

POLICE OVERSIGHT REVIEW: REFORM RECOMMENDATIONS

PREPARED FOR: Honourable Justice Michael H. Tulloch and his Review Team
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*The **Justice for Abdirahman Abdi Coalition** would like to dedicate this report to Abdirahman Abdi (may his soul rest in peace) and the countless women and men who have needlessly lost their lives to police violence.*

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O ye who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do.

Surah An - Nisa, Verse 135



JUSTICE FOR ABDIRAHMAN

REFORM # 1 – MAKE THE SPECIAL INVESTIGATIONS UNIT ACCOUNTABLE TO THE LEGISLATURE

CURRENT CHALLENGE

Presently, the Director of Special Investigations Unit (“Unit”) reports to the Attorney General of Ontario.¹ This structure has been criticized by both the police and public as it creates real and perceived government intrusion into how the Special Investigation Unit functions.

RECOMMENDATION

Given that the Special Investigations Unit is responsible for multiple public institutions, such as the various municipal police forces and the OPP, it needs a degree of protection from government interference. For this reason, the Special Investigations Unit should be accountable to the legislature in order to increase real and perceived independence from the government. Currently, the Special Investigation Unit’s independence from the government is underscored by a memorandum of understanding and policy directives. Often, these documents are not readily available to the public further perpetuating the perception of collusion.

We recommend that the *Police Services Act* be amended so that the Special Investigations Unit is made accountable to the Legislature and not the Attorney General.

Alternatively, increased transparency and perceived impartiality can be facilitated by taking the structure of the Special Investigations Unit out of the *Police Services Act* and creating a separate act that governs all of the police oversight bodies.

¹ Legislative Assembly of Ontario. Government of Ontario. *Police Services Act*. Toronto: Canada. R.S.O. 1990. c. P.15, s. 113 (8).

Models:

- The **British Columbia Police Complaints Commissioner** can be used as a model. The Police Complaints Commissioner is appointed by the Legislative Assembly and is an independent officer of the Legislature.² The Commissioner is at arm's length from the government and reports to a special all party committee appointed by the government.³ This structure avoids any real or perceived undue influence or interference from government or political influence. To a certain extent, it also insulates the Commissioner from the "law and order politics" of partisan politics.⁴
- The **Office of Police Integrity** (Victoria, Australia) – Subsection 9(1) of the *Police Integrity Act* 2008⁵ states that, "The Director is an independent officer of the Parliament."
Further, subsection 9(7) provides that "In particular, and without limiting subsection (6), the Director is not subject to the direction or control of the Minister in respect of the performance or exercise of the Director's functions or powers".

² Legislative Assembly of British Columbia. Government of British Columbia. *Police Services Act*. Victoria: Canada. R.S.B.C. 1996. c.367, s. 47.

³ Note: With the exception of finances and budgetary issues.

⁴ Cavallaro, James L. "Crime, Public Order and Human Rights" online: (2003) International Council on Human Rights Policy http://www.ichrp.org/files/summaries/10/114_summary_en.pdf

⁵ Victorian Legislative Assembly. Government of Victoria. *Police Integrity Act*. Melbourne: Australia. NO. 34. 2008.

REFORM # 2 – CLEAR DEFINITIONS SET OUT IN LEGISLATION THROUGH CONSULTATION WITH STAKEHOLDERS

CURRENT CHALLENGE

To date, the Special Investigation Unit continues to use the very first definition of “serious injuries”, which was proposed by the Honourable John Osler. This definition was developed in consultation with the Ontario Association of Chiefs of Police in 1991 but without any input from the public.

RECOMMENDATION

The present definition is unduly limited to bodily harms. Much has changed since the early 1990s. Of note, we now have a greater appreciation for the impact of police violence on the psychological well-being of individuals and communities.⁶ For this reason, psychological harm must be included in the definition of “serious injuries” in order to protect victims of police violence who are at most risk of developing serious mental illnesses such as post-traumatic stress disorder and depression. Psychological harm has broad reaching impacts on an individual’s health, productivity levels, socio-economic status and housing status.

In addition, “excessive/disproportionate use of force” must also be defined in consultation with police bodies and criminal law experts. There need to be clear rules and regulations regarding when the use of force is considered legitimate and when it is not. The standard the Special Investigation Unit must employ is to ask whether the subject officer exhausted all other options before resorting to the force that caused the serious injury in question.

⁶ Geller, Amanda and Fagan, Jeffrey and Tyler, Tom and Link, Bruce G, “Aggressive policing and the mental health of young urban men,” *American Journal of Public Health* 104(12), 2321-2327.

REFORM # 3 – NON-COMPLIANCE WITH THE SPECIAL INVESTIGATION UNIT'S INVESTIGATIONS AMOUNTS TO SERIOUS MISCONDUCT

CURRENT CHALLENGE

At the moment, the *Police Services Act* requires that all police officers cooperate fully with the Special Investigation Unit; however, there are no effective enforcement mechanisms.⁷ Police Chiefs and officers who obstruct the Unit's investigations do not face any consequences.⁸

RECOMMENDATION

Enforcement mechanisms would facilitate greater compliance with investigations and uphold the integrity of the Special Investigations Unit's oversight role.

