what is going on and ultimately disclose to the public what they find and make recommendations about it.

The difficulty is that however much you may improve the system—and I think it can be improved, as indicated—to ensure that more aggrieved people come forward, you know very well that they will not all come forward. Some people will still be too intimidated to come forward. So you have to have a way of dealing with that.

Moreover, there will be situations where wrongs may be done and people don't know they're being done. The leadership of the black community a few years ago was not aware for some time that they were under that kind of surveillance. So there has to be a way of dealing with that as well.

Also, there has to be a way of dealing with the determination of police priorities. In the absence of ministerial directives and directives from police services boards, who decides and on what basis is the decision made what the police do all day? Somebody is choosing priorities, and we suggest that an audit system would be helpful in all these respects in order to make the whole system more transparent and ultimately more accountable.

Finally, the Canadian Civil Liberties Association makes these proposals to you not because we think the police are more sinful than the rest of us, but rather because we think they are no less human than the rest of us, all of which is, as always, respectfully submitted. Thank you.

The Chair: Thank you for your presentation. We'll begin with the Liberal Party. We started at 11:45. We've got about six minutes, so two per party.

Mr. Zimmer: In two minutes, just let me say personally, and I know on behalf of the committee and particu-

larly my colleague sitting to my left, that, as always, your presentation is a model presentation regardless of what our views of the content may be. It's a serious presentation and I, for one, always look forward to your thoughtful assistance in these matters. Thank you.

Mr. Borovoy: Thank you very much. Anything you say after this will be a terrible anticlimax.

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

1200

Mr. Runciman: Thank you, Mr. Borovoy. Mr. Borovoy and I have known each other for many, many years, and on rare occasions we've even agreed. I have to say I appreciate your submission. In this brief time that we have, there are many areas that I would like to explore with you. I am curious about one element, the compellability issue, which ties in, or I'm tying it in anyway, to police culture. You're a lawyer, aren't you, your background?

Mr. Borovoy: I was when I got up this morning. I was hoping it wouldn't otherwise show.

Mr. Runciman: I find it passing strange—I'm curious about a sort of lawyer culture. We hear all the time about a police culture; I think there's a lawyer culture. We talk about compellability in an issue that I've raised in the Legislature on a couple of occasions, about compellability of others in the justice system; for example, a justice of the peace being a compellable witness at an inquest into the death of someone when the alleged murderer was released on bail by that justice of the peace. Why shouldn't the JP be a compellable witness? Why shouldn't a judge be a compellable witness? So I think there's a bit of a double standard from the perspective of your profession. I'd love to hear your comments on that.

Mr. Borovoy: I'll respond in general the way I once did when a former president of the Metropolitan Toronto Police Association, as it then was, Sid Brown, and I were involved in a television panel. He said, "You keep pressing for independent investigation and review of police matters. What about the law society?" I said to him on television, "If you go with me to make the changes with respect to the police, I'll go with you to make it with the law society." In fact, he did.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you, Mr. Borovoy. I don't know; Mr. Runciman, as a right-wing libertarian, has probably agreed with you far more with respect to civil liberties than he's prepared to admit.

I don't know if you addressed, in your review of the legislation, section 58, which prohibits a police officer from accessing this process if the complaint is about another police officer in his or her own police services, which just seems strange to a whole lot of people.

Mr. Borovoy: I did not notice that, no.

Mr. Kormos: Then we'll move on to the informal resolution, because there are some folks out there who are disappointed that the bill didn't specifically talk about, for instance, mediation, as other government legislation has. The family and children's services amendments, for instance, invoked mediation as an alternative

route. Would you be supportive of a more formal, structured alternative to the adjudicative model, for instance, talking specifically about mediation, as compared to merely using very loose language like "informal resolution"?

Mr. Borovoy: I'm not sure that it's the language, using terms like "mediation." I said earlier "conciliation"; that was from my earlier labour experience. Others may call it "informal resolution." I'm less mystified by the language and more interested in how it gets managed. That's why I suggest that it's got to be taken out of the hands of the chief and that the director should be involved in that kind of process, rather than the chief.

Mr. Kormos: The police association agrees with you on the adjudication issue. The police association advocated that police associations should be party to any agreement to an informal resolution. That, then, seems to me to put a civilian complainant at a disadvantage, because of course people can be very easily coerced into participating—you made reference to that. I think a police officer surely has a right to consult with his association; why wouldn't he or she? How, then, do we balance that in terms of the civilian complainant? Because there's nothing in the legislation about ensuring that the complainant has access to counsel, advice, support etc.

Mr. Borovoy: Of course the person has to have access to counsel, advice, a community organization, whatever, but it's in recognition of all those possibilities of a system that feels uneven that it's so important that it be managed by someone else.

You see, one way it can often work is, you don't have the parties meet. You may bring them together at some points, but you separate them for other points so that you can talk to them without the others being there and so that you have a less intimidating environment.

Mr. Kormos: It was your book that was so warmly reviewed by a senior Toronto Sun columnist. In fact, it was Worthington, wasn't it? What was the title of the book? I haven't read it yet.

Mr. Borovoy: The title is *Categorically Incorrect*, and I've been trying my best to live down that favourable review ever since.

Mr. Kormos: Thank you, sir.

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

DON WEITZ

The Chair: Our next presenter is Don Weitz.

Mr. Don Weitz: Thank you, Mr. Chair. I just want to start off by saying that I don't feel very welcome here, because as I was mentioning to Mr. Kormos, as soon as I walked through the door and said my name and spelled it, W-E-I-T-Z, the OPP guard, in uniform, asked me, "What's your background?" I suppose if my name was Smith or Jones she wouldn't have asked that—because it's not an Anglo-Saxon name. I immediately felt somewhat put off, to put it mildly, by this OPP officer. So

would you please instruct your officers not to ask for people's background when they want to attend a public hearing? That's point one. I felt insulted and discriminated against, and that is not acceptable here or anywhere else in Canada, at least.

The other thing is, why only two days of hearings? I know a number of people who live out of town. They cannot be here. I understand that there are only two days of hearings—please correct me—and then only in Toronto. This is a very controversial bill, as you've heard, so at some point I would like an answer as to why there are only two days of hearings, and the fact that there wasn't much advance publicity in the mainstream press, as far as I know, although I stand to be corrected on that.

I'm here as a social justice activist. I'm representing myself. I've been actively fighting for justice for psychiatric survivors, people with disabilities and other marginalized people for well over 30 years.

You might wonder what the relevance of this handout is. According to the Toronto Star, it is a list of killings by the Toronto police where the SIU, the special investigations unit, cleared them all. The reason why you have a copy is because many of these killings, in my opinion, were largely a result of a lack of accountability on the part of the police and the fact that there is systemic bias against people who have a psychiatric history or who have a non-Anglo-Saxon name, for example, or who are African-Canadians. This is what happens very often when, in my informed opinion, there is a lack of accountability.

1210

I want to go through some of the major points which concern me, as they've concerned Mr. Borovoy, Mr. Sewell and others who care about human rights. There is too damn much power in the hands of one person, namely the director—one person making very serious, fateful decisions for many people who may have the guts to come forward with a complaint. It is open to serious abuse, so that the director becomes a virtual dictator of what is acceptable to be investigated or not acceptable.

There should be a community directorate. That's my first recommendation. It should be an elected one, not an appointed one. We have too many appointees within this government. You want to democratize and decentralize the process? Establish a community directorate drawn from the grassroots so that the decisions will very likely reflect the attitudes and the issues current in that community regarding discrimination, for example, regarding bias or racism or whatever by the police. A grassroots directorate: That's my first real recommendation.

Like others, I'm not happy at all. Lack of independence: There's no guarantee of independence in the investigations that are ordered by the director. That point has been made by Mr. Sewell from the Toronto Police Accountability Coalition, and I certainly second it. It sticks out like a sore thumb. There's just too much room for conflict of interest.

I think the SIU should be abolished. I am charging it, before you, with systemic bias. Just look at the serious

killings that have happened: 18 that are listed. This is the Toronto Star list—it's not my list—that they published. Four policemen were charged in the Otto Vass case, in which case the trial was a big sham, in my opinion, because the lawyers for the police unduly trotted out his psychiatric history and unduly emphasized it, as if that was relevant.

It is not acceptable for a so-called independent investigatory body to not charge police, when there is overwhelming evidence in many of these instances. For example, in the death of Jeffrey Reodica, whose parents are from the Philippines, he was shot from point-blank range three times in the back. It hasn't gone to trial—not charged. The inquest was another sham.

I think that the SIU is not a truly independent body. I know it's not part of the bill—I'm very well aware of that—but I'm talking about independent investigations. The SIU couldn't conduct an independent investigation if its life depended on it. I am very critical and I'm not the only one, I'm sure. Other lawyers, civil rights lawyers, have also expressed their displeasure; I'm sure that they have.

I have a recommendation, although I didn't read Justice LeSage's report, to ensure grassroots accountability. There have to be local regional boards set up, drawn from the people who live in the community, because many of them, particularly in areas targeted by the police, such as Jane and Finch and Regent Park, are under siege by the police. They don't feel that they have a say, I'm sure. I'm not here to speak for them, but it's public knowledge if you go to public forums and listen to people who live in certain areas, very poor areas, where many African Canadians live, many people from other countries, new immigrants. As a matter of fact, we're all immigrants; only the First Nations people are not. But the point is that there has to be more grassroots input, and you're not going to get that in this bill.

I also recommend that this government do some reaching out for a change to my constituency, which it hasn't done so far. Instead of controlling us through the Mental Health Act and so forth and making it easy to make complaints about police bias and police harassment, you should approach a number of advocates who are psychiatric survivors who are doing an outstanding educational job about police bias, systemic police bias, the lack of education that the police are experiencing regarding the key issues of psychiatric survivors, a most vulnerable group that's not likely to come here or not likely often to come to a public forum and make complaints against the police. You should make it easy for them—and not just psychiatric survivors; many others who are marginalized.

Basically, that's all I want to say. I'm open to questions.

The Chair: We have about nine minutes, so three per party, and we'll start with the Conservative Party.

Mr. Runciman: I have one quick question. Thank you for being here. You've been here all morning, I guess.

Mr. Weitz: Not all morning; about an hour and a half.

Mr. Runciman: I don't know if you were here for the Ombudsman.

Mr. Weitz: I heard Ombudsman Marin, yes.

Mr. Runciman: I just wonder what your views are with respect to the Ombudsman providing oversight.

Mr. Weitz: Well, it sounds pretty reasonable. I'm not much on particular mechanisms, I'm not a lawyer, but I think there should be oversight, a community directorate. I'm not in favour of the director being given all these duties; I'm in favour of a community collective, a directorate. I'm not in favour of one person, in which case an oversight wouldn't be necessary, but a true community directorate would be my answer. I've tried to roughly sketch that out, although I'm sure others are more able than I am to get into the details of how to set up a community directorate for police complaints.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you, Mr. Weitz. You've been very fair in terms of making it clear that you're not specifically addressing the bill, but in an oblique way, you're nonetheless commenting on police oversight in the broadest sense. To that end, I appreciated your comment about the need for elected bodies rather than appointed bodies. So we'll take this even one step further afield, although well within the context: What do you say about insisting that all members of police services boards be elected members?

Mr. Weitz: I think that they should be. I'm not a big fan of appointees. There's too much risk of patronage and bias. I mean, if you want to democratize a system in our society, you have to let people have a say. Elect them. If you appoint them, it means I didn't get a chance to select somebody on the police commission or any other government body that has a direct effect on my life, and I want a say about who's going to make decisions on my behalf. I mean, the basic tenet of democracy is a right to express your opinion, and that includes a right to vote and a right to elect your representatives. I don't feel at this point that the Toronto Police Services Board, for example, represents my views and my issues. It's largely appointed. That's the way I feel.

