



**Presentation to the Standing
Committee
On Justice Policy
by the
Police Association of Ontario**

**Bill 103, Independent Police
Review Act**

January 30, 2007

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, 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, the Ontario Civilian Commission on Police Services; and
- ❑ Coroner's inquiries, public inquiries, 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 the 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 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 hearing 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 an 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/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/her discretion to consider any third party complaint made by someone unconnected to the complaint.

The PAO believes that the scope of enquiries 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 public confidence in the complaint system is maintained.

We appreciate the opportunity to provide input into this important process. Thank you and we would be pleased to answer any questions that you may have.

RECOMMENDATIONS

1. Informal Resolution

The legislation should expressly allow for the local police association to have a role in the police discipline process to ensure that the rights of police officers are protected and to assist the discipline process.

Sections 66 and 68 relate to the informal resolution process surrounding complaints made by members of the public.

Subsection 66(4) should have added to it the requirement that the matter may only be resolved informally, "if the police officer, after consulting with the police association, and the complainant consent to the proposed resolution".

Subsection 66(5) should also be amended to add a requirement that the Chief of Police must inform the local police association that he or she is of the opinion that the matter should be resolved informally. A similar provision to that added to subsection 66(4) should also be added to subsection 68(6), and to subsection 93(1).

The legislation also addresses internal complaints made by a Chief of Police/OPP Commissioner about a police officer in section 76. The same amendments that we urge be made to sections 66 and 68 must also be made to subsection 76(10) so that police association representatives have a role to play in the informal resolution of internal complaints.

Present Subsections 66(4), 66(5), 68(6), 76(10), 93(1) of Bill 103
with Additions, as Amendments, Shown in Italics

66(4) If at the conclusion of the investigation and on review of the written report submitted to him or her the chief of police is of the opinion that there was misconduct or unsatisfactory work performance but that it was not a serious nature, the chief of police may resolve the matter informally without holding a hearing, if the police officer, *after consultation with the association*, and the complainant consent to the proposed resolution.

66(5) Before resolving the matter informally, the chief of police shall notify the complainant, *the association*, and the police officer, in writing, of his or her opinion that there was misconduct or unsatisfactory work performance that was not of a serious nature, and that the complainant may, under subsection 71(1), ask the Independent Police Review Director to review this decision within 30 days of receiving such notification.

68(6) If on the review of the written report the chief of police is of the opinion that there was misconduct or unsatisfactory work performance but that it was not of a serious nature, the chief of police may resolve the matter informally without holding a hearing if the police officer, *after consultation with the association*, and the complainant consent to the proposed resolution.

76(10) If at the conclusion of the investigation and on review of the written report submitted to him or her the chief of police is of the opinion that there was misconduct or unsatisfactory work performance but that it was not of a serious nature, the chief of police may resolve the matter informally without holding a hearing, if the police officer, *after consultation with the association*, consents to the proposed resolution.

93(1) If at any time during an investigation under this Part into a complaint about the conduct of a police officer other than a chief of police or deputy chief of police the conduct appears to be obviously conduct that is not of a serious nature, the chief of police of the police force to which the complaint relates may resolve the matter informally, if the police officer, *after consultation with the association*, and the complainant, if any, consent to the proposed resolution.

2. Independent Adjudication

Amend the legislation to ensure that the persons conducting the hearings are independent. This should be addressed in the Bill. The details may be worked out in the regulations.

Bill 103 must be amended in order to remove the chief of police, or his designate, and substitute instead a person to conduct the hearings who is independent of the chief of police. The consequential amendments are set out below. We have put a line through words to be removed from the current subsections, and indicated in italics the words to be added to the current provisions.

66(3) Subject to subsection (4), if at the conclusion of the investigation and on review of the written report submitted to him or her the chief of police believes on reasonable grounds that the police officer's conduct constitutes misconduct as defined in section 80 or unsatisfactory work performance, he or she shall ~~hold~~ *direct* a hearing into the matter.

66(9)3 If the police officer refuses to accept the penalty imposed or action taken, the chief of police shall not impose a penalty or take any other action or cause any entry to be made in the police officer's employment record, but shall ~~hold~~ *direct* a hearing under subsection (3).

