



“Oversight Enhanced”

Submission to the
Standing Committee on Justice Policy
regarding Bill 175,
Safer Ontario Act, 2017

Paul Dubé
Ombudsman of Ontario
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Reinforcing Police Oversight

- 1 Designing an effective and credible system of police oversight in Ontario has proved challenging. Since 1974, there have been dozens of cases in which the use of force by police – especially the use of lethal force on people in crisis – has raised profound questions about policing standards, training and accountability. As a result, there have been more than a dozen reviews and numerous recommendations for reform. Despite incremental improvements through the years, Ontario’s police oversight system has continued to attract criticism and undermine public confidence in policing. More recent incidents – like the fatal shootings of 19-year-old Sammy Yatim on an empty Toronto streetcar, and Andrew Loku at a Toronto residence for individuals living with mental challenges – have intensified calls for greater accountability and transparency in police oversight. When the government responded to these concerns by appointing Justice Michael Tulloch to lead yet another review of Ontario’s police oversight regime, I was cautiously optimistic about the prospect of meaningful change.
- 2 After his Independent Police Oversight Review conducted consultations throughout the province, including with my Office, Justice Tulloch issued more than 100 recommendations for comprehensive reform of Ontario’s oversight of police.¹ Many echoed recommendations I made in my submission² to the review, including that citizens should have the right to complain to my Office about the Office of the Independent Police Review Director and the Ontario Civilian Police Commission – as they already can about the Special Investigations Unit.
- 3 I am pleased today to see that most of these recommendations are on the brink of becoming law through Bill 175, *Safer Ontario Act, 2017*.³ This is truly an historic day for accountability, transparency and credibility in police oversight. I commend the province for introducing these long-overdue reforms. As an Officer of the Legislative Assembly, I have broad powers of investigation and can issue reports and recommendations promoting constructive improvements to legislation, policies and practices for the benefit of Ontarians. I believe the public

¹ Justice Michael Tulloch, *Report of the Independent Police Oversight Review* (Ontario: 2017), online: <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/police_oversight_review/>.

² Ontario Ombudsman, *Oversight Unchanged: Submission to the Independent Police Oversight Review* (Ombudsman Report) P. Dubé (Toronto: Ombudsman of Ontario: 2016), online: <<https://www.ombudsman.on.ca/resources/speeches-and-articles/speeches/2016/submission-to-the-independent-police-oversight-review>>.

³ Bill 175, *Safer Ontario Act, 2017*, online: <http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=5295&detailPage=bills_detail_the_bill>.

interest will be well served by expanding Ombudsman oversight to all three of Ontario's police oversight bodies.

The Ontario Ombudsman and Police Oversight

- 4 My Office has authority to investigate – independently and impartially – individual and systemic complaints about the administrative conduct of more than 1,000 public sector bodies at the provincial and local level. This includes most provincial tribunals.
- 5 However, my authority to review complaints related to police and police oversight has always been fragmented. My Office is unable to consider any complaints about municipal police, or the policing operations of the Ontario Provincial Police (OPP).⁴ My Office can and does still consider some complaints about the Ontario Provincial Police, as evidenced by the 2011 report, *In the Line of Duty*, on our systemic investigation into how the OPP and the Ministry of Community Safety and Correctional Services addressed operational stress injuries affecting police officers.⁵

Ontario's three police oversight bodies

- 6 In Ontario, responsibility for police oversight has been shared between three independent, civilian bodies created under the *Police Services Act*: The Special Investigations Unit (SIU), the Office of the Independent Police Review Director (OIPRD), and the Ontario Civilian Police Commission (OCPC).
- 7 The SIU, established in 1990, investigates cases of serious injury and death resulting from police conduct. Its Director can lay criminal charges against involved officers in the wake of an SIU investigation. The Director must report the results of the SIU's investigations to the Attorney General, including when no charges are laid.
- 8 The OIPRD, established in 2007, is responsible for receiving, managing and overseeing all public complaints about police. The OIPRD accepts complaints

⁴ The Ombudsman is precluded from dealing with complaints about the OPP coming within Part V of the *Police Services Act*, the Complaints and Disciplinary Proceedings section; see *Police Services Act*, RSO 1990, c P15, s 97.

⁵ Ontario Ombudsman, *In the Line of Duty*: Investigation into how the Ontario Provincial Police and the Ministry of Community Safety and Correctional Services have addressed operational stress injuries affecting police officers (Ombudsman Report) A. Marin (Toronto: Ombudsman of Ontario: 2012), online: <<https://www.ombudsman.on.ca/Resources/Reports/In-the-Line-of-Duty.aspx>>.

about the conduct of individual police officers, as well as the general policies and services of police departments. Although most complaints are investigated by police services, the OIPRD directly investigates some conduct issues. Public complaints, if supported, can lead to disciplinary proceedings under the *Police Services Act*.

