

**Strengthening Policing:
Strengthening Police-Community Relations,
Accountability, Transparency, Oversight**

**Submissions of All IN
to Minister Yasir Naqvi,
Ministry of Community Safety and Correctional Services
for review of the *Police Services Act*, 2016**

April 29, 2016

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All IN advocates for inclusive communities. We are a collaborative, city-wide group with a vision for communities where everyone belongs and no one is left behind. We aim to accomplish our goals through engaging with the public and raising awareness; collaboration with businesses; and advocating for policy and legal changes and the governmental level. Our web-site can be found at www.allinadvocacy.ca. For further information, contact info@allinadvocacy.ca.

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INTRODUCTION

Police play a vital role in our democracy. Through the lawful exercise of their powers, they enforce the very laws that are needed to protect our democracy. They hold greater power over civilians than most, if not all, other persons who act on behalf of the state. As a society, we permit officers to infringe our lives, to exercise authority over us, and to use force against us. In return, we expect officers to exercise their powers lawfully, with respect for people and their individual rights, and with the least amount of force required to fulfill their duties.

In order for the police to exercise their exceptional powers, they must have respect for the community. Without this, police authority and the very foundations of lawful policing are undermined. Community respect for the police is based not only on people's formal recognition of the mandate of the police, but also on the community's trust in the police: a trust that is built on positive relationships, on police treatment of all members of the public with respect and equality, on police accountability, on an open system and process for dealing with police misconduct or abuse of power, and on effective police oversight. The public's trust in the police is essential in our democracy.

For the past few decades, that public trust has been undermined. Rebuilding and strengthening that trust depends, not just on public relations campaigns, limited consultations, or the appearance of making change. It is contingent on **actions** that bolster oversight, guarantee police accountability, and improve police interactions with vulnerable and marginalized members of society, as well as groups that have historically faced racism or abuse of police authority.

The Ontario government has the power, the opportunity, and the duty to address these challenges.

Our submissions will address some of the issues raised in the online survey of the Ministry of Community Safety and Correctional Services (MCSCS), as well as other ones that we believe must be dealt with by the Ministry at this time.

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We will focus on three pillars of change for effective policing:

I. EFFECTIVE, RESPECTFUL, EMPATHETIC POLICING:

Respectful dealing with individuals, positive relations with communities, in particular vulnerable and marginalized communities, the improvement of relationships with groups and communities that have long faced institutional racism, and a decreased resort to lethal or unnecessary use of force are all required to achieve effective, respectful, and empathetic policing. To achieve these objectives we focus on:

- A. EDUCATION**
- B. ON-GOING TRAINING**
- C. COMMUNITY RELATIONS**

II. ACCOUNTABILITY AND TRANSPARENCY

A fundamental aspect of public trust in policing and the justice system hinges on the question of whether our police officers and the police force are held accountable for their actions in a timely and appropriate manner, and whether information about investigations into alleged police misconduct and abuse of power, as well as disciplinary hearings, is publicly available. To achieve transparency and accountability, we examine the legislation, processes, and several bodies charged with the responsibility for police accountability, hearings, and discipline:

- A. ONTARIO CIVILIAN POLICE COMMISSION**
- B. ONTARIO INDEPENDENT POLICE REVIEW DIRECTORATE, in conjunction with INTERNAL HEARINGS**
- C. SPECIAL INVESTIGATIONS UNIT**
- D. POLICE SERVICES BOARD**

III. OVERSIGHT

Without effective oversight, none of the other goals of effective policing: public faith in our police forces, police respect and empathy, positive community relationships, police accountability, and, finally, transparency, will be met. This pillar of policing requires an examination of:

- A. THE POLICE SERVICES BOARD**

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I. EFFECTIVE, RESPECTFUL, EMPATHETIC POLICING:

Police Education & Training:

Background and Comments:

Currently, the educational requirement for entering police college is minimal: a high school diploma. Given the complex nature of their work, the diversity of the population that they serve, and, especially, the tremendous amount of intrusive power granted to them, police officers should be required to have a higher level of education, and, at least, a bachelor's degree, prior to entering police college. Studies have shown that higher education in police officers is linked to lower tolerance for abuse of power.¹

Furthermore, the curriculum in police college should include meaningful, lengthy training and studies on diffusion of conflict, peaceful conflict resolution, negotiation with persons in distress (whether or not those persons are yielding a weapon) and ethics. The curriculum should also include studies in race, racism, and the relationship between police and persons from visible minority groups, as well as training in dealing peacefully with persons with mental health challenges.

Recommendations:

- **Applicants to police college should, at least, hold a bachelor's degree from an accredited university.**
- **A significant amount of time in police college should be dedicated to learning about mental health issues, homelessness, gender issues, working with vulnerable people, policing in a multi-cultural society, peaceful conflict resolution, and ethics.**

¹ Webb Telep, Cody, *The Impact of Higher Education on Police Officer Attitudes Regarding Abuse of Authority*. (University of Maryland School of Graduate Studies) (2008)

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Community Relations & Dealing with Persons with Mental Health Issues & with Vulnerable People

Background and Comments:

The starting point for dealing with all person should be that of respect and understanding. If that starting point is embraced and adopted by police officers, appropriate means of dealing with vulnerable people will follow naturally. Too often, police interactions with persons in crisis result in fatalities or aggressive responses that further exacerbate the subject's deteriorating mental health. We recognize that police are required to make quick judgements in difficult and at times unpredictable situations. We also recognize that police officers, themselves, may be living with mental health issues that may hinder their peaceful resolution of conflicts with individuals in crisis.

There *are* solutions to this challenge. We can implement educational, training, and screening processes that increase the likelihood that officers are properly equipped to deal with crises in a non-violent manner that results in peaceful resolutions and avoid further aggravating the mental health of both civilians and officers.

The following will be helpful in ensuring positive police interactions with vulnerable people:

Recommendations:

Education & training:

- **Education on mental health issues, homelessness, and youth-specific challenges will help to better inform police officers on the best means of dealing with vulnerable persons. Police college students should be required to take at least one course on the causes of mental health issues, homelessness, and youth-specific challenges, and at least one course on respectful and non-aggressive means of dealing with these populations.**
- **Volunteer experience or social service placements that give police college students an opportunity to get to know vulnerable groups through a different lens should be required for graduation from police college.**
- **Ongoing police training (post graduation) on dealing with vulnerable persons should focus on empathy and collaborative, respectful means of resolving conflict and dealing with situations.**
- **Use of force training should place a greater emphasis on de-escalation of conflict and minimal use of force, especially when dealing with persons who may have mental health or addiction issues.**

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....Recommendations, cont'd:

Collaboration with social service agencies:

- **Police officers should work with other service agencies to learn about the mental health and conditions of vulnerable people.**
- **Police officers should team with social service agencies and support people when responding to crises involving persons in crisis. This collaborative response should be immediate, as delays may result in regretful responses from officers who do not have the support or training to deal with the situation.**
- **The Ontario government must provide sufficient resources to enable this collaboration.**

Police accountability:

- **Swift, transparent, and appropriate response to police abuse of power: Abuse of power and authoritarian, unnecessary or unjustified aggressive police dealings that exacerbate the already frail and at-risk mental health of vulnerable persons should never be tolerated. Officers who engage in such behaviour should be quickly dealt with and reprimanded in an appropriate way that sends a clear message to other officers and to the public that abuse of power by the police is not condoned. The response to abuse of power should be transparent and accountable.**

Officers' mental health:

- **Police officers, themselves, should be given meaningful support to maintain their own mental health.**

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First Nations Constables

While there are reports of police abuse of power against First Nations and Indigenous communities in Ontario, it is likely that such reports only scratch the surface of the problem.