68(5) Subject to subsection (6), the chief of police shall ~~hold~~ *direct* a hearing into a matter referred to him or her under subsection (3) by the Independent Police Review Director.

68(6) If on the review of the written report the chief of police is of the opinion that there was misconduct or unsatisfactory work performance but that it was not of a serious nature, the chief of police may resolve the matter informally without ~~holding~~ *directing* a hearing if the police officer and the complainant consent to the proposed resolution.

76(9) Subject to subsection (10), if at the conclusion of the investigation and on review of the written report submitted to him or her the chief of police believes on reasonable grounds that the police officer's conduct constitutes misconduct as defined in section 80 or unsatisfactory work performance, he or she shall ~~hold~~ *direct* a hearing into the matter.

76(11)3 If the police officer refuses to accept the penalty imposed or action taken, the chief of police shall not impose a penalty or take any other action or cause any entry to be made in the police officer's employment record, but shall ~~hold~~ *direct* a hearing under subsection (9).

Powers at conclusion of hearing by ~~chief of police~~ *the person conducting the hearing*

85(1) Subject to subsection (4), the ~~chief of police~~ *person conducting the hearing* may, under subsection 84(1),

- (a) dismiss the police officer from the police force;
- (b) direct that the police officer be dismissed in seven days unless he or she resigns before that time;
- (c) demote the police officer, specifying the manner and period of the demotion;

(d) suspend the police officer without pay for a period not exceeding 30 days or 240 hours, as the case may be;

(e) direct that the police officer forfeit not more than three days or 24 hours pay, as the case may be;

(f) direct that the police officer forfeit not more than 20 days or 160 hours off, as the case may be; or

(g) impose on the police officer any combination of penalties described in clauses (c), (d), (e) and (f).

85(4) The ~~chief of police~~ *person conducting the hearing* or board, as the case may be, shall not impose the penalties of dismissal or demotion under subsection (1) or (2) unless the notice of hearing or a subsequent notice served on the chief of police, deputy chief of police or other police officer indicated that they might be imposed if the complaint were proved on clear and convincing evidence.

Additional powers

85(7) In addition to or instead of a penalty described in subsection (1) or (2), the ~~chief of police~~ *person conducting the hearing* or board, as the case may be, may under subsection 84(1) or (2),

(a) reprimand the chief of police, deputy chief of police or other police officer;

(b) direct that the chief of police, deputy chief of police or other police officer undergo specified counselling, treatment or training;

(c) direct that the chief of police, deputy chief of police or other police officer participate in a specified program or activity;

(d) take any combination of actions described in clauses (a), (b) and (c).

Notice of decision

85(8) The ~~chief of police~~ *person conducting the hearing* or board, as the case may be, shall promptly give written notice of any penalty imposed or action taken under subsection (1), (2), (3) or (7), with reasons,

(a) to the chief of police, deputy chief of police or other police officer who is the subject of the complaint;

(b) in the case of a penalty imposed or action taken by a municipal chief of police, to the board; and

(c) in the case of a penalty imposed or action taken in respect of a complaint made by a member of the public, to the complainant.

Appeal to Commission

87(1) A police officer or complainant, if any, may, within 30 days of receiving notice of the decision made after a hearing held under subsection 66 (3), 68 (5) or 76 (9) by the ~~chief of police~~ *person conducting the hearing* or under subsection 69 (8) or 77 (7) by the board, appeal the decision to the Commission by serving on the Commission a written notice stating the grounds on which the appeal is based.

Powers of Commission

87(8) After holding a hearing on an appeal, the Commission may,

- (a) confirm, vary or revoke the decision being appealed;
- (b) substitute its own decision for that of the ~~chief of police~~ *person conducting the hearing* or the board, as the case may be;
- (c) in the case of an appeal from a decision of a ~~chief of police~~ *person conducting the hearing*, order a new hearing before the ~~chief of police~~ *person conducting the hearing* under subsection 66 (3), 68 (5) or 76 (9), as the case may be; or

(d) in the case of an appeal from a decision of a board, order a new hearing before the board under subsection 69 (8) or 77 (7), as the case may be.