1220

Mr. Kormos: Mr. Weitz, I'm very much inclined to agree with you about a preference for elected boards, including police services boards.

Mr. Weitz: All should be elected.

Mr. Kormos: And health services boards, hospital boards.

Mr. Weitz: Health services boards are the same thing.

Mr. Kormos: It's remarkable, Mr. Zimmer, that the largest single expenditure of public tax dollars in any given community is controlled through a hospital board that has no public accountability, that isn't publicly elected, that is more often than not a little gaggle of back-room boys who pick one of their own to be chairman of the board. Remarkable, isn't it? We'll be introducing legislation once again—

Mr. Weitz: I agree with your point.

Mr. Kormos: —when the House resumes, to ensure publicly elected and publicly accountable hospital boards.

Mr. Weitz: Absolutely.

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

Mr. Zimmer: Thank you, Mr. Weitz, for your submission.

Mr. Weitz: You're most welcome. I hope you tell your guards down there, or the OPP, not to ask for people's background when they simply want to enter the Legislature. That's the first time that happened to me, and I'm keeping my cool, but I'm not exactly happy. No citizen should be asked that in a so-called democratic society.

Mr. Dunlop: On a point of order, Mr. Chair: I just want to make a clarification to the Legislative Assembly. I don't believe those are OPP officers in this building.

Mr. Weitz: Well, they're in uniform, but all right.

Mr. Dunlop: In this particular building, I think they are officers of the Legislative Assembly, are they not? I didn't want you to—

Mr. Weitz: Well, whoever. It could have been security; all right.

Mr. Dunlop: You mentioned the Ontario Provincial Police a number of times—

Mr. Weitz: We shouldn't be asked.

Mr. Dunlop: —and I didn't want it to reflect badly on the OPP. Thank you.

Mr. Weitz: I wasn't singling out—it looked like the OPP. Anyway, that's not on Bill 103, but I think you as a committee should be aware of that.

Mr. Kormos: The point is made, and I think well received.

The Chair: Thank you for your point. It's well received, and thank you.

Mr. Weitz: You're welcome.

DONNA CHUIPKA

The Chair: Our next and final deputant before we break for lunch is a teleconference. The name is Donna Chuipka, and I apologize if I didn't pronounce it correctly.

Mr. Kormos: Chair, for a guy whose last name is Berardinetti, surely you could be a little more sensitive to others of—

The Chair: I'm trying my best. We have with us Donna Chuipka, and I apologize if I don't pronounce that properly. Good afternoon.

Ms. Donna Chuipka: Hello.

The Chair: Hello. You have 20 minutes to make your presentation. Any time that you don't use up will be split among the three parties to ask you questions.

Ms. Chuipka: Okay.

The Chair: Can we raise the volume a little bit? Can everybody hear?

Ms. Chuipka: Can you hear that?

The Chair: It's a little bit low, the volume. Is there any way of raising it?

Ms. Chuipka: Yes. Just a second here. Does that help at all?

The Chair: That's a lot better. Thank you.

Ms. Chuipka: So I'm on?

The Chair: Yes, you are on for 20 minutes.

Ms. Chuipka: Okay, thank you. My name is Donna Chuipka. I'm from Sudbury, Ontario, and I recently presented a presentation to the police services board because I was married to a police officer, a sergeant, and he was charged with domestic assault and sentenced to jail for nine months. During that time, I had a lot of obstacles in regards to going through police services. There is that camaraderie of protecting their own.

What you basically have in front of you is my recommendations and the obstacles that I went through, and I think it's pretty self-explanatory, so I won't go through all of that.

When I heard about Bill 103, I thought that was something that really would have helped my situation. I did not even go through the police, 911. I actually had the cellphone number of the chief of police, and that is who I contacted when I finally came to the end of, let's say, my rope on how much abuse I could handle. I had to live through being told that no one was going to believe me, that he's a police officer—who are they going to believe?—that he's trained to do this kind of thing; he's been up in the court stands, basically. I also knew of other officers and things that had been swept under the carpet, shall we say, so that the police officer didn't get in trouble. I guess why I stayed in the abusive relationship so long was that I was basically scared for his career, but at the same time scared that no one was going to listen to me.

My first statement when they did finally come to the door and they asked me how I was—I clearly recall out of it all, and it was a horrendous experience going through that, saying to them, “Why does it matter? There's 200 of you against one of me.” That's basically where I felt I was.

I'm a professional woman. I have two children. One has completed a university degree, and my daughter is finishing her fourth year. I have a nursing degree as well. So basically it wasn't that I couldn't be financially independent or I couldn't do anything on my own. My greatest fear was that he was a police officer and I had to deal with these police officers.

When I went through the charges, I didn't really know what to expect, but some of the actions of a few of those officers could have made or broken my case, because I had my vehicle towed away; I had officers come to my door and ask me, “Do you realize what you're going to do to his career?”

I actually made one phone call to find out about an address because I had a passport that I wanted to forward to him, and when I went to the police station to ask them if they could please give it to him, I was told, “We're not a mail service.” So I made a phone call to the landlord, who was a police officer's wife, and within 20 minutes I had a police car with two sergeants at my door telling me that I was going to be charged with harassment. By no means was I harassing. When I called the staff sergeant on it to explain to him, “I don't understand this”—I'm

already distraught from everything that's going on—and ask him, “Why are they at my door? I'm not making any phone calls. This is one phone call,” and explained why, he said, “Well, you didn't mind when we came to your door and picked up Robin,” who is my ex-husband, “so why should you mind this?”

I obviously knew that there was nowhere—I said, “This is unfair. You're intimidating me. When you came to my door, I didn't know if he had killed himself or if something had happened. I didn't know what was happening. There were two officers at my door, and I hadn't done anything.” I said, “That scared me to death.” He said, “Oh, you're just overemotional. You're this, you're that.”

So I called other police services in the area and found out that that is not how they handle one telephone call. The time frame totally was not—I had a witness who was a massage therapist, and a police officer came up to her in the bar and told her to withdraw her statement, that she didn't have to put in a statement. She was potentially, I guess—I had a lot of good material, for sure, that wasn't just, “He said; she said.” It was more material. But she was a big part of it. Had I not had that other stuff—she had seen the markings when she had given me a massage. She was told to pull her statement, and there were officers standing around the bar looking at her. She was very intimidated, and as a result she did pull her statement.

When he was arrested, he wasn't put in handcuffs after he had just had an extreme outbreak of rage towards me. That's why they were at my door, and yet they let him finish packing. They didn't put him in handcuffs, the normal protocol for any citizen who breaks the law.

I think the other breaking point for me was that he was on 100% wages when he was off, and the police officer who works in professional standards—he's a sergeant—collected money to give him a free gym pass to the gym I worked out in, and there was definitely a restraining order.

1230

The other thing that I found in the trial, and I wish I had sent you the transcript as well, because the judge said it very well, was the fact that when he was criminally convicted—so he is now a criminal; three charges of assault and one of assault causing bodily harm. When it came to his sentencing, his pre-sentencing report basically said that he had problems, but officers sent letters for his character. That really sends a message to the public that, okay, this officer has been convicted criminally, yet they are still protecting him. I had an officer who was charged with an assault prior to that sitting through the whole court session too. I think that didn't send out a good message. And the same thing: Actually, in the sentencing judgment, the judge used his case to set precedents.

These letters: The judge said in his transcript basically that he may have done a good job while he was at work, but no one could go to his character after work. And obviously they didn't sit in the courtroom—for 14 days I testified, I was on the stand—to know, as the judge said,

“what the court knows, what I know and what Donna”—myself—“knows.” I think that sends out the wrong message.

I wouldn't come forth—there had been two other investigations prior, and they kind of got just put aside. I would have to say that was probably more my doing, because I wouldn't really say too much; I was too scared to. But I think that would contribute towards your Bill 103: I didn't feel I could talk to these officers.

In saying that, I have to say in fairness that, yes, there were some officers who did their job well, but when you have officers who—one pulled me over in a rude manner right after the charges; one pulled my daughter over, and she wasn't doing anything. She had a card of my ex-husband's just in with her insurance, one of his police cards. He just took it out and said, “Oh, I don't think you'll be needing this.” That was her private property.

There were so many things that—records weren't given to the Sudbury police centre, because they really couldn't be. The case ended up being put over to the OPP in North Bay, and that made it a little bit easier as time went on because they were very vigilant in not putting up with anything that these officers were doing to undermine the investigation.

Saying all that, I think that Bill 103 would be a good idea. I think too, and I know it doesn't really speak directly to the bill, that police officers who are convicted of domestic violence—you can't have another officer investigate their own. It's just impossible. I do respect the fact, though, that if Bill 103 had an amendment made to the police act, you do have to have highly skilled, trained investigators.

I know it would be a costly venture, but at the same time I don't know if you can put a price on what I've gone through for the last several years, the last two definitely, of going through the trial. I've made it through. I'm better for the whole experience. I'm looking at the positive and I plan to speak out as an advocate against domestic violence by a police officer to try to help other people. That is why I went in front of the police services board for Sudbury. They have to start making their men accountable for their actions.

If they're going to carry a badge and a gun—and when I say gun, too, another time I had to hide his revolver. A staff sergeant called me and said, “Donna, you have to give that back.” I said, “How do you know I have it? If he had it locked up, how do you know I have it?” He said, “Donna, he's going to get in trouble. I have to report this to an inspector.” I said, “Well, my safety comes first and foremost, so I'm not telling you whether I have it or I don't have it.” I held that revolver for five days, when he worked, and the staff sergeant did not report it.

So those are things that have to be looked into, have to be amended. Something has to be done. I think if you read my presentation, you pretty much will understand where I'm coming from. That pretty much summarizes everything.

The Chair: Thank you for your presentation. There's just under nine minutes, so three minutes per party. We'll start with the Liberal Party.

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

Ms. Chuipka: You're welcome.

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

Mr. Dunlop: I have no questions. Do you have any, Mr. Runciman?

Mr. Runciman: No.

Mr. Dunlop: We have no questions. Thank you for your presentation.

The Chair: Mr. Kormos for the NDP.

Mr. Kormos: Thank you very much for participating in the hearing process, and thank you for the written presentation. It is a very forcefully produced and articulated commentary.

Ms. Chuipka: Thank you.

The Chair: Thank you again for your presentation. We appreciate your time today.

Ms. Chuipka: Thank you very much.

The Chair: That takes us to our lunch break. We resume at 2 o'clock. Is that fine? The committee stands adjourned until 2 o'clock.

The committee recessed from 1236 to 1404.

The Chair: I'll call this meeting back to order, members of the committee and members of the public. Welcome to the justice policy committee.

Prior to breaking for lunch, Mr. Kormos of the NDP had put forward a motion, and it's in front of us. It's the first item to be considered before we move into our deputations for this afternoon. I would invite any debate on the motion.

Mr. Kormos: Recorded vote, please.

Mr. Zimmer: Have you spoken?

Mr. Kormos: Yes, I have.

Mr. Zimmer: In my view, and I'm sure my colleagues' view, Mr. Justice LeSage, in the course of doing his report, spoke with over 320 individuals and groups. In fact, it's one of the most exhaustive reviews of the police complaint system in Ontario. Justice LeSage has chosen to speak through his report. He's obviously aware of these hearings. I expect if he wanted to attend the hearings he would have contacted the clerk. It's entirely up to Justice LeSage to make that request or not make that request. But he has spoken through his report. For these reasons, I, for one, will be voting against this motion.

Mr. Runciman: I don't want to prolong the debate. I think it's passing strange that the government spokesperson has taken this position given that his colleague Mr. Crozier was quite interested during the appearance of the Ombudsman with respect to Justice LeSage's position and pursued that line of questioning. It seems curious, at the least, to now hear that they don't want to hear from the justice himself.