To this effect, the provincial legislature should draft a regulation, which necessitates that any failure to cooperate or any obstruction of the investigative process by the Police Chief and/or police officers will amount to an act of serious misconduct. The Director of the Special Investigations Unit should have the discretionary authority to refer incidents for discipline. Specifically, where the Police Chief or police officers breach legislative and regulatory requirements relating to cooperation with the Unit's investigations, the Unit's Director should refer these to the Ontario Civilian Commission on Police Services (now the Ontario Civilian Police Commission) for consideration under the discipline process.

Moreover, oversight bodies should be empowered so they may ensure compliance through deterrence measures such as publicizing incidents of noncompliance. With respect to the

⁷ Legislative Assembly of Ontario. Government of Ontario. *Police Services Act*. Toronto: Canada. R.S.O. 1990. c. P.15, s. 113 (9).

⁸ Laura Kane, "SIU head blasts Toronto police chief for co-operation failures" *The Toronto Star*, August 29 2013, Accessed September 12, 2015, https://www.thestar.com/news/gta/2013/08/29/siu_head_blasts_toronto_police_chief_for_cooperation_failures.html.

Special Investigations Unit, greater compliance can be guaranteed by making the failure to cooperate with an investigation an offence punishable by fine or discipline consistent with similar provincial offences.

Behaviours that would constitute misconduct include but are not limited to:

- Not furnishing notes
- Not providing surveillance videos
- Witness officers not making themselves available for interviews

Finally, the Special Investigations Unit should be empowered to make an application to the courts for determinative settlement of disputes between it and the Police Chiefs in cases of non-compliance.

REFORM # 4 – STANDARD OF “REASONABLE SUSPICION”

CURRENT CHALLENGE

At present, the Office of the Independent Police Review Director (OIPRD) will only investigate a complaint or refer it to discipline in cases where there are reasonable grounds to believe that the police officer’s actions constitute misconduct. Reasonable grounds will be made out were “an ordinary and cautious person to believe that misconduct occurred”.

RECOMMENDATION

The current standard is onerous, and being a “cautious person” is a needless qualifier. We recommend that the standard be changed to “a reasonable apprehension of misconduct”. That is, the investigative power of the OIPRD should be triggered where there is a “reasonable suspicion” that the subject officer may have engaged in professional misconduct or conduct in contravention of the *Police Services Act*.

It is significant that, in the context of a criminal investigation, the “reasonable suspicion” standard focuses on the question of whether someone is involved in criminal activity. The standard of “reasonable suspicion” is like the “reasonable and probable grounds” standard in that there must be an objective basis for the suspicion but the “reasonable suspicion” standard requires a lower degree of probability.

The reasonable suspicion standard also ensures that complaints of misconduct are not being screened out the system for want of evidence. While there must be a proper basis for requiring police officers to cooperate with oversight investigations, effective oversight in the public interest would be materially impaired if police officers were only required to cooperate when their regulator has evidence of each essential element of the breach, which, if believed by a hearing panel, could result in a finding of professional misconduct.

Given the power imbalance between the police and the citizenry, there should be a presumption of public honesty.

REFORM # 5 – REFERRALS BETWEEN OVERSIGHT BODIES

CURRENT CHALLENGE

Under the current framework, each police oversight body operates in a silo. There is no meaningful communication between the three oversight bodies. If a matter does not fall within a particular oversight body's mandate, that body will simply cease its review. There is no mechanism in place to facilitate the transfer of evidence obtained during its investigation to the appropriate oversight body.⁹

Complications resulting from the aforementioned compartmentalization of these bodies can manifest in a number of ways. For instance, the Special Investigation Unit's review of an incident may determine that there was no criminal conduct on the part of a subject officer. This however does not rule out the possibility of an incident raising concerns that should be dealt with under a police service's disciplinary process. Presently, there is no legislated mechanism for making this type of referral or sharing evidence.

RECOMMENDATION

If the Unit's Director believes, on reasonable grounds, that a criminal offence has been committed, he/she must refer the matter to the Crown Attorney for prosecution.¹⁰ If this threshold is not met, but there are concerns of professional misconduct, the Director is not mandated to initiate a complaint with the OIPRD. This failure to refer pertinent cases to their appropriate oversight body creates gaps in the investigative process. Simply enacting provisions that would open the channels of communication between the three police oversight structures would lend itself to a significantly more comprehensive approach to ensuring fair and impartial policing.

⁹ Ombudsman Ontario. Government of Ontario. *Oversight Unchanged, Submission to the Independent Police Oversight Review*. Paule Dubé. Toronto: Canada. October 2016.
<https://www.ombudsman.on.ca/Files/sitemedia/Documents/Resources/IPOR-EN-linked.pdf>.

¹⁰ Legislative Assembly of Ontario. Government of Ontario. *Police Services Act*. Toronto: Canada. R.S.O. 1990. c. P.15, s. 113 (7).

As previously elucidated, the Unit does not share its case files with the OIPRD. Similarly, the OIPRD also fails to share information with the Unit. Such a substantial inconsistency lends itself to potentially mishandling evidence pertaining to prosecutable conduct if an officer has indeed committed a crime.