Delegation of chief's powers and duties

94(1) A chief of police may ~~delegate~~ *assign* the following powers and duties to ~~a police officer or a former police officer of the rank of inspector or higher,~~ a judge or retired judge, or such other person as may be prescribed,

1. ~~to~~ ~~conducting~~ *conduct* a *directed* hearing under subsection 66 (3), 68 (5) or 76 (9) and taking an action under subsection 84 (1), if that subsection applies.

2. ~~Acting~~ ~~act~~ under ~~subsections 66 (4) and (9), subsection 68 (6) or subsections 76 (10) and (11).~~

94(2) A person to whom the chief of police may ~~delegate~~ *assign powers and duties* under subsection (1) may only act as ~~a delegate~~ if he or she meets the prescribed qualifications, conditions or requirements, ~~if any.~~

~~94(3) If a chief of police delegates the powers and duties described in paragraph 1 of subsection (1) to a police officer from another police force of the rank of inspector or higher, that police officer may only act as a delegate with the approval of his or her chief of police.~~

94(3) A chief of police may delegate the powers and duties to a police officer or a former police officer of the rank of inspector or higher, or such other person as may be prescribed to act under subsection 66(4) and (9), subsection 66(6) or subsections 76(10) and (11).

3. Third Party Complaints

The legislation should appropriately scope the provisions for Director discretion to ensure that Third Party complaints are confined to individuals affected by or connected to the original complaint.

This can be accomplished by amending subsection 60(5) to prohibit the Director from dealing with complaints from persons unaffected, or unconnected to the person to whom the conduct complained of was directed. The introductory words to subsection 60(5) should be amended to read:

60(5) The Independent Police Review Director shall not deal with a complaint made by a member of the public if the complainant is not one of the following:

4. Development of the supporting Regulations

Many important areas of the legislation will need to be addressed by regulation. The Police Association of Ontario is willing to lend its expertise and would welcome the opportunity to be involved in the important process of developing the regulations.



Mandate of the Association

The Police Association of Ontario (PAO) was founded in 1933 and is the official voice and representative body for Ontario's front-line police personnel. Our membership consists of over 30,000 police and civilian members from every municipal police association and the Ontario Provincial Police Association (see attached for a complete listing of member associations).

The Police Association of Ontario promotes the mutual interests of Ontario's front-line police personnel in order to uphold the honour of the police profession and elevate the standards of police services.

The core objectives of our Association are to:

- Provide progressive and effective leadership and representation on policing issues;
- Deliver flexible and innovative services providing resource and support to our member associations;
- Deliver training and educational programs to foster enhanced association leadership; and,
- Encourage cooperation and unity within our membership.

Community Service

The Police Association of Ontario and its affiliates across this province have a long history of community support and involvement. Whether through the work of our individual members or through the efforts of a local association, many charities, minor sports programs and assistance programs for people of all ages, have benefited from our efforts.

The PAO believes that our "Kids and Cops and Canadian Tire Fishing Days" is another example of this community spirit. We have partnered with Fishing Forever, a non-profit organization, whose principal focus is recreational fisheries conservation and securing the future of fishing in Ontario. The PAO has committed over two hundred thousand dollars to this program over the last several years and to date have taken thousands of young people fishing for the day with police personnel. The PAO was honoured in 2005 with the Rick Amsbury Memorial Award for its contribution to fishing and youth in Ontario.



Sharing Our Expertise

Our unified voice has always been a key resource to government on all matters related to policing. Building on our shared goal of making Ontario communities safer, we have worked with successive governments on a number of important policy files sharing our experience and expertise.

Notable amongst our past achievements is the revitalized Police Services Act. Our Association worked along side other police stakeholders including representatives of Ontario's Chiefs of Police, Police Services Boards and municipalities to forge a consensus on how best to transform Ontario's police services. Working with elected members on all sides of the Legislature on this important initiative was particularly rewarding.