Recommendations:

➤ **The Attorney General should consult with First Nations governing authorities and/or band councils, as the case may be, to determine the specific needs of each reserve.**

➤ **At the very least, there should be significant additional education and training in place for First Nations Constables, particularly those who do not come from the communities which they serve, to ensure greater awareness of and sensitivity to the diverse cultures, practices, history, conflict resolution methods, gender issues, youth challenges, and the needs of each First Nations community.**

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II. Accountability & Transparency

Background and Comments:

There is a justified public perception that, despite the presence of a Police Services Board (PSB), the Ontario Civilian Police Commission (OCPC), the Ontario Independent Police Review Director (OIPRD), and the Special Investigations Unit (SIU), there is no one, other than the Chief of Police, who can truly hold officers accountable. Current legislation hampers the efforts of these bodies to uncover the truth, conduct full investigations, and impose discipline. It shrouds their processes in secrecy. These limitations, in turn, undermine police legitimacy and authority.

Police chiefs *do* have broad authority to require co-operation and answers from police officers, and *can* provide complete and accurate information to the public about police conduct and interactions with members of the public. However, it appears that this power to swiftly, publicly, and responsibly hold his officers accountable is rarely exercised by police chiefs in the province. The resulting lack of accountability and transparency leads to a –justified, or at least reasonable– public perception that officers “can get away” with anything, and that the police force and our elected officials are not interested in ensuring that officers respect our most fundamental constitutional rights.

A democratic society that values fundamental rights and freedoms must institute and implement effective accountability mechanisms, and must ensure that the processes and procedures for such accountability are transparent, to the extent that is reasonable. To fulfill the above objectives, several additional changes should be made to the *Police Services Act*.

Recommendations

- **Effective and meaningful oversight must be recognized as one of the key requirements of adequate and effective police services.**
- **Each body (Police Services Board, Ontario Civilian Police Commission, Ontario Independent Police Review Directorate, Internal Hearing and Discipline mechanisms, and the Special Investigations Unit) must be given the appropriate level of power and authority to fulfill the mandate of transparency, openness, accountability, and effective, timely, and meaningful response to allegations of police misconduct, abuse of power, or other complaints or allegations against the police**

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We now turn to each of these in turn:

Ontario Civilian Police Commission:

Background and Comments:

The requirement for secrecy at OCPC hearings directly undermines the fundamental principles of transparency and accountability. This secrecy, at the very least, leads the public to question the legitimacy of the decisions made by the Commission. More often, it fuels the suspicion that officers are treated with kid gloves and are not held accountable for their actions.

Recommendations:

- **The OCPC shall operate on a principle of transparency and accountability;**
- **The OCPC shall make public, at a minimum, identifying information about any parties being investigated or about whom inquiries are made, as well as the particular issue, charge, or matter being investigated;**
- **The OCPC shall be required to publicly release its decisions to the public within one week of the decisions being made and released to the parties;**
- **The OCPC may only keep confidential information, details of investigations, or decisions, if it determines that it is necessary to do so in the interest of completing further related investigations, or if release of the information will compromise an ongoing investigation or inquiry by the Commission or another adjudicative or investigatory body. When making a decision whether or not a matter should be kept confidential, the Commission must turn its attention to and give significant consideration to the public interest to know the truth about police interactions with civilians;**
- **Matters that are kept confidential should only be held confidential for as long as, and no longer than is necessary.**

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Public Complaints Made to the Ontario Independent Police Review Director

Background and Comments

For many groups and residents, one of the main driving forces behind setting up an independent police review director was to remove the role of investigating and adjudicating complaints against the police from the police themselves. This step was necessary both to ensure neutrality in decision-making and to avoid the appearance of bias in dealing with complaints against the police. In setting up the OIPRD in its current form, the legislation failed to address both of the above concerns. In order to ensure accountability and neutrality in the investigation and adjudication of complaints against the police, and in order to promote public confidence in the complaints process, certain changes are required.