We recommend the following:

- The OIPRD have a mechanism for feeding information and evidence to the Special Investigations Unit if it determines that the officer(s) in question may have committed a criminal offence.

- In cases where injury is caused, but the threshold of the SIU's "serious injury" definition is not met, particularly in situations where racism or racial bias is alleged to have been a factor, complainants must be entitled to, and ensured of, an independent investigation conducted by the OIPRD.

Each police oversight body be compelled to refer incidents falling outside their mandate to the appropriate police oversight body for consideration. The province should establish information-sharing protocols to facilitate this referral process amongst oversight bodies.

REFORM # 6 – INDEPENDENT AUDITING

CURRENT CHALLENGE

The Special Investigations Unit performs its own internal audits of a few self-identified cases.

RECOMMENDATION

The structure of the Special Investigations Unit must be monitored for both the quality of its service delivery and its impact on police performance. Auditing is necessary for the purpose of identifying problems and their causes in an effort to realize improvements in the functionality of the Unit. The Unit must be held accountable for its effectiveness, efficiency and legitimacy. As previously discussed, it should be accountable to the Legislature.

In order to further safeguard the Special Investigation Unit's integrity, it should be subject to an annual independent audit. Independent audits should be carried out by a third party as opposed to the current system that sees the Unit evaluating itself. A suggestion here would be to hire KPMG, Deloitte or other independent evaluators. Also, instead of the Unit staff being given the liberty to select a few cases to study per year, it may be prudent that such studies be done in partnership with the Board of Directors.

Here are some potential evaluation strategies:

- Audits of complaint files
- Audits of training and recruitment of investigators
- Audits of implementation of the recommendations of the Special Investigations Unit
- Surveys of public awareness of the Special Investigations Unit and the complaints process

- Surveys to determine the satisfaction of the public awareness of complaints and police officers with the oversight body and the complaints process
- Surveys of public confidence
- Analysis of data on police misconduct

Finally, it is imperative that the Unit's budget and expenses be publicly reported.

REFORM # 7– MEANINGFUL DISCLOSURES OF SPECIAL INVESTIGATION UNIT REPORTS

CURRENT CHALLENGE

At the moment, it is not clear to the public how the Special Investigations Unit reaches the decisions it does since reports are not made public in any meaningful way. Significant portions of the Andrew Loku report have been redacted. The release of the aforementioned report was only realized after considerable public pressure was placed on both the Unit and the Premier's Office.

RECOMMENDATION

All Special Investigation Unit reports should be made public while maintaining the privacy interests of involved parties and witnesses. In the interest of maintaining public confidence, all Unit reports should be released to the public upon their conclusion. Withholding reports in their entirety does little more than erode trust between the public and the oversight body in question. The act of heavily redacting reports is often perceived as an attempt to obfuscate; many members of the public in turn focus on the portions that are withheld rather than those that have been made available to them. Despite the public's need to access the findings of Unit investigations, it is also critical that the privacy interests of civilian witnesses, witness officers and subject officers (assuming no charges have been laid) be taken into consideration.

Reports should, at a minimum include:

- the basis for SIU jurisdiction,
- a description of resources deployed,
- a summary of facts/evidence,

- whether a decision to (not) report to the Crown was reached, and
- the reasons for such a decision.

If information is withheld or redacted, it is essential that the reason for omissions/redactions be made clear to the public. This can be done without disclosing the information in question (e.g. Names of involved parties, portions of statements that could otherwise be used to identify involved parties). As per above, the burden of omission should be placed on the Unit. All omissions must be justified in order to maintain public confidence in the process.

It is necessary for there to be a review of the SIU's current confidentiality policy with respect to rationales redactions. The Special Investigations Unit issues a Confidentiality Assurance. This Assurance provides that privacy and confidentiality rights are protected to the extent possible. The inability of the SIU to adequately balance between disclosing as much information as possible to the public, and the need to protect the confidentiality of investigative work is an ongoing concern. The Unit Report should be structured in such a way that redactions appear with less frequency. If there is sensitive information included in the report that is not pertinent to the case in question, this information should be omitted from the report. This way when the final report is released, frustrations over a lack of transparency can be neutralized.

An Appellate system should be established in order to rectify inadequate investigations or unreasonable decisions (consider OPCC). Failsafe's are necessary to ensure that any system can correct itself if an error occurs. A comprehensive appeals process must be established to assess SIU investigations that appear to be inadequate. An appeals process would assist in rectifying cases carrying with them considerable discrepancies, or cases producing decisions that appear to contradict findings in the report. There should be mechanisms in place for injured parties to appeal both the procedure and the decision.

If subject officers or witness officers refuse to cooperate with an investigation, that information should be included in the report. An officer refusing to cooperate with an investigation can impact its outcome. If pertinent information is omitted from a Special Investigation Unit report as a result of a refusal to cooperate, this should be made clear upon release of the report in question. The number of officers who refuse to cooperate, and whether they are witness or subject officers, should also be indicated. The report should indicate how, and to what degree, the investigation has been impacted by a refusal to cooperate.