Mr. Crozier: My few comments, more or less in response to that: You couldn't be further from the truth. I was asking the Ombudsman's comments on his conver-

sation with Mr. Justice LeSage. I didn't ask that Mr. Justice LeSage appear before the committee at all.

Mr. Runciman: I didn't suggest you did.

Mr. Kormos: I'm not surprised. I find it regrettable, however, that the government would hide behind the robes of Mr. LeSage when it's convenient for them to do so and would allow others to, with at least innuendo, put words in Mr. LeSage's mouth. The government overlooked this opportunity to clear the air because Mr. LeSage doesn't have to come if he's invited, if he doesn't want to. That's why I included the opportunity for him to address in writing the business of section 97.

What was interesting is that this morning staff members hid behind LeSage and implied that Bill 103 is only about giving effect to the LeSage recommendations. What poppycock. Horse feathers. Rubbish. That's not how the Attorney General introduced the bill on first reading. The comments are available in the binder that the staff has so nicely prepared for us.

Clearly, the government doesn't like the Ombudsman. It doesn't want the Ombudsman to have oversight over family and children's services. It doesn't want the Ombudsman to have oversight over this new independent police review process. That causes me great concern. The evolution of the role of the Ombudsman and Ontario's leadership—Ontario was, in my view, a leading jurisdiction in developing a strong, independent Ombudsman office. This legacy is being undermined now by the government and its demonstration of disdain for the Ombudsman office.

Mr. Marin very articulately addressed the issue, not only in his comments to the committee today but of course in his speech to the Toronto Police Services Board in which he first addressed his concern about section 97 of Bill 103. He taught us the Latin phrase "Quis custodiet ipsos custodiet?" The question remains unanswered, doesn't it, Mr. Zimmer? The question is a valid one. The principle is a long-time one.

1410

In view of the fact that notice was given when Mr. Marin made that speech on May 13 of last year, just shy of a year ago now, the failure of the government to adequately respond and, more importantly, the effort to describe the Ombudsman's role as some additional level of police oversight—you heard that earlier today, didn't you, in response to a question put by me saying, "What's wrong with the Ombudsman?": "We don't need another level of police oversight"? What a frantic, albeit feckless, effort to try to respond to the question. "Oh, it's just another level of police oversight. How many levels of police oversight do you want?" It's oversight of this independent police review process.

I trust you read Mr. Marin's comments that he made in May. I read a big chunk of them into the record during second reading debate on Bill 103. I find his arguments compelling; clearly, Mr. Zimmer doesn't. No, I should be more careful, because I have regard for Mr. Zimmer. I'm sure Mr. Zimmer, with his history, his background, his intellectual acuity and his innate sense of fairness and of

what's just and right, doesn't argue with Mr. Marin at all. I'm sure Mr. Zimmer, the parliamentary assistant, not only understands the argument of Mr. Marin but has a great deal of personal sympathy with it.

Is it really lawyers who are the world's second-oldest profession? Because here we are, the parliamentary assistant simply doing what he's paid to do, as compared to what I suspect he really believes in his heart is the right thing to do. Who said that there wasn't a political culture that's alive and well, in addition to the police culture and the lawyer culture? Who would dare suggest that?

Those are all of my comments on the matter. I'll be addressing this again when we deal with clause-by-clause and, of course, in what I'm sure will be an enthusiastic and lively third reading debate on this bill.

I simply note this: I was so proud this morning that Mr. Zimmer, as parliamentary assistant, had something, a piece of legislation, that wasn't a pit bull ban or that wasn't a highly contentious and guillotine debate around the abolition of the Ontario Human Rights Commission. It rather was a substantive and thoughtful, by and large, revision of existing police oversight. I thought, if there was going to be a highlight in his parliamentary assistant career, it was going to commence today.

While I don't want to take anything away from Mr. Zimmer, and he is truly a conscientious member of this Legislature, he has certainly dimmed a glow that attached to him when he walked into this room this morning by his Nuremberg-like acquiescence to the marching orders that come from the east wing, second floor.

Thank you kindly.

The Chair: Is there any further debate?

Mr. Kormos: Recorded vote, please.

The Chair: Recorded vote, then. Is there any need to read the motion back?

Mr. Kormos: We've got it.

Ayes

Dunlop, Kormos, Runciman.

Nays

Balkissoon, Crozier, Qaadri, Zimmer.

The Chair: The motion does not carry.

TORONTO POLICE SERVICES BOARD

The Chair: We'll move on, then, to our 2 o'clock deputation, which is the Toronto Police Services Board and Alok Mukherjee. I apologize if I didn't pronounce it properly.

Sir, you have 20 minutes to address the committee. Any time that you don't use will be split amongst the committee to ask you some questions.

Dr. Alok Mukherjee: Thank you very much. Good afternoon, Mr. Chair and members of the committee. On behalf of the Toronto Police Services Board, I want to

begin by thanking you for giving me the opportunity to speak on this very important issue—namely, the public complaints process governing the police. This is an issue of great importance not just for our board but for police services and, indeed, for communities everywhere in this province.

As you know, our board has long advocated for changes to the current complaints system. Our submission to the Honourable Mr. Justice LeSage was the result of months of research, analysis and public consultation. I am encouraged by Bill 103 and recognize that it represents a major shift from the process now in place.

At the same time, I submit that there are issues that still remain unaddressed and additional changes that still need to be made to ensure that the ever-important principles of accountability, transparency and fairness remain the foundation of this legislation.

The move to establish an independent police review director is a positive step, one that will provide greater accountability in the complaints process. In our submission to Justice LeSage, the board had asked that an independent body be created, one that would be responsible for the intake of all complaints. Under Bill 103, the director assumes this role, providing for the overall management of every complaint from the outset. This is important both on a symbolic level and on an administrative one. I am heartened, too, to see that the director has the power to investigate complaints and to appoint investigators.

I would recommend that serious thought be given to the question of resources. With these expanded responsibilities, comes, too, the need for adequate funding and staff. Without these resources, such powers will have little meaning.

On the expanded definition of “directly affected”: Bill 103 expands the definition of “directly affected,” which is, once again, a welcome change. The previous definition of “directly affected” was unnecessarily narrow, leaving many with a legitimate rationale for making a complaint unable to do so. The new language creates more categories of complainants under this provision. However, the provision does not allow a complaint from someone on behalf of an alleged victim of police misconduct who is suffering from a physical or mental disability that renders the individual unable to make a complaint himself or herself. A recommendation to expressly include such a category in the definition of “directly affected” was a part of our board’s submission to Mr. LeSage, and I reiterate that recommendation today.

Auditing of complaints process: The inclusion of provisions to provide for performance audits to be conducted by boards and by the director is significant. Our board believes that this will enhance public accountability of the complaints process and allow for any deficiencies in the new process to be identified and corrected, where necessary.

1420

On informal resolution: Like our current system, Bill 103 contains a mechanism to facilitate informal resolu-

tion of non-serious complaints. Our board very much supports informal resolution in appropriate circumstances where it can offer a meaningful alternative from the often bureaucratic and lengthy complaints process. The increased use of informal resolution by our police service and others is a positive shift. However, I am disappointed to see that Bill 103 contains no guidelines as to when informal resolution should be employed, as was recommended by our board and others. These guidelines need not be overly prescriptive but could include a list of possible types of misconduct that should be referred to informal resolution.

Alternatively, as is the case in the UK, the legislation could provide that informal resolution can be used where the conduct complained of, if proven, would not justify the bringing of any criminal proceedings and that, in the event any disciplinary proceedings were brought, the proceedings would be unlikely to result in a dismissal, a requirement to resign or retire, a reduction in rank or other demotion, or the imposition of a fine. I believe the bill should include similar provisions governing the use of informal resolution.

Suspension of police officers: The suspension of police officers is a critical issue for our board, and we have repeatedly asked that the Police Services Act be amended to provide chiefs of police with the authority, in certain limited circumstances, to suspend police officers without pay. Bill 103 proposes no such amendment. In my view, the current provision severely limits a chief’s ability to effectively and efficiently administer his or her police service. In addition, continuing to pay an officer who is alleged to have committed an egregious offence may jeopardize public confidence in the police service and may constitute a gross misuse of public funds. While I am mindful of the principles of fundamental justice that individuals must be considered innocent until proven guilty, I submit that the current provision appears to be wholly inconsistent with a fair and accountable complaints process as well as sound management practice. I would recommend, again, that the provision be amended to provide for suspension without pay.

“Delay applications”: One area that remains virtually unchanged by Bill 103 is subsection 69(18) of the current Police Services Act. This provision provides that no notice of hearing shall be served if six months have elapsed since the facts upon which the complaint is based, unless the board is of the opinion that it was reasonable, under the circumstances, to delay serving the notice of hearing. On increasingly numerous occasions, our board has been asked to decide such so-called “delay applications.” These decisions are usually exceedingly difficult, and it has become apparent that the six-month time period is often a practical impossibility, given the complexity of investigations and current disclosure requirements. I would ask that this provision be amended to extend the length of the limitation period from the current six months.

Before closing, I would like to note that our board is aware of the presentation being made to you by Scadding

Court Community Centre and the Community Education and Access to Police Complaints Demonstration Project. The board has consistently supported this important initiative, which was designed to facilitate accountability and understanding between the Toronto Police Service and Toronto's communities. The board also supports, in general, this organization's recommendations that the new legislation be strengthened in terms of increased accessibility to the complaints process. Specifically, the board supports the CEAPC model developed by Scadding Court and submits that it should be given serious consideration as the implementation process for the new legislation is planned and carried out. The board agrees with Scadding Court's position that there is a need for a variety of intake mechanisms for police complaints and that the implementation of Bill 103 must include a component of community-based intake.

Once again, on behalf of the Toronto Police Services Board, I thank you for the opportunity to speak today and I look forward to changes that will ensure that the new police complaints system is effective, fair, transparent and accountable. Thank you.

The Chair: Thank you, Dr. Mukherjee. We have about 10 minutes left, so three and a half minutes per party, starting with the Progressive Conservatives.

Mr. Dunlop: Dr. Mukherjee, it's good to see you here. One question: On the very last page, you suggested that the limitation period be extended from six months. Have you got a suggestion on that, unless I didn't catch it somewhere else in the—

Dr. Mukherjee: No, I have not suggested what the new period should be. I would suggest that at least a period of nine months would be more reasonable than the current six months.

Mr. Dunlop: Okay. Would that be following discussions you've had with your police services board and the chief etc.?

Dr. Mukherjee: Following discussions that we have had with the board and the pattern of some of the delay applications that we have had to deal with, we found that six months was quite inadequate.

Mr. Dunlop: Okay. That's the only question I had.

Mr. Runciman: Just a quick one, sir. I appreciate your being here and appreciate your input. One of the issues that was raised this morning—I think it's going to be part of the discussions over the next day and in our clause-by-clause considerations—was the Ombudsman's concerns, which he has put on the record, with respect to having what he describes as a truly independent oversight of police complaints. Have you or your board—I know you are speaking on behalf of your board—taken a look at this issue? Do you have any position on it, any concerns or any input whatsoever?

Dr. Mukherjee: As I heard Mr. Kormos mention, the Ombudsman made that suggestion when he came to speak to our board's 50th anniversary conference. I'm quite familiar with his position.

The board has not had a discussion of his proposal, nor has it taken a position on it. I should say that the

issue that he raises is an important one: that public confidence requires that the proposed civilian director be seen to be independent and be independent and be accountable for that independence. As to whether making the director's office accountable to the Ombudsman is the solution, that's something that the board has not discussed. We don't have a position on it.

Mr. Runciman: You're a municipal appointee of the board.