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Recommendations:

- **Police officers should be required by law to speak to the OIPRD and to co-operate with its investigations**
- **Police officers who are the subject of complaints as well as witness police officers must be required to turn over their notes and any evidence related to a case to the OIPRD within 24 hours of the request being made.**
- **The OIPRD should have the authority and the power to seize any documents its deems necessary in its investigation.**
- **As much as possible, complaints should be investigated and resolved at the OIPRD. If the OIPRD determines that discipline is required in a certain case, it should be able to make one or more disciplinary recommendations to the chief of police, who will then be required to implement one of the recommendations made by the OIPRD.**
- **The OIRPD should have original jurisdiction to investigate complaints of illegal conduct, misconduct or unsatisfactory work performance against a chief of police or a deputy chief of police. If the OIRPD substantiates the complaint and finds it to be of a serious nature, the OIRPD report should go to the Ontario Civilian Police Commission for resolution of the complaint. Currently the OIRPD must refer such complaints to the Police Services Board for a determination whether the complaint may be well-founded before the OIRPD can investigate with the complaint returning to the Board for disposition or referral to the OCPC.**
- **The referral of complaints against policies to the police chief (mandatory, s. 61.(2)), and the default referral of complaints regarding conduct to the police chief (subsection 5), should be optional only.**
- **The legislation, under s. 58, should be amended to allow any member of the public to make a complaint again the conduct of a group of officers or a unit of officers.**

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OIPRD, cont'd

Hearings

Background and Comments:

Internal hearings on disciplinary matters in relation to individual police conduct should be limited to minor cases that do not involve allegations of abuse of power, violence, or significant use of force. Even if such limited cases are dealt with through internal measures, certain legislative changes are required to ensure public trust in the complaint, investigation, and adjudication process, to bolster accountability and transparency, and to strengthen oversight. The additional context as well as recommended changes and amendments are outlined below.

Recommendations:

- **Complaints should be handled, investigated, and resolved by the OIPRD or other neutral third body.**
- **Only minor complaints that do NOT deal with police abuse of power, violence, or significant use of force should be dealt with by the police or through an internal investigative and adjudicative process.**

Prosecutor at hearing

Background and Comments:

Currently, it is the chief of police who designates prosecutors at police hearings. Most often, these “prosecutors” are other police officers:

82. (1) The chief of police shall designate to be the prosecutor at a hearing held under subsection 66 (3), 68 (5) or 76 (9),

- (a) a police officer from any police force of a rank equal to or higher than that of the police officer who is the subject of the hearing; or
- (b) a person authorized under the *Law Society Act* to be a prosecutor at the hearing.

Principles of neutrality, objectivity, and the maintenance of public trust in hearings mean that a prosecutor in these internal hearings should *not* be a current or former police officer. (In the past, the chief of police has hidden behind this false designation of a “neutral tribunal” to argue that he cannot make decisions on officer behaviour (this is in relation to the G20).)

Recommendation:

- **Persons who are current or former police officers in Ontario or another jurisdiction should not be appointed as prosecutors under s. 82 of the Act.**

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Evidence

Background and Comments:

Currently, under subsection 82(6), police officers involved in disciplinary hearings are **not** required to give evidence. These hearings are not criminal, but disciplinary in nature. Accountability and public trust in the process demand that officers be compellable to testify and to provide any and all information available to them or of which they are aware.

Furthermore, under the current law, as stated in subsections 82(7)-(9), the evidence, documents, and statements obtained during this process are not admissible in other proceedings. This restriction is overly broad and impedes the administration of justice and the public's right to have full information about officer conduct and the circumstances of alleged allegations of misconduct and abuse of power. These subsections should be amended so that the testimony, documents, statements, and evidence otherwise obtained under Part V of the Act can be used in other proceedings. At the very least, such statements should be available and used in perjury proceedings.