REFORM # 8 – IMPROVING REPORTING, COLLECTION, PRODUCTION AND ACCESS TO DATA

CURRENT CHALLENGE

Only high level data and statistics (gender, type of occurrence, case type, police service, average number of investigators assigned to incident) is currently available to the public by one oversight body - the Special Investigations Unit (SIU) . It is also not clear if the other oversight bodies have public aggregate data. The data released by the SIU is not relevant in understanding if there is a pattern or issue in the actions of police when there is an interaction with someone that results in serious injury or death. Essentially, you cannot change what you do not measure.

RECOMMENDATION

A critical component to the oversight process and should be part and parcel of public service. Creating improved data reports and a platform for reporting would not only increase transparency in the process of oversight bodies' investigations, it would assist with mending public perception and trust in the actions of police officers and police services.

As well, enhancing the data collected should be linked with data that is accurate and clear. For instance, a commonly cited statistic that causes concern is that 97% police officers are cleared after SIU investigation¹¹. This data is skewed as it includes cases of suicide or self-harm where police were present, and not just instances where police were directly involved in causing serious injury or death. Clear, comprehensive and accurate data would provide the ability to oversight bodies, the province, municipalities and the public to identify the scope of profiling, unequal enforcement, when there is use of force by police officers and for

¹¹ Ministry of the Attorney General of Ontario. Government of Ontario. *Review Report on the Special Investigations Unit Reforms prepared for the Attorney General of Ontario*. Honorable George W. Adams. Toronto: Canada. 2003. Implementation of the Recommendations (Recommendations 1 to 8). <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/adams/recommendations1to8.php>.

what reason, as well as deaths resulting from police encounters/custody. It would also assist these groups in addressing issues or patterns that arise from the data and reports.

With these challenges and possible solutions in mind, we are recommending specific action items.

Firstly, we recommend introducing an occurrence report that would provide specific details of occurrences between police officers and civilians that result in serious injury or death. Details should be released depending on the particular situation. For example, if the subject officer is a repeat subject officer, the officer's name should be made public and specific details regarding the occurrence should be released into the public domain.

Secondly, we recommend that a tracking database be created which would be used and managed by the Special Investigations Unit and OIPRD. Presently the OIPRD and police services post reports on disciplinary hearings and decision on their websites. While this is important information, more data and data in a different form - specifically aggregate data where incidents, subject officers, hearings, charges and decisions are rolled up into numbers - can be used to create reports and track trends is required.

Notably, this database would track police officers who have been a subject officer in oversight body investigation and would have a flag if an officer's name has been a subject officer more than once. In these cases, the oversight bodies would ensure to take this as important information in their investigations as it could indicate a pattern among repeat subject officers. Mandatory reporting to track repeat subject officers and misconducts should be ensured. Addressing this pattern is vital as any perception of abuse of power or unreasonable uses of force could undermine the trust between police and police services and the communities they serve.

Furthermore, this database would hold a selection of data collected by the oversight bodies which would be detailed for the purposes of investigation. This data would be released publicly in aggregate form only, in order to protect the privacy of police officers serving their communities. However, if the subject officer is charged, the officer's name should be released along with details regarding the situation. This tracking database, and the release of data it holds, would be an item listed separately from the occurrence report. The creation of this database would support transparency in the oversight system, as it would provide members of the public with the ability to research and track trends using released statistical data.

Below, we offer a suggestion on the structure of the database and data variables. These suggestions would have to be further discussed and fleshed out if this recommendation is to be implemented.

Database Views

In a database management system, a view is a way of portraying information in the database.

- Public availability (for charged officers) of aggregate database views for:
 - A specific police officer
 - A specific police percent
 - A specific police service

A database scheme is purposed below that ensures both of these requirements are balanced for the interests of all stakeholders:

List of Aggregate Views Available to the Public:

- Number of Incidents where Status = Cleared, or
- Number of Incidents where Status = Informal Discipline, or
- Number of Incidents where Status = Formal Discipline
 - a) by Location
 - b) by Postal Code
 - c) By Precinct Name
 - d) By Police Service
 - e) By Race of the Subject Officer
 - f) By Race of the Civilian
 - g) By Gender of the Subject Officer
 - h) By Gender of the Civilian
 - i) By Mental Health Status (yes or no flag)

- Number of Incidents where Status = Cleared, or
- Number of Incidents where Status = Informal Discipline, or
- Number of Incidents where Status = Formal Discipline
 - a) by Precinct Name vs. Race of Subject Officer/Civilian Gender of Subject Officer/Civilian vs. Mental Health

 - b) by Postal Code vs. Race of Subject Officer/Civilian vs. Gender of Subject Officer/Civilian vs. Mental Health

Please see **Appendix A** for the suggested database schema. The database schema is the skeleton structure and layout that represents the logical view of the entire database and its components.

REFORM # 9 – END “POLICE INVESTIGATING POLICE” IN CASES INVOLVING MISCONDUCT

CURRENT CHALLENGE

After “screening-in” a complaint, the OIPRD may investigate the matter itself *OR* refer the matter to the Police Chief of the officer for investigation¹². The issue that arises when the OIPRD refers the matter to the Police Chief of the officer is the perception of bias and conflict of interest it creates in the process of investigation. This is police investigating police – an aspect that should be removed as an option.

