

**Submission to the Standing Committee on Justice Policy**

**RE: Bill 175, Safer Ontario Act**

**The Justice for Abdirahman Coalition**

**March 1, 2018**

## **Introduction**

The following written submission is presented by the Justice for Abdirahman Coalition to the Standing Committee on Justice Policy concerning *Bill 175, An Act to implement measures with respect to policing, coroners, and forensic laboratories and to enact, amend or repeal certain other statutes and revoke a regulation*. This written submission follows our appearance before the Committee during public hearings in Toronto on Thursday, February 22, 2018.

Bill 175 is being introduced during a critical time for policing in Ontario. Numerous cases involving police misconduct and mistreatment, including Abdirahman's Abdi's tragic death, have led to growing deterioration in confidence and trust between the police and the communities they serve. This submission provides our reflections on key provisions in this Bill that are welcome and that we strongly support. However, we also provide our recommendations for areas of the Bill that should be given closer consideration. On balance, we believe the measures proposed in this Bill can serve to strengthen accountability and begin to rebuild public trust for law enforcement in this province.

## **Overview**

The Justice for Abdirahman Coalition was formed in the days following the death of Abdirahman Abdi, a 37-year-old Somali-Canadian with mental health issues, on July 24th, 2016. Abdirahman, who had no criminal history, died following a violent altercation with Ottawa Police Service officers. The Coalition, based in Ottawa, and supported by national advocacy groups, seeks to promote greater transparency, challenge racial inequity, and increase support for mental health needs throughout law enforcement institutions to secure justice for the late Mr. Abdi and his family. We believe that fairness, transparency and accountability in our law enforcement institutions are critical to the collective safety and security of all Ontarians.

The Coalition has been closely engaged with various efforts to reform police oversight mechanisms in Ontario. Of interest to this Committee will be our submission to the Honourable Justice Michael H. Tulloch review of the Police Oversight Act. Justice Tulloch's report was the outcome of 17 public consultations and 130 private stakeholder meetings

across the province, which sought to incorporate the voices of communities disproportionately impacted by policing interactions. We believe its recommendations set a clear path for the reform of Ontario's police oversight, which we are pleased the legislation has mostly reflected.

The Coalition strongly supports the Bill's proposed principles to govern police oversight in Ontario. The provisions clearly identify the importance of holding police officers and other policing officials accountable, and assert that the oversight system will be both impartial and independent from the influence of Government and the individuals it oversees. We are also pleased to see the principles recognize the diverse, multiracial, and multicultural character of our Province. This underscores the necessity of policing institutions to build and retain the trust of all citizens that reflect the makeup of Ontario.

### **Special Investigation Unit**

The Coalition also supports the Bill's proposed changes to the Special Investigation Unit's appointment practices. Bill 175 introduces new restrictions, which would phase out the appointment of ex-police officers as SIU investigators. This recommendation directly addresses a key community demand, and its inclusion in the legislation would help restore confidence and trust in the SIU's investigative practices. As well, the legislation requires the Government to consider the diverse, multiracial, and multicultural character of Ontario when appointing the Director of the SIU. As Justice Tulloch's report noted, hiring people from diverse backgrounds would provide a number of advantages for the SIU, including a more intimate appreciation for the needs and concerns of the diverse communities it serves.

The Coalition also applauds the legislation's significant improvements to transparency and cooperation within SIU investigations. Currently, SIU investigations are shrouded in secrecy and this has weakened community trust in the impartiality and independence of the police oversight process. This is particularly pronounced in cases that have had prolonged investigations without public disclosure on the status of the case. In the case of the SIU investigation into Abdirahman Abdi's death, the investigation stretched over seven months, adding to a mourning family's anguish. As such, we are pleased to see that the Safer Ontario

Act will require SIU investigations to be finalized within 120 days, and to provide a public status update on the status of the investigation if the time limit is exceeded.

We also welcome the proposed measure to allow SIU Director's to comment on ongoing investigations, in the interest of preserving public confidence. Moreover, the introduction of penalties for non-compliance and cooperation with SIU investigators is critical. This is a long standing issue where there are many documented cases of breaches in the responsibility of police officers to cooperate with the SIU - historically, trends show that officers repeatedly violated their legal duty to co-operate with the provincial watchdog 'including after deaths of people in custody and sexual assault allegations against officers'<sup>1</sup>. Currently, the duty to cooperate is unenforceable, and therefore meaningless, if noncompliant officers are not subject to sanction. This represents a level of accountability that does not currently exist in SIU investigations. We welcome these provisions empowering and independent SIU to fully realize its role by ensuring cooperation through tangible consequences such as fines (up to 50K) and even, where appropriate, imprisonment.

We also applaud the proposed measure to allow the SIU Director to comment on ongoing investigations in the interest of preserving public confidence. These measures, along with strengthened requirements to compel cooperation with SIU investigators, can go a long way towards restoring confidence in the oversight system at large.

### **Ontario Policing Discipline Tribunal - Standard of Proof**

We also welcome the newly formed Ontario Policing Discipline Tribunal and the articulation of the standard of proof in the proposed bill as a balance of probabilities. The previous Police Act did not have clear language in articulating the standard of proof in civil proceedings. This change applies the same standard to the profession of policing that already exists for other lifesaving professions such as firefighters and medical doctors.