Recommendations:

- **Subsection 82(6) should be deleted.**
- **Subsections (7)-(9) should be amended to reflect the above.**

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Six-month Limitation Period

Background and Comments:

The six-month limitation period (subsections 82(17) & (18)) creates a seriously flawed situation where hearings or disciplinary proceedings against officers can be impeded by other officers or by the chief through choosing to delay the serving of notice. Furthermore, delays can also be caused if other officers delay providing relevant information to the OIPRD or to the prosecutor appointed by the chief of police. In this context of police control over the flow of information or the serving of notice of a hearing, the six-month limitation period can lead to an absurd denial of fundamental justice and a potential obstruction of justice that is condoned by the law.

Recommendations:

- **The six-month limitation period should be eliminated.**
- **A positive duty should be placed on the chief of police and other officers to deal effectively, expeditiously, and fairly with complaints and requests for information.**
- **If a longer limitation period is imposed by law, then there should be penalties for officers who delay the process or the steps that need to occur before an officer can be served with notice.**

Decisions to be publicly available

Background and Comments:

The current requirements, under section 86, for the release of decisions pursuant to subsection 66(3) or 68(5) provide an overbroad discretion to the chief of police and to the board, to the extent that they can choose to provide only the most minimal information (the name of the officer and the disposition, or simply the disposition). Such limited disclosure does not serve the public good and should be amended to set minimal standards.

Recommendations:

- **The chief of police, the board, and the OIPRD should be required to make public and post the decisions, including a summary of the evidence and the reasons for the decision (or the judgement), within 7 days of the decision.**

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Suspensions:

Background and Comments:

Currently, officers who are charged with a serious offence or facing allegations of serious misconduct may only be suspended with pay. The chief of police should have the authority to immediately suspend, without pay, an officer charged with a criminal offence or misconduct of such a serious nature that the chief will be seeking the officer's dismissal from the force if found guilty. An officer suspended without pay pending disposition of the allegations should have recourse to a summary review procedure to contest the suspension without pay. Officers found guilty and ordered dismissed from the force should not receive pay pending the final disposition of any appeal or review proceedings unless so ordered by the appeal or review tribunal. Section 89 of the *Police Services Act* should, therefore, be amended to reflect the following:

Recommendations:

- **A chief of police should have the authority to suspend an officer without pay pending resolution of a complaint of criminal conduct or misconduct of a serious nature where the chief will be seeking the officer's dismissal from the force.**
- **An officer found guilty of a criminal offence or of misconduct of a serious nature and ordered dismissed from the force should not receive pay pending the final disposition of any appeal or review proceedings unless otherwise ordered by the appeal or review tribunal.**

Terminations:

Background and Comments:

Currently, under section 90, if an officer resigns prior to the disposition of a case where there is a complaint against that officer, then the matter must be abandoned and no further investigation is undertaken. In effect, there is no hearing, no disposition, no recourse for the complainant under the complaints system, and no right of the public to discover the truth or to put into place a mechanism for avoiding similar negative conduct or interactions with the police, if that were the case. This protection is unique to police officers. And it undermines public trust in policing and the need to investigate and uncover the truth.

Recommendations:

- **Given their unique position of power and authority in society, it is paramount that allegations of misconduct by the police be dealt with through a resolution process or hearing that deals with the matter substantively, openly, and responsibly, and to its natural end. The termination option under section 90 should be removed. Matters should be dealt with, investigated, and resolved, regardless of an officer's position with the force.**

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Special Investigations Unit

There has been ample criticism of the SIU's failure and inability to properly investigate and to bring charges against officers who have probably committed serious offences, including the Ontario Ombudsman's 2008 report, *Oversight Unseen*.²

We share the concerns expressed by numerous organizations and the public about the ineffectiveness of the SIU. While we do not have the opportunity here to provide further details, we believe that the concerns raised in the 2008 report, mentioned above, need to be meaningfully and effectively addressed. Only then can we claim to have an investigative body that operates with integrity and that has the power and ability to carry out its mandate.