Dr. Mukherjee: That is correct.

Mr. Runciman: Yes. If you go back to the days when we had a provincial appointee as chair of the board, there were always suggestions that because there was this connection between the government of the day and the chair, who was an appointee of the government, they tended to be supportive of whoever was responsible for their appointment, and I guess that could be the colouring attached to this as well. That's one of the concerns: that this is an order-in-council appointment, i.e., a political appointment, if you will. That could—if not in reality, in terms of perception—damage the effectiveness of that individual, perhaps.

Dr. Mukherjee: I guess that's an issue of perception that you grapple with with any appointment. I've been chief commissioner of the Human Rights Commission, appointed by the government of the day. I was a member of the Ontario Civilian Commission on Police Services, appointed by the government of the day. I am chair of the Toronto Police Services Board, appointed by the local city council. There will always be the question as to how independent political appointees are.

I think on balance, when you take into account that these bodies are composed of people with different perspectives who have a duty to carry out under their mandate, they do a good job. What will happen with this new appointment remains to be seen, but I think it is fair to say that the public expects the director to be and to act as an independent person.

The Chair: Thank you. Mr. Kormos?

Mr. Kormos: Thank you kindly, sir. There's a remarkable convergence between the Canadian Civil Liberties Association with Alan Borovoy and Bruce Miller and the Police Association of Ontario, in that both of them called out for independent adjudication. The police association—and I quite frankly am very sympathetic with their concern—felt that it was inappropriate that a police officer accused of, effectively, misconduct, if you will, in the broadest sense, is going to be subject to a hearing by somebody who is at least an inspector, or the chief, his employer—management, if you will, in the operation. So a very, very powerful argument was made by both the police association and by Mr. Borovoy. What's your view on the need, if any, for independent adjudication, both in terms of the actual process and the perception of it by police officers, by the public?

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Dr. Mukherjee: As you know, the Toronto Police Services Board has always supported the concept of an independent public complaints system. In our submission

to Justice LeSage, that's the position the board took. Here is the government's proposal. What we would like to see is that the office of the director have the independence and be seen to have the independence to carry out credible investigations. Now, there will always be questions about when the director allows the local police service to carry out its own investigation: What kind of authority will the director exercise on the results of those investigations? What kind of audit will the director carry out of those investigations? Those will be very, very critical in ensuring that people do have faith in this new system.

Mr. Kormos: The specific area, though, is not with respect to investigation, although that was noted by Mr. Borovoy, amongst others, but with respect to adjudication. Because in those cases which are handled by the chief of police, the chief of police is charged with holding a hearing or having a designate hold a hearing—and the designate would be or could be a senior police officer. You've made yourself clear on the investigation. What about the adjudication?

Dr. Mukherjee: Having seen the adjudication process in our service, where there's a separate office of hearing headed by a senior officer, a superintendent—the board has asked questions about how reliable the adjudication process was, and we spent a whole day with the presiding officer to understand the process that was going on. I know that in our service, I have tremendous faith in the independence of that adjudication process: that it is not directed by the chief; it is thorough; it is impartial. From our point of view, we don't have a problem with the adjudication process within our service. I cannot generalize on that.

Mr. Kormos: What's interesting is that the Toronto Police Association sat on the panel with the Police Association of Ontario calling for the independent adjudicator. So you have confidence; I'm not sure that your police officers necessarily have confidence.

Dr. Mukherjee: The Toronto Police Association's view is well known to me. Mr. Wilson and I have good, friendly adversarial conversations. I'm quite aware of the difference of our opinion on that issue.

Mr. Kormos: Thank you kindly, sir.

The Chair: Thank you for your presentation.

Dr. Mukherjee: You're very welcome. Thank you very much.

The Chair: We'll move on now to our next deputation, ARCH Disability Law Centre.

Interjection.

The Chair: I'm sorry, sir. There is still time for questioning from the government side. My apologies. I'm not trying to show bias.

Dr. Mukherjee: I thought I left the government side speechless.

The Chair: Maybe you did. Councillor Balkissoon.

Mr. Balkissoon: Here we go again.

The Chair: Mr. Balkissoon.

Mr. Balkissoon: We've known each other too long. I think we've got to separate.

Mr. Mukherjee, thanks for coming and thanks for sharing your thoughts with us. A couple of years ago, the complaints process was audited by the city of Toronto auditor, and at that time the public was very clear in its request that actually going to a local police station to lay a complaint was a very threatening process and that most police stations are a cold environment. If this process is implemented, the public can now go to a different place, but would the board continue to do outreach and community education, indicating how the complaints process works and facilitating the public doing that through this new director? Do you see that as a role the board will take?

Dr. Mukherjee: Absolutely. This board has historically had a position—you were on the board, you know—on the importance of a complaints process that the public has faith in. That still remains a priority for us. We supported this guiding process as a pilot to see if there are alternative models of intake that might increase public faith in the system. We continue to monitor very closely how the system is working within the service. So I have no doubt that even after the office of the director is created, we'll still remain very concerned about the public perception of how the complaints system is working. We'll emphasize outreach; we'll emphasize public awareness of the system; and we'll continue to look at ways to streamline the system within the service.

Mr. Balkissoon: Did you ever move to the process of actually allowing complaints over the Internet? That was one of the things discussed at the time, too.

Dr. Mukherjee: We haven't done that yet.

Mr. Balkissoon: You haven't done that yet. Okay. Thanks very much.

Dr. Mukherjee: You're welcome.

The Chair: Thank you.

ARCH DISABILITY LAW CENTRE

The Chair: The next deputation is ARCH Disability Law Centre, Laurie Letheren, the staff lawyer. Good afternoon.

Ms. Laurie Letheren: Good afternoon. My name is Laurie Letheren. I'm a lawyer at ARCH Disability Law Centre.

ARCH Disability Law Centre is a charitable, not-for-profit specialty legal clinic that is dedicated to defending and advancing the equality rights of persons with disabilities, regardless of the nature of the disability. We have a provincial mandate. ARCH represents national and provincial disability organizations and individuals in test case litigation at all levels of tribunals and courts, including the Supreme Court of Canada. We provide education to the public on disability issues. Our membership consists of over 60 disability organizations, and ARCH is governed by a volunteer board of directors, a majority of whom are persons with disabilities.

ARCH is encouraged by the government's initiative to reform the current police complaints process. Through our contacts with persons with disabilities, we have heard

that many choose not to complain or abandon the complaint before it is resolved. Many have expressed distrust in the system. In addition, persons with disabilities are often barred from making complaints because the process for filing complaints is not accessible.

The number one recommendation of Justice LeSage was that “an independent civilian body should be created to administer the public complaints system in Ontario.”

In his press release of April 19, 2006, Attorney General Bryant stated that if Bill 103 were passed, it “would provide the public with a significant new option for bringing forward their concerns.” When Bill 103 was introduced in the Legislature in October 2006, Attorney General Bryant stated that the bill “would entrench an independent and transparent police review system.”

It is ARCH’s opinion that despite statements made by Justice LeSage and the Attorney General, Bill 103 does not prescribe a significant new option that is independent and transparent.

In the first part of our submission, we will recommend amendments to the bill that, if adopted, would allow for the creation of a police complaint system that is fully administered and controlled by an independent civilian body. It is ARCH’s opinion that until police are no longer involved in review of police complaints, the public mistrust and dissatisfaction with the system will remain unchanged.

The second and major part of our submission will focus on the need to amend Bill 103 to ensure that the entire complaint process is accessible and fully accommodates the needs of persons with disabilities.

In the report prepared by Justice LeSage, it is stated that many who had met with him indicated that the current system is not effective and that the ineffectiveness of the system itself led to a mistrust of police. In his report, Justice Lesage wrote, “A fair, effective and transparent complaints system could be a step toward improving confidence and trust in the police.” Those presenting to him “suggest that this can only come from implementing a fully independent civilian complaints system.”

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Similar opinions about the current police complaints system were expressed by the Ontario Human Rights Commission and the Psychiatric Patient Advocate Office in their submissions to Justice LeSage.

In ARCH’s opinion, if the system for processing complaints proposed under Bill 103 were established, there likely will be little change in the public’s trust and satisfaction with the system.

Under Bill 103, if a complaint is filed about the conduct of a police officer, the independent police review director has the discretion to refer the complaint to the officer’s chief, to the chief of another police force or to retain it for investigation by the director’s office. ARCH is concerned that resources, funding and outside pressure will force the director to refer many cases to police forces for investigation and resolution. The result will be that the system will be relatively unchanged.

In addition, by providing the director with discretion to refer the complaint to a police service for investigation or to conduct the investigation himself or herself, there will be a lack of consistency in how complaints are investigated and resolved across the province.

For a person with a disability who may be making a complaint about a police force’s failure to accommodate her disability, a complaint made to a civilian body should mean that the complaint is investigated and resolved by persons who have been trained in disability issues. All complainants should have equal opportunity to have their complaints properly and fairly resolved.

In addition, having all complaints reviewed by the same civilian body will ensure that there is opportunity to track common complaints and to monitor systemic issues.

ARCH also recommends that in order to ensure consistency in dealing with complaints and to allow for proper monitoring of systemic issues, Bill 103 must be amended to remove the distinction between the process for handling complaints about conduct and complaints about policy and services.

All complaints should be processed in the same way. The conduct of officers is often a reflection of a policy within the police service. For example, we have heard of persons with mental health disabilities who attempted to make complaints about the use of restraints by officers. When the person attempted to make a complaint, she was advised that it was the policy of the police service to restrain all persons who were in mental health crisis and the police station refused to take that person’s complaint.

ARCH recommends that all complaints about officer conduct, chief conduct and policies and services should be reviewed and investigated by a completely independent civilian review body.

ARCH recommends that the independent civilian review body must be fully separated from any police service and must not employ any current or former police officers.

ARCH recommends that part V of Bill 103 be amended so that each complaint, regardless of type of complaint or jurisdiction of the police service, shall be subject to the same review, investigation and resolution process.

ARCH endorses the position taken by the Psychiatric Patient Advocate Office, CLASP and other groups that submit that a truly independent civilian body should be established to handle all police complaints in order to restore credibility to the police complaints system and to have a system that is fair, effective and transparent.

On page 38 of his report, Justice LeSage makes reference to the difficulties that complainants have in navigating the current system.

In creating and designing a new system for handling police complaints, the principles of universal design must be applied to ensure that all aspects of the new system, starting from educating the public about the system to final resolution of complaints, are usable by a broad range of people. Steps must be taken to ensure that the system is fully accessible to persons with disabilities.

First, an accessible process requires that all barriers, including barriers to accessing its physical spaces, communications and information, policies and practices, be identified and removed to ensure full accessibility. There are currently many barriers, including attitudinal barriers, which persist throughout the complaints process. For example, the information provided on the Ontario Civilian Commission on Police Services does not appear to be available in formats that would be accessible to persons with visual impairments, and the contact information does not provide a number for those persons with hearing impairments who use telecommunication devices or text telephone.

Because complaints must currently be in writing, those persons who may not be able to write out their complaint because they are illiterate, have disabilities that affect their mobility or are persons with cognitive, communicative, intellectual or developmental disabilities may be barred from filing a complaint. The body receiving complaints must accommodate these persons by either providing a device or a person who can assist in drafting their complaints. The process must be flexible and must accommodate the particular needs of all persons with disabilities.

The onus should be on the civilian review body to ensure that all accommodations are in place once a person's disability has been identified. One possible way of achieving this may be to have a system where accommodation needs are identified at the point of filing the complaint. A case file manager would then ensure that the claimant's needs are accommodated throughout the entire complaint system. Key to this is to ask the individual complainant how she or he can be accommodated, understanding that there are a great variety of potential accommodations. Accommodating the needs of individuals is consistent with the spirit of the Accessibility for Ontarians with Disabilities Act and Canadian human rights jurisprudence.