RECOMMENDATION

OIPRD should conduct all investigations or an independent third party (a civilian-only investigative/adjudication process) to investigate the matter. There is a legitimate concern that a civilian-only investigative/adjudication process may be perceived by most police officers and police services as being inadequate and unsympathetic to police concerns and their operational realities. However, we are recommending that civilians be exclusively involved in the investigation of complaints but refer matters to the police chief for discipline as aligned with the current systems. This process would encourage more effective internal self-governance and accountability while also developing more powerful but collaborative civilian oversight and investigative models.

Ultimately, we believe that this is a balanced, fair and effective recommendation that would:

- 1) Be regarded by most members of the public as the most independent investigative model;

¹² Legislative Assembly of Ontario. Government of Ontario. *Police Services Act*. Toronto: Canada. R.S.O. 1990. c. P.15, s. 59 (2).

- 2) Create a more accountable organizational culture that will inform the investigative process due to the absence of police experience and influence/culture;
- 3) Enhance the level of confidence and cooperation in complainants as they would interact with non-police investigators, thereby reducing their fear of repercussions from police investigators; and

Provide police with a stronger public validation of their position due to the independence of the civilian investigative process.

REFORM # 10 – INSTATE A MANDATORY CORONER'S INQUEST

CURRENT CHALLENGE

Presently, there is no automatic call for an inquest when a death of a civilian is a result of police action - such as a shooting - according to the Office of the Chief Coroner's statement in 2016¹³. However, this is not, in actuality, clear as the Office has sent mixed messages regarding this mandatory nature of an inquest. Inquests are mandatory if the person is deemed to be in police custody at the time of the incident that leads to the death, however the semantics regarding what it means to be in custody differs from case to case¹⁴ thereby resulting in some inquests not being called. As well, the decision to call an inquest is often made by the regional supervising coroner for the area where the death happened, along with the investigating coroner. Furthermore, the chief coroner has the power to order an inquest if he feels that one is necessary¹⁵. This is a matter of concern as it leaves that decision to probe a death of a civilian due to police action at the discretion of the regional supervising coroner, investigating coroner and/or the chief coroner. In some cases, these roles choose not to call an inquest due to different understandings of their role and the decision-making process used to call an inquest.

RECOMMENDATION

Call a mandatory inquest at every instance of when a civilian dies due to the actions of police officers. As well, there should be a clear definition for oversight bodies and the Office of the Chief Coroner regarding what it means to be "in police custody". The Province of

¹³ Gallant, Jacques, "Police keeping identity secret of officer who killed woman's son", *Toronto Star*, July 4 2016. Accessed September 16, 2015, <https://www.thestar.com/news/gta/2016/07/04/police-keeping-identity-secret-of-officer-who-killed-womens-son.html>.

¹⁴ Gallant, Jacques, "Police keeping identity secret of officer who killed woman's son", *Toronto Star*, July 4 2016. Accessed September 16, 2015, <https://www.thestar.com/news/gta/2016/07/04/police-keeping-identity-secret-of-officer-who-killed-womens-son.html>.

¹⁵ Gallant, Jacques, "Coroner to review decision not to hold inquest into police death of Kitchener man", *Toronto Star*, July 8 2016. Accessed September 16, 2015, <https://www.thestar.com/news/gta/2016/07/04/police-keeping-identity-secret-of-officer-who-killed-womens-son.html>.

Ontario's Ministry of Community Safety and Correctional Services states that the Coroner's Act indicates that an inquest is mandatory if a person dies while in police custody¹⁶. For example, if a police officer shoots or injures a civilian and that person become debilitated due to that action, they should be considered detained and in police custody. Therefore, if that person dies, a mandatory coroner's inquest must be called. The issue of semantics and unclear definitions that currently surround the calling of an inquest will continue to impact how police officers, police oversight bodies and police services are perceived by the wider public. Therefore, not only should there be a clearer definition, the process itself should be made transparent.

¹⁶ Ministry of Community Safety and Correctional Services. Government of Ontario. *Common questions about death investigations*. Toronto: Canada.
http://www.mcscs.jus.gov.on.ca/english/DeathInvestigations/CommonQuestionsAboutCoronersInvestigations/OCC_common_questions.html.

REFORM# 11 - ABANDONED AND WITHDRAWN COMPLAINTS

CURRENT CHALLENGE

Police Officers during the course of their duty have the ability to mistreat or even harm a citizen. When a citizen is mistreated or harmed, one of the recourses they have is to put forth a police complaint. Complaints serve multiple purposes as they allow citizens to find solutions, report problems, and raise awareness of policing institutions. As such, complaints should not be viewed as a threat to police policies and procedures or to individual officers, but rather should be considered an opportunity to receive public feedback that can strengthen organizational policies and procedures. The current process does not provide adequate mechanisms and resources for citizens to express complaints about police encounters, as it is difficult to navigate the complaint process. Moreover, citizens do not have any assurances that their complaint will not result in retaliation from officers or police services. While it is an offence under s. 79(1) of the Police Service Act for police to harass, coerce, or intimidate any person in relation to a complaint, if it does so occur, there is little assurance that actions can be addressed through current complaint processes.