In recent years, our Association has been advocating for a number of new initiatives that would improve community safety and protect police personnel including:

- ❑ Measures to address the escalating problem of violence in our communities posed by gangs, drugs and guns in particular;
- ❑ Implementation plans for the 1,000 new officers;
- ❑ Revitalizing the Ontario Municipal Employees Retirement System (OMERS) to better reflect the contribution of police and fire fighter personnel;
- ❑ Passage of the "pull to the left" law that requires vehicles to slow and pull to the left when approaching a stopped emergency vehicle.

Moving Forward: Developing The Work Plan

While proud of our past accomplishments, we understand that police services are constantly in transition. By responding to changing public expectations, we can ensure that Ontario's police services remain responsive, effective and accountable. At present, we are anxious to work with government on a number of important policy matters including:

- ❑ Maintaining Ontario's strong system of civilian oversight.
- ❑ Improve pension portability for police personnel through a divestment agreement with the Ontario Pension Board and OMERS.
- ❑ Standardizing Ontario's usage of private security personnel.
- ❑ Implementing Bill 28 regulations (Mandatory Blood Testing Act) to ensure officer and community safety.



PAO Member Associations

Amherstburg Aylmer Barrie Belleville Brantford Brockville Chatham-Kent Cobourg Cornwall Deep River Dryden Durham Regional Elliot Lake Espanola Essex Gananoque Guelph Halton Regional Hamilton Hanover Kenora	Kingston Kirkland Lake LaSalle Leamington Lindsay London Michipicoten Twp. Midland Niagara Parks Niagara Region North Bay Ontario Provincial Police Orangeville Orillia Ottawa Owen Sound Oxford Community Peel Regional Pembroke Perth Peterborough-Lakefield Port Hope	Sarnia Saugeen Shores Sault Ste. Marie Shelburne Smiths Falls South Simcoe St. Thomas Stratford Strathroy Stirling-Rawdon Sudbury Temiskaming Shores Thunder Bay Timmins Toronto Waterloo Regional West Grey West Nipissing Windsor Wingham York Regional
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The Police Association of Ontario – a Resource for Government

The PAO has a history of working with government to ensure safe communities. Our unified voice has always been a key resource to government on all matters related to policing. The PAO web site is located at www.pao.on.ca. It contains all of our media releases, position papers and other information on policing and community safety. We would also encourage you to contact our office should you need any further information. Some of the material includes:

- PAO federal and provincial submissions on pre-budget consultations.
 - Public opinion polling information on community safety issues.
 - Presentation to the Standing Committee on Justice Policy on Bill 110, An Act to require the disclosure of information to police respecting persons being treated for gunshot wounds.
 - Presentation to the Standing Committee on Justice Policy, Bill 128, Law Enforcement and Forfeited Property Management Statute Law Amendment Act, 2005.
 - Presentation to the Standing Committee on Justice Policy, Bill 159, An Act to revise the Private Investigators and Security Guards Act and to make a consequential amendment to the Licence Appeal Tribunal Act, 1999.
 - Presentations to the Standing Committee on General Government on Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act.
 - Presentation to the Standing Committee on General Government on Bill 53, An Act to revise the City of Toronto Acts, 1997 (nos. 1 and 2), to amend certain public Acts in relation to municipal powers and to repeal certain private Acts relating to the City of Toronto.
 - Presentation to the Standing Committee on Justice Policy on Bill 56, An Act to amend the Emergency Management Act, the Employment Standards Act, 2000 and the Workplace Safety and Insurance Act, 1997.
 - Presentation to the Standing Committee on Justice Policy on Bill 107, An Act to Amend the Human Rights Code.
 - Presentation to the Standing Committee on Justice Policy on Bill 14, An Act to promote access to justice by amending or repealing various acts and by enacting the Legislation Act, 2005.
 - Presentation to the Standing Committee on General Government on Bill 148, An Act to amend the Highway Traffic Act respecting seatbelts.
 - Presentation to the Standing Committee on the Legislative Assembly on Bill 28, Mandatory Blood Testing Act.
 - Presentation to the Standing Committee on Social Policy on Bill 152, An Act to modernize various Acts administered by or affecting the Ministry of Government Services
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