ARCH recommends that a provision addressing accessibility be legislated and that the following subsection be added after section 56 of Bill 103:

"The principle of accessibility will have primacy over concerns of efficiency and expeditiousness of the complaint process."

In addition, ARCH recommends that principles of accessibility be included in subsection 56(1), which sets out the powers of the independent police review director in establishing procedural rules and guidelines for handling complaints. The following should be added to section 56:

"In making rules governing the practice and procedure before it, the independent police review director must prescribe practices and procedures that ensure full accessibility to persons with disabilities throughout its process."

ARCH recommends that subsection 56(2) be amended as follows:

"Procedural rules established by the independent police review director under clause (1)(a) shall be in

writing and shall be made available to the public in a readily accessible manner and, in particular, in a format that is accessible to all persons with disabilities."

ARCH agrees with Justice LeSage when he stated that public education on the new system will be critical to increasing the public's trust and use of the new complaints system. The information must be available in accessible formats and must be delivered in manners that ensure that all persons with disabilities can obtain and understand the content.

ARCH recommends that subsection 58(4) be amended by adding the following:

"The independent police review director shall provide information about the public complaints system in formats that are accessible to all persons with disabilities."

The body responsible for designing and administering the hearings and appeals process must make sure that all barriers, including barriers to accessing its physical spaces, communications and information, policies and practices, be identified and removed to ensure full accessibility.

Accessible hearing procedures would include such things as:

- providing all documentary evidence in accessible formats;
- the independent police review director would ensure that the costs of converting these documents are covered;
- providing interpreters and interveners; and
- being flexible on timing of the steps in the process so that those who may require more time or a different time because of their disability are accommodated.

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Subsection 58(1) states that a member of the public may make a complaint to the independent police review director. Subsection 58(3) states that a complainant may act through an agent. Neither "member of the public" nor "agent" are defined in the bill, and it's unclear whether a third party can file a complaint.

In addition to allowing a person to appoint someone to act on their behalf, organizations that may have encountered police or may have a concern with a policy or service should be able to file their own complaints. As well, organizations or persons who have an interest in the welfare of a particular group should be permitted to file an application on behalf of such persons, with their consent, when the person with a disability is unable to do so.

A good example of a complaints system that allows anonymous complaints is the system for filing complaints at the pay equity tribunal of Ontario. The Pay Equity Act allows an employee or group of employees to remain anonymous in a proceeding by allowing them to appoint an agent who replaces the employee as the party to the proceeding. ARCH recommends that subsection 58(1) be amended as follows:

"Any member of the public or organization may make a complaint under this part to the independent police review director about,

"(a) the policies of or services provided by a police force; or

“(b) the conduct of a police officer.”

ARCH recommends that the following be added as subsection 58(1.1):

“A person or organization may make a complaint under subsection (1) on behalf of another person if the other person,

“(a) would have been entitled to make a complaint under subsection (1); and

“(b) consents to the application.”

ARCH recommends that all sections of the bill that refer to “member of the public” need to be amended accordingly to include organizations making complaints on their own or on behalf of another person.

ARCH recommends that the following, which adopts the wording under subsection 32(4) of the Pay Equity Act, be added as a subsection to section 58:

“Where a complainant or group of complainants advises in writing that” they wish “to remain anonymous,” their appointed agent “shall be the party to the proceeding and not the complainant or group of complainants.”

ARCH recommends that the current limitation period set out in subsection 60(2) be extended from six months to two years, in accordance with the general standard for civil actions. Many persons with disabilities are unable to meet the six-month deadline because of their disability. ARCH recommends that section 7 of the Limitations Act be included as subsection 60(2.1) to provide that the limitation period does not run during a time in which a person is incapable.

ARCH endorses the recommendation made by the Psychiatric Patient Advocate Office in its submission to Justice LeSage that an advisory committee be formed to assist with the design, implementation, monitoring and evaluation of the new police complaints system. It’s our submission that persons with disabilities should be on the advisory committee in order to assist the civilian body in addressing the unique needs of persons with disabilities.

In conclusion, we ask that you take seriously our considered recommendations and those of other presenters. This is an opportunity for change that should not be lost. Thank you.

The Chair: Thank you for your presentation. We have about one minute per party to ask you a quick question. We’ll start with Mr. Kormos.

Mr. Kormos: Thank you kindly. The informal resolution proposed here, which nobody suggests is necessarily a bad thing—but the police association notes that it would like its police officers to know that they have an assurance that the police association will have a role in approving participation in informal resolution. There’s no comparable protection for civilian complainants, who can be bullied very easily into the informal resolution with a litany of arguments about how long it will take, how stressful it will be etc. How should the government be addressing the absence of advocacy for civilian complainants?

Ms. Letheren: I’m not an expert on the whole process, but I would think that one thing that necessarily has

to be there is that informal resolution has to be agreed upon by all the parties. At that point, the opportunity for support and advocacy would be something the complainant would have to be considering, whether they’d go ahead.

The Chair: Thank you. To the Liberals.

Mr. Zimmer: Just so I understand you, in the case of an anonymous conduct complaint, what mechanism would you have to assess credibility if you got into a he-said-she-said situation?

Ms. Letheren: My understanding of how it works under the pay equity tribunal is, if they’re getting to the point of cross-examination, it’s an option that the tribunal has to call witnesses at that point if they feel it’s necessary for a fair and just hearing. So there are provisions within the rules under the tribunal to allow for that.

The Chair: Thank you. To the Conservatives.

Mr. Dunlop: I have no questions, Mr. Chair.

The Chair: Mr. Runciman?

Mr. Runciman: I have just a quick comment on the limitation period suggestion that you’re making which would follow along the lines of the Limitations Act. It strikes me that that is a fair proposal. Not that I’m disparaging the rest of your submission, but certainly I think that’s one that any fair-minded member of the committee should be supportive of.

The Chair: Thank you for your submission.

LAW UNION OF ONTARIO

The Chair: We’ll move on to our next deputant, the Law Union of Ontario, Mr. Howard Morton. Good afternoon.

Mr. Howard Morton: Thank you very much for having me here to make submissions on behalf of the law union. I’m going to restrict my submission to six concerns we have with the bill as it stands, but at the outset let me say that with respect to these concerns and others, we’re very concerned about the public’s perception of the body that you’re setting up. I know that the government has taken the position that the public trust the police—and they do. However, if you were to ask the public if they trust the police completely to investigate themselves, I think you’d get a far different answer. The early difficulties that were experienced at SIU were mainly ones of perception. Community groups, ethnic groups and racial groups simply did not accept that a proper investigation was being carried out when in fact, under Justice Osler, it was. I’m sure some of you here will recall the difficulties that existed then. Unfortunately, when I was the director, the difficulties were with the police and not with members of the public.

Our major concern is that you are, in this bill, turning the investigations over basically to the police, and I fail to see the logic in that. You recognize that there is a need to have complainants make their complaints somewhere other than the police station. So the bill recognizes the absolute need to separate the complaint initially out of the police, yet when it comes to investigating the com-

plaint and interviewing the complainant or members of his family or friends, you turn that over to the police. To me, it makes absolutely no sense whatsoever.

These complaints are not homicides and they are not matters involving serious bodily harm; that's the mandate of SIU. At SIU, you need a police investigation. The only persons who have sufficient training to carry out those investigations are former police officers, by and large, with a civilian component to the system.

The complaints that are going to be investigated here are simply ones quite often, for example, about bad-mouthing—racial or ethnic epithets used by police officers. There are scores of provincial investigators in all sorts of agencies in this province who can carry out that type of investigation competently and fairly.

Your reasoning behind using the police can't be one of budget, because the officers who are assigned in the bureaucracy that will have to be created in the police service and the additional officers required will make far more in terms of salary and require as much space as using civilian investigators who have some investigative experience in perhaps other agencies.

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The difficulty becomes exacerbated in the small communities. There aren't many left in Ontario that have small police forces. You're going to have an officer who's very close to the officer who's been complained about investigating that complaint. There's an easy way around it: You bring in another police force. But that doesn't address the major concern that we have with allowing the police to police themselves. So unless we're missing something in terms of the logic and thinking when you start off with the premise that the complaint should be made elsewhere, there simply does not seem to be any basis whatsoever for using the police to investigate these complaints.

Our second concern involves the exemption from the Ombudsman's review. You're building a loser here if that becomes known. That's a clear perceptual difficulty with the bill. It's beyond me as to why you would not make this agency come under the purview, as virtually every other agency does, of the Ombudsman. The present Ombudsman, as a former director of SIU, presumably won't be there forever, but you would want to have an independent review of the agency at some time in two, three, four or five years. Again, there doesn't seem to be any logic apart from the fact that the current Ombudsman is busy exempting this agency from that.

The third issue we have is with the burden of proof. The bill uses the term "clear and convincing evidence." There is no lawyer who can tell you what that means—absolutely none. It will ultimately be determined by the Divisional Court, I'm sure. But our main concern is that it means, "Beyond the shadow of a doubt, I am convinced of something." It's beyond being satisfied beyond a reasonable doubt, potentially, depending on how it's ultimately defined. It's not a term known to law generally. There are all sorts of thresholds that you could use apart from the civil or the criminal threshold. We would suggest the one that police officers are very familiar with:

that on a review of the evidence, the investigator is satisfied on reasonable grounds that the complaint is justified, and he or she has those grounds to believe the complaint. It's a threshold which is greater than the civil burden, less than "beyond a reasonable doubt," presumably, and one that has been used and recognized throughout common law for well in excess of a century.

I'll just add that the standard dictionary definition for "convincing" as an adjective is "firmly persuasive." I don't know whether that gets you any further, but it's a burden that's going to cause you all sorts of trouble; I can tell you that. There will be lawyers coming out of every direction arguing what that means.

The fourth concern we have is with respect to the mediation process. Many of the complainants whom we in the law union have spoken to over the years who wish to make a complaint against an officer simply do not have the sophistication, in our view, to come up against a police officer who no doubt will be briefed and assisted by the police association and their lawyers. In our view, you should give complainants who are willing to have a mediation—we think mediation is a great idea—an opportunity to apply for legal aid. I know this will add to an already overburdened legal aid system, but if the person could demonstrate that they are in need both financially and in terms of dealing with the issues, they should have some opportunity to have assistance in doing so. Otherwise, they're going to be totally overwhelmed no matter how good the mediator is because the mediator must be right in the middle in these mediation processes.

The last two issues: One is the act's taking the position that the findings, or decision, of the complaint are not to be made public. Again, I think you're heading for a disastrous perception. If the complaint is found to be on clear and convincing or on reasonable grounds, no more should be said except that. If the complaint is unfounded, it would be possible to give some reasons, as SIU does. Whenever you create covert decisions that nobody knows about, you're just giving in to those who perceive our entire system of justice to be mandated against them.

Our last concern is with the six-month limitation period. It's going to really affect persons who are charged with criminal offences. I've spoken to several of our members at the law union. If somebody comes to us and wants to lay a complaint and they're charged, our advice is, "Don't lay the complaint," because you're going to be interviewed and you may jeopardize your trial. I know that the director is going to have some leeway to grant extensions, but maybe it could be built into the regulation somehow that that would be a recognizable exemption.

Those are our respectful submissions to you. Overall, we really welcome moving away from the system that presently exists. We just respectfully feel that you don't have it quite right yet. Thank you very much.

The Chair: Thank you, Mr. Morton. We have about three minutes per party, and we'll start with the Liberals.

Mr. Zimmer: Have you addressed your mind to the whole issue of how frivolous and vexatious and off-the-wall complaints should be weeded out of the system?