RECOMMENDATION

We recommend that the current police complaint process be facilitated so that complainants have immediate recourse in the event of police retaliation. Secondly, we recommend that the complaint process be facilitated so that an ordinary person would be able to navigate the process. Moreover, we recommend that the province establish a group of Civilian Liaison Officers whose primary role would be to facilitate police complaints with OIPRD or initiate SIU notifications of incidents.

In order to ensure their independence and neutrality, Civilian Liaison Officers must face four constraints that would ensure their separation from police services. Firstly, the Civilian Liaison Officer cannot be housed within a police service. Secondly, Liaison Officers cannot

have police service experience or have family members who are current or retired police officers. Thirdly, the Liaison Officer role should be housed under the Province's Ministry of Community and Social Services instead of the Ministry of Community Safety and Correctional Services to be completely separated from law enforcement. Lastly, the community should be able to petition a particular person to be a liaison officer for their area.

The main responsibilities of Civilian Liaison Officers will be to:

- Fill out OIPRD police complaints;
- initiate a SIU Notification of an Incident;
- facilitate civilian complaints;
- coordinate with civilians providing witness statements for SIU or OIPRD or Police Professional Standards Investigators;
- update civilians with status changes of ongoing investigations;
- create awareness in the community of the availability of this service;
- participate in community events to promote Civilian Liaison Officers, be certified in Mental Health First Aid (MHFA) & and Applied Suicide Intervention Skills Training (ASIST);
- attend mandatory indigenous cultural sensitivity and anti-racism training;
- work closely with the nearest Ontario Network of Sexual Assault/Domestic Violence Treatment Centres; and,
- display a willingness to travel within the designated community to help facilitate complaints.

To become a Civilian Liaison Officer, the person must have over 100 hours experience dealing with the community they would like to serve, must have a post-secondary degree or diploma related to Social Science, must have great interpersonal and communication skills,

must have strong writing and editing skill, must have a proficiency in the use of Windows, Excel, PowerPoint and Internet Explorer, must have First Aid and CPR training, must pass an Ontario Police Vulnerable Sector Check (PVSC), must have a valid G license or equivalence, must have experience working with mental health and should be able to speak other non-English or French languages.

In addition, the Civilian Liaison Officer must be provided with access to a vehicle provided by the province, must be provided with reimbursement for their gas and vehicle maintenance, must be housed in an office space that is near a bus stop (1-2 minute walk), must be housed in an office space that provides free parking to civilians, must be housed in an office space that is accessible to disabled peoples and must be housed in an office space with internet access.

Finally, we recommend that the collection of race-based data regarding the use of force by the police must be conducted on a permanent basis by the OIPRD for incidents not falling within the mandate of the SIU. The race-based data collection must include the age, gender/sexual identity, physical and/or mental disability of the civilian(s). In addition, the description of the incident must include the police service involved, the rank, experience, age, gender, race and occurrence report of the subject and witness officer(s), as well as the outcome of the case (charges laid or officer cleared).

REFORM #12 – PHASE-OUT POLICE INVOLVEMENT IN SPECIAL INVESTIGATIONS UNIT

CURRENT CHALLENGE

The process of retaining retired police officers to conduct investigations on active police officers raises fundamental concerns about accountability and fairness. There is a question whether the police can in fact conduct fair and impartial investigations of themselves. This very concern about the fairness police investigating police has been mentioned in a report regarding the RCMP members investigating other RCMP members in cases involving serious injury or death.¹⁷ The report focused on the way in which investigations of police-involved deaths were carried out. The report found serious cause for concern with more than two-thirds of the cases being handled inappropriately.¹⁸ In a quarter of the cases, the investigator personally knew the officer under investigation.¹⁹ In one-third of the cases, the investigator was of an equal or lower rank than the officer under investigation.²⁰ These findings highlight the perceived conflicts of interest related to the involvement of former or retired police officers in SIU investigations of active police officers.

There are a number of reasons that prompt civilian oversight bodies to utilize former or retired police officers. The strongest of them, being that former or retired officers offer qualifications and experience that are often difficult to find. Although it can be acknowledged that former or retired police officers may offer a level of experience, the perception of a lack

¹⁷Civilian Review and Complaints Commission for the RCMP. Government of Canada. *Police Investigating Police – Final Public Report*. Paul Kennedy. Ottawa: Canada. 2009. <https://www.crcc-ccetp.gc.ca/en/police-investigating-police-final-public-report>.

¹⁸Civilian Review and Complaints Commission for the RCMP. Government of Canada. *Police Investigating Police – Final Public Report*. Paul Kennedy. Ottawa: Canada. 2009. <https://www.crcc-ccetp.gc.ca/en/police-investigating-police-final-public-report>.

¹⁹Civilian Review and Complaints Commission for the RCMP. Government of Canada. *Police Investigating Police – Final Public Report*. Paul Kennedy. Ottawa: Canada. 2009. <https://www.crcc-ccetp.gc.ca/en/police-investigating-police-final-public-report>.

²⁰Civilian Review and Complaints Commission for the RCMP. Government of Canada. *Police Investigating Police – Final Public Report*. Paul Kennedy. Ottawa: Canada. 2009. <https://www.crcc-ccetp.gc.ca/en/police-investigating-police-final-public-report>.

of impartiality or accountability can outweigh the value they provide. At the same time, there are other avenues available for civilian oversight bodies to obtain qualified and experienced personnel.