² "Oversight Unseen," Ontario Ombudsman's report. (2008) http://www.siu.on.ca/pdfs/marin_report_2008.pdf

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Municipal Police Services Boards

Background & Comments:

Police Services Boards are the primary oversight body of police services. Yet their powers and ability to provide this oversight effectively are limited by legislation, by tradition, and by institutional resistance to meaningful oversight. Changes to the *Police Services Act* can help to make oversight of police and police accountability the primary and achievable obligations of the boards.

The provincial government has a duty to ensure that police chiefs and police officers understand and respect the important oversight function of boards, and that chiefs will respond to board requests in a timely manner, will implement board decisions, guidelines, and parameters that are directed at the police, and that chiefs will ensure that their subject officers also respect and adhere to board directions, guidelines, and policies.

Operations vs. Policy

The distinction between operation versus policy has repeatedly hampered the ability of Police Services Boards to impose minimum standards, guidelines, and policies with respect to policing. This was most recently the case when dealing with arbitrary stops, otherwise known as “carding,” of mostly young black and brown men in the Greater Toronto Area. The Toronto Police Services Board’s attempts at ending a discriminatory practice that many believe violates the *Charter of Rights and Freedoms* was undermined and ultimately thwarted by police arguments that the TPSB’s requirements were a matter of “operations,” and infringed an area that was solely under the authority of the chief of police.

Our government has a duty to safeguard and promote responsible oversight of our police forces. Proper oversight means that police services boards, from time to time, will implement policies and guidelines that will necessarily impact how police conduct themselves, what directions they are given from the chief, and what conduct is deemed acceptable and what is not. If the police chief or police officers can simply refuse to implement these policies and guidelines using the spurious argument that the policies infringe on operations, then police oversight becomes a meaningless and unattainable goal.

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To facilitate and to promote police oversight, we make the following recommendations:

Recommendations:

- **The P.S.A. must emphasize the need and the importance of meaningful, responsible oversight of policing in our democracy.**
- **The P.S.A. will make clear that Police Services Boards will need to, from time to time, draft guidelines, policies, and minimum standards (hereinafter, policies) that direct the behaviour of officers within a police force. Such policies may direct what actions officers may take, how their conduct needs to be changed, or even what additional training or education may be required to achieve the goals of the policies. Police chiefs and the officers of their force are obligated to implement the policies and guidelines in a timely manner and to abide by them.**
- **The P.S.A. should further be amended to clarify that chiefs of police are required to implement any such policies proposed by their police services board, and that failure to implement such policies will result in discipline or other measures permitted by law.**
- **The P.S.B. must be given the authority to require that the chief of police change its administration of the complaints system, under section V of the Act.**

In addition, the following recommendations will help to bolster the transparency, accessibility, effectiveness, and oversight function of the police services boards.

- **Currently, the Act excludes criminal defence lawyers (and not provincial prosecutors or Crown Attorneys) from membership on the board. We think that it would be helpful to have people with a legal background in criminal law on the board. To avoid any allegations of conflict of interest, The Act may be amended so that practising defence lawyers, Crown Attorneys, federal agents, or provincial prosecutors are not permitted to sit on the board. However, as their input would be valuable, those who no longer practice criminal law or work as a provincial prosecutor, Crown Attorney, or federal prosecutor should be able to join the Board. Guidelines should be in place to allow for either one defence lawyer and one either prosecutor, Crown Attorney, or federal prosecutor to serve at the same time or to alternate.**
- **Meetings of the Police Services Boards should be publicized so that the public has ample notification of the dates (and a minimum of 7 days if a regular meeting is postponed), and at least 72 hours notice of “emergency” meetings, unless such meetings are taking place in response to unexpected events that involve public safety.**
- **Materials for PSB meetings should be made available at least a week in advance of regular meetings and as soon as possible for emergency meeting.**