Mr. Morton: If it is apparent from the nature of the complaint itself, then I would think that the director would weed that out initially. Without getting into specific cases that have happened in this city involving the police in the last few years, on some of the things we found we would have said, “That’s ridiculous. That can’t happen in Toronto.” I don’t know that it’s that easy to weed them out except if it is true that they would not amount to a real complaint. In other words, if I say, “The officer made me produce my driver’s licence and insurance,” right away that’s gone. But the ones that allege conduct on the part of an officer either by epithet or otherwise, I don’t think you can tell if they have an issue or if they’re totally off the wall.

I agree with you that many, many of these complaints are going to be groundless, absolutely groundless. I don’t have any misconception about the merits because I’ve heard some people who have come to me about complaints. But you’ve got to deal with them, right? That’s all part of accountability.

Mr. Zimmer: Thank you.

The Chair: To the Conservatives. Mr. Runciman.

Mr. Runciman: Mr. Morton, it’s good to see you. Thanks for your submission.

Mr. Morton: Thank you, sir. Good to see you.

Mr. Runciman: I think the government has some problem with the Ombudsman’s position related to this legislation. My assumption is that it’s because he’s doing his job, much to their chagrin. I’m just wondering, from your experience with the SIU and the oversight provided by the Ombudsman—he indicated that they do provide oversight for the SIU—what was your experience? Did you have a problem with that relationship while you were at the SIU?

Mr. Morton: No, but probably only because we didn’t have any oversight at that time. I can’t imagine any body that would not want to have oversight, because you get an independent view of how to make your system work a little better. At a minimum, you get that. It’s just totally illogical to me. I think the government is setting itself up for a perception problem here with large communities in the city and throughout the province.

Mr. Runciman: Just another quick question on concerns you expressed about the police being the investigative—or former police. I’m confining my question to the former police being part of this investigative body. You talked about cost, and the cost associated with retaining former police officers versus others who have had some investigative experiences. Is your concern focused primarily or solely on the cost implications or is there an objectivity concern that you have as well?

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Mr. Morton: No, sorry, our concern is with police investigating the complaint; in other words, going to the chief.

When it comes to former police officers, I’m going to be a little careful here. Let me say that the law union’s position is that it should not be former police officers, and I’ve cleared that with them. I can tell you, when I

was at SIU the best two investigators I had were former police officers. One was a former London bobby and the other was a former Metro officer. There’s tremendous history to policing that they can bring to an organization that’s basically going to be investigative. I personally do not have any difficulty with—and you can find them. This notion that the culture is there: Once they’re out of the culture—most of them are retired, as you know—they can do the job. You’ve got to be careful in the ones you pick, but you’ve got to be careful no matter whom you pick.

Mr. Runciman: I agree with you wholeheartedly. Thank you for that.

Mr. Kormos: Thank you kindly, sir. I’m interested in your comments about the standard of proof of “clear and convincing,” and with the assistance of AG staff I was able to locate the current provision in the Police Services Act which is “clear and convincing.” Has there been difficulty with that standard in the course of the last 10 years?

Mr. Morton: I can’t say that there has. I honestly don’t know. I can tell you, of the lawyers I spoke to, which would number at least seven, maybe as many as 10, that nobody can figure out what it means.

Mr. Kormos: That’s interesting. Chair, perhaps Mr. Fenson can help in that regard, then, because I don’t have the preceding statute, the 1990 statute, which was overhauled significantly in 1997. If we could get the standard that was established in the 1990 statute, and, Mr. Fenson, if you could find any judicial—

Mr. Morton: I don’t think there’s been any. Manitoba—one other province might use the same standard, I think.

Mr. Kormos: This is a problem that should be considered and addressed. If we can get a little bit of material from you on that, I’d appreciate it very much.

Mr. Morton: The lawyers will be mad if you change it because they’re all looking forward to getting a lot of work out of that.

Mr. Kormos: Thank you kindly, sir.

Mr. Morton: Thank you very much for having us here.

The Chair: Thank you for attending today.

METRO TORONTO CHINESE AND SOUTHEAST ASIAN LEGAL CLINIC

The Chair: We’ll move on, then, to our next deputation, Metro Toronto Chinese and Southeast Asian Legal Clinic; Avvy Go, director. Good afternoon.

Ms. Avvy Go: Good afternoon. My name is Avvy Go, clinic director of the Metro Toronto Chinese and Southeast Asian Legal Clinic. I would like to begin by thanking the committee for providing us an opportunity to comment on Bill 103.

Just a few words about the clinic: We are a community-based organization similar to ARCH, funded by legal aid. We are mandated to provide free legal ser-

vices to the Chinese and Southeast Asian communities in the Toronto area. Over the years we have represented a number of clients who have filed complaints against members of police over policemen's conduct, including the use of excessive force, unlawful arrest and other discriminatory treatment. Many of our clients experience racism and other forms of discrimination at the hands of members of police.

As immigrants and refugees who come to Canada, they think of Canada as a country that respects the rule of law and they think of police officers as the impartial enforcers of that legal system. They find it hard to reconcile their perception about Canada and our legal system with their actual experience. Those who choose to pursue complaints against police officers are further disillusioned by a complaints system that lacks accountability, transparency and independence. Very often, by the end of that process they are totally disillusioned and their confidence in the complaints system and the police system as a whole is often completely shaken.

There are many groups, including our clinic, particularly those working with racialized communities, that have been calling for reform to the police complaints system for a long, long time. Particularly, we want to have an independent civilian oversight system which will make the police truly accountable to the public. For these reasons we welcome the government's initiative to bring forward Bill 103.

When the Attorney General of Ontario announced the new police complaints system, he said that the system was based on the recommendations made by the Honourable Justice Patrick LeSage, who conducted a review of the entire system and made a number of recommendations. At the time the LeSage report came out, we stated that we supported the report in principle and some of his recommendations. However, we felt that the report did not go far enough in many areas. So our view about the LeSage report hasn't changed. Having said that, we are trying to review the bill and compare that to the actual recommendations made by Justice LeSage, because, as the AG promised, that was what the bill was based upon. Then we're looking at issues that were actually not addressed by Justice LeSage.

My written submission contains a number of recommendations. I'm just going to highlight a few of them in the interest of time. The first set of recommendations that Mr. LeSage looked at is around the issue of access, and he made a number of recommendations. The bill in some way goes to implement those recommendations. Of course, the establishment of an independent police review director, the IPRD, is clearly a good start, but it does need improvement in a number of areas. For instance, recommendation 1 of the LeSage report says that the new independent body should produce an annual public report for the government and should hold an annual public meeting. The bill kind of talks about an annual report to the Attorney General, but does not talk about the annual public meeting, so we want to add that to subsection 26.1(8) of the bill.

Recommendation 2 of the LeSage report calls for the establishment of an advisory body for each region covered by the bill which is made up of community and police representatives. Again, that recommendation was not reflected anywhere in the bill, so we want to have a provision added to set up an advisory body. In addition, we want to make sure that the mandate of the advisory body is clearly defined to include such systemic issues as hiring and recruitment processes, establishing procedural rules for investigation and review, and also developing a work plan for the director. Also, we believe the advisory body should be inclusive and reflective of all the communities with stakes in fair policing.

Recommendation 3 of the report deals with the functions of the independent body. Some, but not all, of the activities included in the recommendation were transferred into the bill itself, which is at section 26.2. We want to include on that list of functions things like engaging in educating the public about the complaints system; providing appropriate access to the system; recognizing the linguistic, cultural and geographic diversity of the province; and providing appropriate assistance to complainants in the filing of complaints.

Similarly, we want to amend subsection 58(4) to ensure that the information and assistance provided by the director will reflect the needs of the linguistic, cultural and geographic diversity of the province.

Recommendation 7 of the LeSage report deals with the six-month limitation period of the filing of a complaint. I think that issue has been echoed by a number of the presenters here today, so I'm not going to repeat it, but to again endorse the position that the whole six-month limitation period has to be reviewed, in particular using recommendation 7 in the report as a basis for amending the bill.

Turning now to the issue of the informal resolution: The LeSage report recommends that any informal resolution be conducted by a neutral body. There's no such requirement in the bill, so we recommend that the bill must be amended to include that particular requirement.

On the issue of investigation, Mr. Justice LeSage's recommendation 14 is that the police officers assigned to an investigation "not have any connection to the incident and be removed from the persons involved in the incident." Again, that's not a requirement that is reflected or specified in the bill. We want that to be amended as well.

1520

On hearings and discipline, recommendation 20 of the report says, "The government should develop a body of independent adjudicators to preside over" the hearings in the province. That is, again, not stated in the bill, and we want that to be added.

On audits, research and inquiries, recommendation 24 makes a number of suggestions as to how audits should be done and when they should be conducted. The bill adopts parts of the recommendation. We want the full recommendation to be reflected in the bill.

We do not include it in our paper, but one of the issues that the representative from ARCH raised is around third

party complaints. When I look at the bill, I find it extremely confusing because section 58 and section 60 seem to be saying different things. One section says that “any member of the public” can file a complaint against the police on the issue of policy and services, but then section 60 seems to suggest that you have to be directly affected by conduct in order to file the complaint. In any event, at the very least those provisions need to be clarified. I fully endorse the idea that there should be third party complaints allowed, particularly for vulnerable members who find it very hard to raise issues on their own.

There are also issues not in our report around a clear and convincing burden of proof. We find it hard to understand, although I believe there is a decision from the Court of Appeal which seems to suggest that it’s somewhere between reasonable doubt and balance of probabilities. But wherever that burden stands, how it’s being applied in reality is another issue that I think needs to be addressed.

One of the key recommendation of the LeSage report is found in recommendation 27, in which Mr. Justice LeSage called for sufficient funding to be provided to the new independent body to ensure that it will be “able to operate in a manner that ensures public confidence in the police complaints system.” We could not agree more. Without sufficient funding, the director will have no choice but to refer all police complaints to the police services for investigation, regardless of the nature of the complaint and the appropriateness of the referral. The director can only carry out this broad mandate in a meaningful manner if it has the necessary resources to do so. The success of this new body will bring public confidence back into our law enforcement system. Failure, on the other hand, will cause further damage to the already fragile relationship between the police and racialized communities in particular. We therefore recommend that the bill be amended to include a commitment from the government of Ontario to provide sufficient resources to the office of the independent police review director to ensure that it will be able to operate in a manner that ensures public confidence in the police complaints system, as suggested by Mr. Justice LeSage.

Turning now to some of the issues not addressed by the report, first of all there’s the issue that previous presenters have raised that police are still investigating police complaints. One of the foundational principles of a civilian police complaints system is that civilians, not police, should be dealing with complaints against police. We remain concerned that without a truly civilian-controlled, -managed and -staffed police complaints system, public confidence and trust in police services may not be fully realized. So we include in our paper a recommendation that the Attorney General should conduct a review of the bill three years after its passage to see if the objectives for reform, as set out in the LeSage report, have been accomplished.

We further recommend that in conducting the review the Attorney General must consult widely with com-

munity groups, especially those from the affected and marginalized communities who are most likely to be victims of police misconduct due to race and other grounds of discrimination. Should the review conclude that the proposed system falls short of the objectives for reform as set out in the LeSage report and that public trust in the police system remains an issue, the Attorney General should commit to developing a truly civilian police complaints system in order to provide an independent oversight body for the police system.

But short of having a truly civilian oversight system, we endorse a proposal being made by a number of other groups, including the African Canadian Legal Clinic, which recommends that all complaints relating to the issue of race, racism and related forms of discrimination be investigated by the independent review director. By providing the director the power to retain all race-based complaints, racialized communities will then be assured that the complaints will be taken seriously. As well, by retaining all race-based complaints within his or her office, the director will be better able to identify the underlying systemic problems leading to the complaint and hopefully will be able to recommend solutions to address them.