RECOMMENDATION

Our recommendation calls for the phasing out of police involvement in SIU investigations by the year 2019. Furthermore, this recommendation should be mandated by legislation. If civilian oversight bodies are concerned about the level of qualification and experience of their investigators, they may alternatively use other police agencies outside the province or external provincial investigation bodies where available, to conduct investigation.

REFORM # 13 – DIVERSITY AND REPRESENTATION

CURRENT CHALLENGE

Our increasingly diverse social context has a great implication on policing and oversight bodies. This is because perceptions of needs, values and expectations often vary greatly between the police/civilian oversight bodies and members of different social groups.²¹ This poses a significant challenge in terms of balancing such conflicting demands. At the same time, police officers may sometimes hold certain biases towards certain groups that constitute the key population of the area they police.²² In this, it is vital that police services and civilian oversight bodies to be committed to diversity and representation programs. The primary objectives of this diversity and representation strategy would to improving confidence in civilian oversight bodies and policing amongst members of vulnerable groups and reducing the impact of police cultural.²³

RECOMMENDATION

We recommend that civilian oversight bodies and police services should improve their diversity and representation strategies in the following ways. Firstly, we recommend that there should an executive commitment that begins at the top, with total executive support. In doing so, the Special Investigations Unit and OIPRD must retain independent employment equity experts to develop concrete, measurable, and attainable goals to increase the number of racialized people working for oversight bodies, particularly African Canadians. These oversight bodies must commit to have racialized people in positions of responsibility and not tokenizing their bodies. The SIU must actively recruit investigators from cultural and

²¹Kešetović, Želimir, “Understanding diversity in policing: Serbian perspectives”, *An International Journal of Police Strategies & Management*. (2009) 32:3. 431-445.

²²Kešetović, Želimir, “Understanding diversity in policing: Serbian perspectives”, *An International Journal of Police Strategies & Management*. (2009) 32:3. 431-445

²³Kešetović, Želimir, “Understanding diversity in policing: Serbian perspectives”, *An International Journal of Police Strategies & Management*. (2009) 32:3. 431-445.

racially diverse backgrounds in order to safeguard their mission and be representative of the people they serve.

Secondly, we recommend employees and management are educated on diversity programs, policies and achievements by introducing a mandatory training/competency programs that ensure that diversity principles are taught to all employees and to all levels of management. In doing so, oversight bodies and police forces must develop an anti-racism curriculum and training program to be incorporated into any existing training programs on the use of force for police officers and investigative training for oversight bodies. This must be mandatory for recruits, new officers, serving officers, SIU investigators, members of the SIU Director's Resource Committee, and personnel working in liaison and outreach positions. The training should be designed and delivered by independent experts in anti-racism to ensure a full understanding of racially biased policing and racial discrimination. The training program should be independently and regularly evaluated to assess its efficacy; it should also be provided as a refresher on a regular basis.

REFORM #14 – BETTER SUPPORT FOR SEXUAL ASSAULT SURVIVORS

CURRENT CHALLENGE

Sexual assault is a crime that can be devastating on many levels: emotionally, physically and psychologically. Sexual assault can happen to women, men, transgendered people, young or the elderly. A person can be sexually assaulted by a stranger, their partner, dates, coworkers, acquaintances or family members. People in authority and professionals can also commit sexual assault.²⁴ According to the Special Investigation Unit's 2014-2015 annual report, sexual assault allegations accounted for 15.4%.²⁵ This is the second highest occurrence next to custody injury.

Many survivors of sexual assault are reluctant to report for many reasons, including those related to one's natural response to a traumatic experience and to the systemic barriers which diminish victims' access to the legal system. In addition, commonly held attitudes and beliefs about sexual assault engender feelings of shame in the victim.²⁶ This can have an even more profound effect if the perpetrator is a person of authority.

RECOMMENDATION

Survivors of sexual assault can be further traumatized if the investigators are former or retired police officers, hence the need to phase out police from the Special Investigation Unit process. We recommend that efforts be made to take a multi-disciplinary approach that includes the Special Investigations Unit investigators, survivor advocates (this can be someone who works at a rape crisis centre), mental health workers and counselors. We

²⁴ Sex Crimes Unit. Toronto Police Service. City of Toronto. *A Guide for Sexual Assault Survivors*. Toronto: Canada. 2016. https://www.torontopolice.on.ca/publications/files/print/a_guide_for_sexual_assault_survivors/

²⁵ Special Investigation Unit. Government of Ontario. *Annual Report 2014-2015*. Mississauga: Canada. 2015. http://www.siu.on.ca/pdfs/siu_ar_2014_15_ltr_final.pdf

²⁶ "Criminal Justice Division. Alberta Justice and Solicitor General. Government of Alberta. *Best Practices for Investigating and Prosecuting Sexual Assault*. Edmonton: Canada. 2013. https://justice.alberta.ca/programs_services/criminal_pros/documents/sexualassaulthandbook-policecrown.pdf

also recommend that the Special Investigations Unit employee one lead investigator who is responsible for training other investigators on how to properly conduct alleged sexual assault investigations. In addition to keep up to date with new sexual assault training the lead investigator would also serve as a great resource internally for all sexual assault cases.