While the Coalition supports the majority of the Safer Ontario Act's proposed changes, there are specific measures that concern us and that may not meet their desired outcomes. These

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<sup>1</sup>[https://www.thestar.com/news/crime/2013/12/12/toronto\\_police\\_failed\\_to\\_cooperate\\_with\\_siu\\_letters\\_from\\_former\\_director\\_ian\\_scott\\_allege.html](https://www.thestar.com/news/crime/2013/12/12/toronto_police_failed_to_cooperate_with_siu_letters_from_former_director_ian_scott_allege.html)

include the opening up of police services to privatization in our communities. This is an area that should be more closely examined.

### **Suspension without pay of officers accused or convicted of criminal conduct**

Another area of particular concern for our Coalition are the proposed measures related to the suspension without pay of officers accused or convicted of criminal conduct. In Ottawa, Constable Daniel Montsion has continued to accrue regular pay despite facing charges for his involvement in the death of Abdirahman Abdi. While the Coalition has urged the Ottawa Police Service to suspend Constable Montsion without pay, Chief Charles Bordeleau has noted that the Police Act, as it read at the time, restricted his ability to do so. As it stands, this Bill does not address those constraints.

We are concerned with the lack of discretion afforded to Chiefs of Police to suspend without pay officers accused or convicted of criminal conduct. Our legislative framework around policing should be sophisticated and agile enough to delegate such authority to Chiefs of Police, especially in cases where the police officer is accused of a serious crime such as manslaughter or murder.

Under section 151, a Chief of Police may suspend a police officer without pay if the police officer is charged with a serious offence but section 151(1)(i) requires that the alleged offence was **not** committed in relation to the performance of the officer's duties. This caveat seemingly excludes all charges laid as a result of SIU investigations, and therefore applies only to serious criminal offences committed off-duty. **We suggest that suspensions without pay should also apply to conduct that arises in relation to a police officer's duty.**

Section 151(1)(2) allows suspension without pay where a police officer is subject to conditions of judicial interim release that prevent them from performing the usual duties of a police officer (for example, if they cannot carry a firearm, and other conditions related to "risk of flight and public protection"). **We recommend that the definition of judicial interim release should include conditions of undertaking given by a peace officer or an officer in charge** (which is typically the case following SIU investigations). A detailed summary of the proposed amendments can be viewed in **Annex A** to the submission.

## **Conclusion**

The Justice for Abdirahman Coalition emphasizes that the totality of this legislation is sound, proactive, sustainable, and an effective framework for policing focused on community safety and well-being. We believe this legislation will take necessary steps towards restoring public trust and confidence in law enforcement.

Bill 175, which has been in the making for decades, can bring trust, transparency and accountability to policing in Ontario. Our support for this Bill, and for the above recommended amendments, represents the perspectives of concerned citizens across this province. A safer Ontario for all communities depends on the success of this important Bill.

## Annex A

### Proposed Amendments: Section 151

The Coalition is concerned that Bill 175 does not provide discretion to Chiefs of Police who would like to suspend officers accused of criminal or serious conduct without pay. To rectify this gap, we propose a series of amendments which would remain in the spirit of legislation intending to strengthen police oversight and accountability in Ontario.

Current	Proposed amendments
151 (1) 2. The police officer is in custody or is subject to conditions of judicial interim release that prevent the officer from performing the usual duties of a police officer.	151 (1) 2. The police officer is in custody or is subject to conditions of judicial interim release <b><u>or is subject to conditions of undertaking given by a peace officer or an officer in charge</u></b> that prevent the officer from performing the usual duties of a police officer.
151 (2). A suspension without pay imposed under paragraph 2 of subsection (1) on a police officer who is subject to conditions of judicial interim release ends once the police officer is able to perform the usual duties of a police officer again.	151 (2). A suspension without pay imposed under paragraph 2 of subsection (1) on a police officer who is subject to conditions of judicial interim release <b><u>or is subject to conditions of undertaking given by a peace officer or an officer in charge</u></b> ends once the police officer is able to perform the usual duties of a police officer again.

These proposed changes provide Chiefs of Police with the tools to suspend without pay. They do not negate the ability of Chiefs of Police to use their discretion, but rather provide extra tools for them to carry out their responsibilities more effectively.

These changes only apply to special conditions that prevent the officer from performing the usual duties of a police officer such as carrying a weapon, as defined in the Criminal Code.

It is important to note these proposed amendments would not block a police officer from receiving the best financial defence possible as it is common for the police officer's Police Association to pay their defence legal fees.

The Coalition acknowledges the fact that the public service profession of policing is a complex, difficult and dangerous one. Police officers have sworn to serve and protect us, and should be remunerated for their work. However, this should not extend to police officers accused of serious wrongdoing who are unable to fulfill their duties due to conditions that restrict their ability to perform their duties.

The Ontario Association of Chiefs of Police found in a survey they conducted in 2008 that 52 officers in the province were on suspension at that time. Their annual salaries and benefits added up to about \$4.8 million. Suspending without pay a police officer charged with a serious crime would not only preserve the integrity of public funds, but also a perception of trust in the justice system for the victim's family and the public, especially in cases where the police officer is accused of a serious crime, such as manslaughter or murder.

The Justice for Abdirahman Coalition would echo the words of William Blair, the former Chief of Police in Toronto, who wrote in a 2010 white paper on behalf of the Ontario Association of Chiefs of Police that "there is simply no credible argument for continuing to pay officers charged with such serious criminal offences, particularly when doing so gravely damages public trust in their police service. Although police officers should be protected by the law when operating in the good faith performance of their duties, the law should not shield police officers from the consequences of serious criminal misconduct unrelated to the performance of their duties".