In conclusion, policing is an important public service that Ontarians need in order to protect our personal and public safety. Police services must be provided in a respectful and equal manner to all people regardless of their background. Given the extraordinary powers that police officers enjoy and the important role that they play in our society, it only makes sense that police are made accountable to all members of the public and that any abuse of police power must be dealt with appropriately. The existing police complaints system simply fails to achieve police accountability. We do welcome the change, but let’s hope that the change is real and that it will really work for the vulnerable groups in Ontario. Thank you.

The Chair: Thank you for your presentation. We have just under two minutes per party for questions, starting with the Progressive Conservatives.

Mr. Dunlop: Thank you for your presentation today. I’m from a central Ontario riding, so we don’t have a large Chinese community, but certainly I’ve been working for the last few weeks in the Markham by-election and have met a lot of really nice Chinese people, including our candidate, Alex Yuan.

I just wanted to mention something to you. There are a number of recommendations that obviously you’d like to see made to reflect the LeSage report. If the government wouldn’t support those recommendations, are you still in favour of the bill—your community, your organization?

Ms. Go: I think the bill will provide the skeletal framework for us to make further improvements because it will allow the government to set up the independent body. Once that is set up, I think that hopefully we will be able to review how effective it is. If it’s proven not to be very effective, then hopefully more changes will come later.

The Chair: Thank you, Mr. Kormos?

Mr. Kormos: Thank you kindly for participating. Interesting—on page 8, the final paragraph, your concern about the ability of the IPRD to hire retired “former police officers,” which is your language. I appreciate your expression of that, but having heard Howard Morton, as you did, Howard Morton surely has credibility in this respect, doesn’t he?

Ms. Go: Well—

Mr. Kormos: Has it caused you to rethink this sort of blanket, absolute opposition to former police officers? Howard Morton says you’ve got to be careful—fair enough; you’ve got to be careful about anybody you hire in that type of role—but that people who are familiar with it have experience and history in policing and can bring some very valuable insights, and I suspect particularly valuable because these are people who know that police culture. So I’m just asking you if you’re prepared to rethink. I’d appreciate it. It’s such a small part of your submission but it’s not insignificant. Are you prepared to rethink that in view of what Morton said?

Ms. Go: Yes, I am prepared to rethink that, but ultimately, as Mr. Morton has pointed out, you have to get the right people, regardless of their background. In reality, sure, because a lot of the professions, like lawyers, doctors, a lot of the investigators—particularly for lawyers, anyway; we often hire lawyers to investigate lawyers. So I do see why a case can be made, or that members who belong to that profession or were once members of that profession can still be able to carry out an investigation in an objective manner. But I think you need to look at the overall context, and that’s one piece of the overall context of the civilian oversight system.

1530

Mr. Kormos: You know, the Ombudsman has expressed concern that section 97 in the bill specifically bars him from engaging in any oversight. Some people have tried to obfuscate the issue by suggesting that the Ombudsman shouldn’t have to be supervising police conduct. It’s got nothing to do with that. It’s about people having recourse to an ombudsman if they feel that the IPRD hasn’t been fair in administering its responsibilities. What do you have to say about Ombudsman oversight over the proposed IPRD?

Ms. Go: I think there needs to be some oversight or some auditing of the work done by the IPRD, whether it’s the Ombudsman or whether it’s through another process, requiring the director to report to the Legislature or whatever. I think there needs to be more thinking about who that IPRD should report to to ensure transparency. It could very well be the Ombudsman, but I don’t think that’s necessarily the case. I guess the problem right now is that there is nothing in the bill, apart from some mentioning of the audits and a report to the Attorney General. I think those who are concerned about the lack of Ombudsman oversight are clearly not convinced that the current provisions are sufficient.

Mr. Kormos: Thank you.

The Chair: Thank you very much. We move on to the Liberal Party. Mr. Crozier.

Mr. Crozier: Thank you, Ms. Go, for appearing today and bringing your comments to us. Being from a small, urban-rural municipality, I appreciate particularly that you’ve brought out, if I recall correctly, recommendation number 2: that there should be community and police representatives on an advisory group in each region, because policing is different all around the province. Certainly, it’s different in my community from the city of Toronto, for example. So I think that’s something that’s well worth considering. Thanks for pointing that out.

The Chair: Thank you for your presentation this afternoon.

JOHN CUDAHY

The Chair: We’ll move, on, then to the next presentation. John Cudahy?

Mr. John Cudahy: Thank you for giving me the opportunity to speak to you this afternoon. There is one category that I don’t want to touch. Police have to deal with some very dangerous criminals out there, some really rough cases, and I don’t even want to enter that. That’s a given. We need to support them when they’re doing their job, and that’s beyond discussion.

What I do want to talk about is—perhaps I could tell you what happened 17 years ago when I went to a meeting like this at police headquarters. As I was leaving, a policeman hollered out loud, “What’s your phone number?” I gave it to him, and the illegal phone calls began. Two years of illegal phone calls occurred because I attended a meeting and spoke honestly.

The point I’m making is that bad habits develop. It’s not just the police. Look at bullies in the schools. In the elementary and the secondary schools, the mentality of bullies—there’s a lot of it out there. Some of it seeps into the police force. There are a lot of fine people on the police force trying to do their best, but I have seen some real bullies—in my case, being harassed by gangs of criminals for 14 years because I helped to set up the Bill Clinton-Boris Yeltsin summit in Vancouver in April 1993—something good. Everyone involved was praised for that—Prime Minister Mulroney.

Anyway, what happened is gangs of thugs showed up to stalk me, bug my home, bug my phone. I’ve been punched in the face. I’ve been smashed up against the wall—and these are goons, these are real thugs who were and are still stalking me. I mean, these are literally the street scum.

I naturally complained to the police. I tried patiently, politely and honestly to appeal to the police. I got nowhere. I filed a formal complaint. As a matter of fact, not only did the police refuse to address it, the reaction that I kept getting from the police was automatic: They would lie, they would deny everything. They would suggest, “Maybe you have mental problems. Maybe you should see a psychiatrist.” This routine was repeated again and again. They got much worse. I filed a formal complaint and went through the system and it bounced right back to the individuals on the police force who were already

guilty of corruption and misconduct. I was threatened and insulted all over again. I just saw something—there's a dark side there.

These habits—as many of these very competent people said to you already, the police cannot and will not investigate themselves. They just won't do it. There's too much pressure within the police force, and a lot of honest, decent police can't do it either because the bullies are in key positions in certain police divisions. They hold the sway. This unwritten code: It's unwritten, it's dishonest and it's not fair. That's why I came here, just as an individual, to appeal to you. I congratulate you for working on this Bill 103. Something has to happen. We just can't sit back and allow it to—these bad habits are decades old and they don't get any better.

I would also like to mention some of the sources of these bad habits: CSIS, the RCMP, and extremists from the FBI and the CIA are here. They're bringing a lot of bad habits. Toronto police won't oppose them. Some joker shows up from Washington with an FBI badge and says, "We're going to get this guy. He set up the Clinton-Yeltsin summit and we don't like that. We don't want politicians talking to each other. We prefer hatred and violence." The Toronto police should have said, "Look, I'm sorry. We protect our individual citizens. We don't harass them." But they don't do that. They just joined whoever these—obviously they're CIA and FBI, and CSIS is in on this as well. These people are completely out of control, as we saw with the Maher Arar situation. There's a lawlessness at the federal level that seeps down into local police. The local police say, "Well, the CIA, the FBI, CSIS and the RCMP don't have to obey the law. They make the law up as they go along. They are a law unto themselves. So why should we obey the law?" You see where the bad habits are coming from.

It's wonderful what you people are doing, but it will have to be done at the national level as well because these national outfits are just literally beyond the law, bugging people's phones—good people, honest people, decent people—teams of them following them in the streets. Some of their behaviour is just shameful. It's a culture that has to stop. There has to be some sort of accountability.

It's an awful feeling, to make your appeal to the police politely, patiently and waiting and hoping, and have somebody knock on your door and say, "We refuse to investigate any of the bugs that are stalking you. We refuse to do any of that, but we just think that you're a little bit nuts." How do you respond to this sort of abuse? Lying and denying everything, automatically, and saying, "You're making it all up. We're going to arrest you and charge you with mischief because you're making it all up." I wish I were making it all up; then I could just snap my fingers and it would go away. But it's very true, very real. That's why I came here, as just an individual citizen, to give you my experience with the police. There are a lot of decent cops, but the bullies are in there interfering with really good police work in many cases. I would be so grateful to you if you could come up with some sort of a mechanism that would stop this.

1540

The Chair: Thank you, sir. We'll start, then, with the NDP.

Mr. Kormos: I just want to thank you very much for coming forward today. You've made a valuable contribution to this process. I appreciate it.

The Chair: The Liberals?

Mr. Zimmer: Thank you for your submission.

The Chair: The Conservatives?

Mr. Runciman: I join my colleagues in thanking you for being here.

I'm just wondering: When you said you've approached police in the past with complaints, have you ever approached the Ontario Civilian Commission on Police Services with a complaint?

Mr. Cudahy: Oh, yes indeed—formally, in writing, politely, patiently, waiting, hoping, and the thing just bounced right back to the same police officers who were abusive. Four of them showed up one day—four of them. They let out a stream of insults, insulting me in every possible way, hoping I would react, because if I reacted they would have pounced and beat the hell out of me. But I wouldn't react; I knew what they were up to. This sort of provocation, this sort of mean-mindedness, small-mindedness and pettiness—as I said, there are a lot of decent people on the police force. Let the good people on the police force run the show, for a change.

Mr. Runciman: Thanks very much.

Mr. Cudahy: Thank you very kindly for your time. I'm grateful to you.

The Chair: Thank you, Mr. Cudahy.

CO-OPERATIVE POLICING: KILLALOE AREA

The Chair: We'll move on to our next deputation. It's Brian Tyrrell, Co-operative Policing: Killaloe Area.

Mr. Brian Tyrrell: I'd like to thank you for the opportunity to do a presentation here today. I'd like to introduce you to my left-hand man, Mr. Robert Howe.

It has been a long day and a lot of travelling. We come from Killaloe, a small logging and tourism town in Renfrew county. We all know each other there, and life is pretty straightforward. It's also a place where the existing police complaints system isn't working.

The recommendations which we're presenting today have the support of four local municipalities, whose councils have also submitted them to the Attorney General.

Many people in our area no longer trust the police. Here are some incidents that ordinary people in our community have reported to COPKA—that's our organization, Co-operative Policing: Killaloe Area—and we've verified these reports. These experiences could just as easily have been yours.

You're driving on the highway at night past the local detachment office. Without signalling, an oncoming car swerves across your lane and into the station. As you slam on your brakes to avoid broadsiding the vehicle,

you see that it's a police cruiser. Numerous other examples have come to our attention where the police have violated the Highway Traffic Act in our area. It's fairly common.

You're a teenager who gets into a fist fight at a public dance—the fellow was 17. Without warning, an officer tases you in the back. As you fall to the ground in front of dozens of outraged witnesses, the officer continues to shock you. You're left with 10 burn marks on your back and chest. If you had been using cocaine or had a heart condition, this many taser shocks could have killed you.

You're a middle-aged mother whose son has just been arrested following an altercation with another youth. This is not a major event; this is an altercation with another youth. Frustrated with the situation, you get in your car and attempt to drive away. An officer tries to wave you over, but you are in an emotional state and you don't want more contact with the police. You drive on at the speed limit. Although the police know you and where you live—as I was saying, it's a small community; people know you. They know where you live. They knew her; they knew where she lived. Five cruisers with 10 officers follow her for several kilometres, set up a roadblock and stop her. Two officers point drawn handguns at her head. Another officer swears and kicks her door; she's too scared to open it. He smashes the window, chokes her with the seatbelt and drags her from the car. She's shoved to the ground and an officer slams her face into the pavement several times. She's handcuffed and then kicked. As a result of the incident, she suffers from severe post-traumatic stress disorder.