Furthermore, we recommend that proper protection be provided to survivors of sexual assault who proceed with making a complaint to the Special Investigations Unit.

APPENDIX A

Table Name: <u>Incidents</u>	
Attribute Name	Attribute Details
Incident ID	A unique identifier for each incident
Officer ID	The officer's budge number
Type	The incident is either a OIPRD complaint or a SIU investigation
Status	<p>Current status of the investigation</p> <p>In progress = Investigation still going on</p> <p>Cleared = The police officer was cleared</p> <p>Formal Discipline = The police officer was formally discipline for the incident</p> <p>Informal Discipline = The police officer was informally discipline for the incident</p>
Citizen ID	Unique sequence number identify the Citizen involved with the incident
Postal Code	The first 3 sequence subset of the postal code of where the incident occurred.
Incident Date	Date the incident occurred
Incident Type	<p>This displays the manner the police officer was involved with the actual incident</p> <p>Direct = The police officer was directly involved with the incident</p> <p>Indirect = The police officer was indirectly involved with the incident</p> <p><u>Example of Indirect Involvement:</u> "The officer was present when a suicide occurred when a citizen injured themselves"</p> <p><u>Example of Direct Involvement:</u></p>

	"The officer is accused of violating the civil rights of a citizen"
Decision Date	Date the decision of the investigation is released
Incident Details	Detailed explanation of the incident
Decision Details	Explanation of the decision by the investigating body
Open to the Public	<p>Is this specific incident open to the public?</p> <p>If the Status equals Formal Discipline then Yes all attributes of this table and other attributes linked to this specific incident is open to the public.</p> <p>Note: If the Status equals Cleared or Informal Discipline then the information is still available to the public but in an aggregated view. This aggregate view does not capture individual information of the police officer.</p>

Table Name: <u>Citizen</u>	
Attribute Name	Attribute Details
Citizen ID	Unique sequence number identify the Citizen involved with the incident
Race	<p>Perceived Race of the citizen involved in the investigation</p> <p>Using the "Traffic Stop Race Data Collection Project TSRDCP - Ottawa Police Service" definition for selecting race of the citizen involved with the interaction with the police officer.</p> <p>Source: https://www.ottawapolice.ca/en/about-us/resources/TSRDCP_York_Research_Report.pdf</p>
Age	Age of the Citizen when the incident occurred
Gender	Individual's gender
Mental Health	<p>Does the citizen have a mental illness?</p> <p>Yes or No</p> <p>Definition of the mental illness is defined by Public Health Agency of Canada: http://www.phac-aspc.gc.ca/cd-mc/mi-mm/index-eng.php</p>

Table Name: <u>Officer</u>	
Attribute Name	Attribute Details
Officer ID	The officer's budge number
First Name	The First name of the officer
Last Name	The Last name of the officer
Officer's Rank	Rank of the police officer when this incident occurred Chief of Police / Commissioner / Chief Constable Deputy Chief of Police / Deputy Chief Constable Staff Superintendent Superintendent Staff Inspector Inspector Sergeant Major Staff Sergeant Sergeant / Detective Police Constable 1st Class / Detective Constable Police Constable 2nd Class Police Constable 3rd Class Police Constable 4th Class Cadet
Precinct Name	The officer's Precinct Name or Police Station Name where this incident occurred
Police Service	The police service of the officer where this incident occurred

Table Name: <u>Postcode</u>	
Attribute Name	Attribute Details
Postal Code	The first 3 sequence subset of the postal code of where the incident occurred.
Description	The description of the area where the incident occurred by on the Postal Code K2H: Ottawa (Queensway / Copeland / Carlington / Carleton Heights) M3M: Toronto Downsview L6R: Brampton Northwest N1G: Guelph Central
Location	Municipality or township where the incident occurred

- Below is an example of simple query of all incidents involved on April 7, 2016 with this database

Table Name: Incidents										
Incident Id	Office ID	Type	Status	Citizen ID	Postal Code	Incident Date	Decision Date	Incident Details	Decision Details	Open to Public
123456	4543	SIU	In progress	11112	K2H	April 7, 2016	N/A	Officer is claimed...	N/A	Private
123457	7723	OIPRD	Cleared	11113	N4V	April 7, 2016	August 30, 2016	Officer is claimed...	Police Service Decision is ...	Private
123458	2322	OIPRD	Formal Discipline	11114	M3M	April 7, 2016	July 15, 2016	Officer is claimed...	Police Service Decision is ...	Public
123459	2322	OIPRD	Cleared	11115	L6R	April 7, 2016	September 2, 2016	Officer is claimed...	Police Service Decision is ...	Private
123460	3433	OIPRD	Informal Discipline	11116	N1G	April 7, 2016	June 18, 2016	Officer is claimed...	Police Service Decision is ...	Private

Table Name: Citizens				
Citizen ID	Race	Age	Gender	Mental Health
11112	Black	19	Male	No
11113	Asian	44	Female	No
11114	White	32	Male	Yes
11115	White	22	Female	No
11116	Middle Eastern	24	Female	No