None of these individuals or others whom we've heard from used the existing police complaints system. Some were too frightened to go face-to-face with the police. Others were facing charges stemming from the incident and didn't want to do anything that might prejudice the outcome of their charges. Another did not complain for fear of harassment. He'd heard of the police stopping someone more than 20 times. And no police officer was disciplined in any way as a result of these incidents because there were no complaints made.

We're all here today because the system doesn't work. It doesn't work for the police management because they don't know who's causing the problems because there are no complaints made; it doesn't work for the offending officers because they don't get the counselling and the training that they clearly need; it doesn't work for the good officers, the ones who are doing exemplary work, because they don't have the trust and co-operation of the local community. They're tarred with the same brush as the offending officers and the local people don't want to have anything to do with them. I've heard from a middle-aged lady. She said, "I used to trust the police. I'd call them at any time if there was something going on. Now I'm afraid of them. I wouldn't even consider phoning them." This is really important in a small community if you're trying to do policing work. More than that, it doesn't work for the people who are victimized, who are told by offending officers, "You have no rights," or, "I

can do anything I want." We've spoken to people who have been told this by the police. Without an effective complaints system, those officers are correct: They can do anything they want if there's no accountability.

Positive change is on the way. As it stands, we think that Bill 103 introduces significant improvements over the existing system. However, three key LeSage recommendations need to be included or strengthened for the new system to work.

We've heard from a number of others about the time limit on complaints. The discretion given to the director by subsection 60(2) of Bill 103 not to deal with a complaint more than six months after the incident should be deleted or, alternately, that six-month period should not start until after the charges stemming from the incident have been completely resolved. Defence lawyers typically advise their clients against filing a complaint while charges are pending. Often, the charges are not resolved within six months. We suspect that charges are sometimes laid specifically to discourage or even prevent complaints being filed. We have a number of incidents where people have mentioned to us that they were called on obviously trumped-up charges in order that they wouldn't make a complaint because they'd been severely treated by the police.

Officer identification: All uniformed officers should be readily identifiable by a sufficiently large name patch, as recommended by LeSage. Unless the officer can be identified, how are you going to make a complaint?

Harassment, intimidation and retaliation: Section 79 of Bill 103 provides that any officer who harasses, coerces or intimidates a complainant commits an offence. We support the penalty included in subsection 79(3) of imprisonment of up to one year. We recommend, however, that the maximum fine should be increased from \$2,000 to \$5,000, that being the maximum fine in section 61 of the Provincial Offences Act. Courts are most likely to deal with these things with a fine. It's very unlikely that a judge is going to send a police officer to jail. They can put in the possibility of a one-year imprisonment, but the chances of a police officer being sent to jail are pretty remote because his chances of survival without being pretty badly treated there are slim. I don't think a judge would do that. In that case, we've got to have a fine that's at least somewhat of a deterrent. If the police union pays for the fine instead of the individual officer, there's no deterrent at all.

In our small, rural community, everybody knows everybody else and they recognize each other by their cars, so harassment is easily done and it is done frequently. That instance of the gentleman not wanting to complain because he knew somebody had been stopped 20 times: We were just talking with a young man who said that he'd been stopped 10 times in two weeks with no charges laid—obviously harassment. It's a very common thing.

Officer safety is a legitimate concern for all of us, but it's increasingly being used to justify questionable police behaviour. It's vital that this be balanced by an effective

and accessible complaints system. Unless the LeSage report's recommendations on the time limit and officer identification are implemented in Bill 103, its usefulness is undermined. What good is a well-designed system if nobody can use it?

1550

The people of Ontario need your help. We urge you to make the necessary amendments to make Bill 103 effective. There were some excellent recommendations made earlier today and I certainly hope that you have the ability and the intention to incorporate those in this new legislation. This is your chance—and it's a really important one—to raise the standards of policing in this province for generations to come.

Thank you very much.

The Chair: Thank you. We have about nine minutes and we will start with the Liberal Party. Mr. Zimmer, do you have any questions or comments?

Mr. Zimmer: I've asked several witnesses this. I have heard your thoughts on dealing with the substantive complaints and your very legitimate concerns that all complaints ought to be investigated and so forth. What would be your plan to deal with the frivolous and vexatious complaints and complaints, really, that are just over the top and ought not to clutter up the system and choke up dealing with the quite legitimate complaints? How would you weed those out?

Mr. Tyrrell: I have an idea, but my left hand is suggesting—

Mr. Robert Howe: I think the comment that was made earlier that to judge a particular complaint to be of that sort right off the bat is a dangerous thing to do. I notice, too, that there's a provision in section 12 of this bill that by regulation that term can be defined, and so can bad faith. Initially, complaints might appear to be of one or another of that sort, and I'd be concerned about what definitions might be prescribed by regulation. I think many complaints might have a veneer of "this looks pretty frivolous" and upon investigation, if there was one, not appear to be frivolous at all.

What did you want to say, Brian?

Mr. Tyrrell: I was just of the impression that the new director would in fact be vetting all complaints to the standards that are established to eliminate those frivolous and vexatious ones. This would also take a load off the police departments because right now what complaints do get registered—and there are precious few where we come from—the police are having to vet and screen out the ones that are obviously in bad faith or vexatious. My understanding was that the new body would do that job.

Mr. Zimmer: Thank you.

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

Mr. Runciman: Gentlemen, thank you for travelling to attend the meeting. I know that's a long trip and I think it reinforces the strength of your feelings regarding this issue, the fact that you have taken the time to travel here to appear before us. I very much appreciate it.

I have to say, I'm struck by the strength of the concerns in your region related to policing. I gather the policing in your area is provided by the OPP.

Mr. Tyrrell: That's correct.

Mr. Runciman: There is no municipal service in place.

Mr. Tyrrell: That's correct. I think it's important too that I should mention: This is specific to our area but it's not exclusive. From what we've seen in the media, it seems to be that some of these instances are quite widespread.

Mr. Runciman: Is there a police services board or an advisory board in your region that deals with the OPP?

Mr. Tyrrell: Currently we have an organization called CPAC, which is the Community Policing Advisory Committee, where each of the municipal councils sends a representative to this meeting once a month with the local staff sergeant. We've been attending that for a year now.

Mr. Runciman: And you've made your concerns known to them?

Mr. Tyrrell: Yes. We've brought up specific issues such as the taser, this incident around the taser. We were quite clear about getting answers and educating the public about what was going on. A lot of people didn't even realize the taser was in use.

Mr. Runciman: And no positive feedback from the advisory board in terms of—they're the folks who actually are dealing on a regular basis with the providers of the police service.

Mr. Tyrrell: That's correct. The CPAC committee is, at this point—the individuals from the municipal council seem to come with great reluctance to say, "We were told to come and tell you about this, sir, and let me spit it out really quickly and I'm a little embarrassed to have to tell you that certain of our constituents are concerned about A or B or C." But they have accomplished a certain amount in the time that we've been there. We've also noticed that in that time they've tended to cross their "t"s and dot their "i"s a bit more carefully because they know there's an independent civilian group watching. It has made a bit of a difference.

Mr. Runciman: Have you attempted to meet with the regional superintendent for the OPP to discuss your concerns?

Mr. Tyrrell: Not yet, no. We have met with the staff sergeant and all the local sergeants and we continue to interact with them, but I think that would be a good idea.

Mr. Runciman: I think it would be worth the effort. Thank you again for being here today.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you, gentlemen. I invite you to talk to the clerk and the Chair when we're finished here to get compensation for travel, if you're so inclined. You're entitled to it.

Mr. Tyrrell: Really?

Mr. Kormos: Yes.

Mr. Howe: Okay. We're eating. I'll buy the beer.

Mr. Kormos: This is a troubling narration. Mr. Runciman clearly has addressed some of the styles that

you might use, some of the strategies that you might use in addressing it. Judges hear these stories. What do local provincial judges have to say about it? We haven't got a whole lot of time.

Mr. Howe: I might address that. I practise law, and some criminal law. Certainly one of the incidents in our brief was before the courts and a couple of others too that are just about as shocking. I was involved in a case where a judge concluded that a man had been led naked out of his home in handcuffs and another case where a family, including two young children, were delayed for about an hour an half on the side of the road on a cold night while an illegal search was conducted.

Mr. Kormos: Judges have made findings on the record that are critical of the police, yes?

Mr. Howe: Yes.

Mr. Kormos: What do crown attorneys say about it?

Mr. Howe: Apart from—and the judges can only do so much, I think; they make the findings. The crown attorneys haven't done anything. In the one case of the gentleman led from his residence, he did commence a civil legal action.

Mr. Kormos: And the defence bar, you and your colleagues?

Mr. Howe: Certainly we're sensitive to the issues but I think conscious as well of perhaps the limitations of what the judiciary and the judicial system can do. Certainly to undertake a civil action is a major undertaking that would probably be beyond the means of most people and not appropriate where the real issue isn't compensation.

Mr. Kormos: But the sort of judicial findings that are obviously available by way of transcript: Aren't you sending these on to the Ottawa Citizen or the National Post or the Toronto Star for—

Mr. Tyrrell: We're far too small to get on their radar. We're lucky to be here today. We've had a lot of good representation from local newspapers but they're very small and it doesn't get picked up on a national level.

Mr. Kormos: Nobody here is going to pass judgment; right? But I'm telling you, if you've got these sorts of things that cause you concern, that cause judges concern, that cause defence lawyers concern, it seems to me that that's the sort of thing, to the chagrin of the authorities, that papers like the Ottawa Sun or the Ottawa Citizen or the Toronto Star love seizing hold of. I don't know. When I saw you on the list, I thought this was some sort

of community-based policing operation, where there was collaboration and where it was a small town showing big cities how to do it better. So I've got to tell you, I'm shocked by the information you've come here with.

Mr. Tyrrell: It's shocking to have to deal with it.

Mr. Kormos: How long have the OPP been there?

Mr. Tyrrell: In Killaloe?

Mr. Kormos: Yes.

Mr. Tyrrell: Twenty-five years.

Mr. Kormos: Okay, so this wasn't part of the new contracting-out of municipal police services.

Mr. Tyrrell: No.

Mr. Kormos: Okay. Interesting.

Mr. Tyrrell: But again, it's important to realize that these are examples that are one locality. From what we're understanding, these are quite widespread.

Mr. Kormos: Good luck.

Mr. Tyrrell: Thank you. Thank you for being able to present here and thank you for your work on Bill 103, because Bill 103 is really important. If you can come up with 60% of the recommendations that have been made today, it will be so much more powerful.

Mr. Kormos: Mr. Zimmer is the parliamentary assistant to the Attorney General.

Mr. Tyrrell: I'm well aware of that.

Mr. Kormos: You may want to spend a little bit of time with him—we're going to recess now—just getting some contact information so you can keep in touch with him.

Mr. Tyrrell: That would be great.

The Chair: And we can also help you with your travel compensation, as well.

Mr. Tyrrell: Wonderful. As we said, we're buying the beer.

Mr. Zimmer: But no driving.

Mr. Tyrrell: But no driving, no, no.

The Chair: Thank you for coming out.

Just before we adjourn, I wanted to recognize someone who has been here today for most of the day—he's visually impaired but he has been listening very carefully—Hamid in the back there, along with his friend Anthony Chang. They've been listening carefully to the presentation today. Welcome to our committee.

That concludes the presentations for today. This committee stands adjourned till 10 a.m. tomorrow in room 151.

The committee adjourned at 1600.

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