- 9 The OCPC, also established in 2007, adjudicates such police-related matters as appeals of disciplinary decisions and budget disputes between police services and municipalities. It may also investigate the conduct of chiefs of police, police officers, and members of police service boards.⁶

Ombudsman oversight of the SIU, OIPRD, and OCPC

- 10 My Office has had limited authority to address complaints about the administrative conduct of Ontario's police oversight bodies. We have been able to review complaints about the SIU since its inception, but our jurisdiction over the OIPRD and the OCPC has been limited – we could only review concerns about matters falling outside of the public complaints and discipline process. Unsurprisingly, most complaints about these bodies involve issues that we are unable to review.
- 11 Despite these limitations, my Office has taken an active role in monitoring and, when necessary, investigating issues related to police oversight.

Oversight Unseen and Oversight Undermined

- 12 Two systemic investigations conducted by the Special Ombudsman Response Team identified serious structural and operational concerns regarding the SIU. The first report on these, *Oversight Unseen* (2008), focused on the SIU's operational effectiveness and credibility, resulting in 46 recommendations to improve the rigour of its investigations, address perceptions of pro-police bias, and ensure the SIU could hold police to account.⁷ The second, *Oversight Undermined* (2011), revealed that the Ministry of the Attorney General had inadequately supported the SIU in its role and had not responded to the first

⁶ Because Bill 175 replaces the term “police services boards” with “police service boards,” this submission adopts the new term throughout, except for the formal names of specific bodies.

⁷ Ontario Ombudsman, *Oversight Unseen: Investigation into the Special Investigations Unit's operational effectiveness and credibility* (Ombudsman Report) A. Marin (Toronto: Ombudsman of Ontario, 2008) [Oversight Unseen], online: <<https://www.ombudsman.on.ca/Resources/Reports/Oversight-Unseen.aspx>>.

report's recommended legislative reforms because of concern about police resistance.⁸The latter report made an additional 16 recommendations to improve police oversight in the province, 13 of which reiterated those in the first. Both reports recommended that:

- The SIU be required to publicly disclose Director's reports in cases involving decisions not to charge police officers who caused serious injuries;
- The government make it an offence for police not to co-operate with the SIU; and
- The government enact legislation separate from the *Police Services Act* to clarify and reinforce the SIU's mandate and independence.

13 For years, these recommendations remained unfulfilled, and the problems first highlighted in 2008 continued to damage public trust in the SIU's oversight of police.

Submission to the Independent Police Oversight Review

14 My Office has continued to monitor the province's police oversight bodies closely, and advocate for acceptance of our earlier recommendations. In October 2016, I met with Justice Tulloch and shared my Office's well-informed perspective on this issue in my submission to his review, making 16 recommendations to guide the province's reform of police oversight.

15 One of my key recommendations was that my Office should be given authority to investigate complaints about the OIPRD and the OCPC, as had always been the case with the SIU. This change would remedy the gaps and inconsistencies in the legislation that have deprived Ontarians of the effective oversight that only an Officer of the Legislature can provide.

16 To improve their independence and accountability, I also recommended that all three police oversight bodies be reconstituted under new legislation dealing specifically with their mandates and investigative authorities. I further recommended that they all have greater civilian representation within staff and management.

⁸ Ontario Ombudsman, *Oversight Undermined: Investigation into the Ministry of the Attorney General's implementation of recommendations concerning reform of the Special Investigations Unit (Ombudsman Report) A. Marin* (Toronto: Ombudsman of Ontario: 2011) [Oversight Undermined], online: <<https://www.ombudsman.on.ca/Resources/Reports/Oversight-Undermined.aspx>>.

- 17 Regarding the SIU, I recommended that it be required to disclose Director's reports in cases involving decisions not to charge – and that an offence be created, punishable by fine or imprisonment, for police failure to co-operate with SIU investigations.
- 18 And to improve information sharing between police oversight bodies, I recommended that they be given the authority to refer incidents falling outside their own mandates to one another, as appropriate, for consideration.
- 19 Justice Tulloch included these proposals in his final report's 129 recommendations. The government was closely guided by his report in drafting Bill 175, which it says implements 118 of his recommendations.⁹

Bill 175: A New Era for Police Accountability

- 20 I am pleased to see that Bill 175 comprehensively amends the province's policing legislation. Although it contains many important changes, some are of particular interest to my Office because they specifically respond to our recommendations for increasing the credibility, accountability, transparency and effectiveness of police oversight.
- 21 First and foremost, the bill gives my Office jurisdiction over all three police oversight bodies, under new names: The SIU will add "Ontario" to its name to become the OSIU, the OIPRD will become the Ontario Policing Complaints Agency and the OCPC the Ontario Policing Discipline Tribunal. We would also have authority to review complaints about a to-be-created Inspector General, which will oversee and monitor policing and police service boards. As I recommended, each oversight body is to be given a clearer mandate and robust statutory foundation, reconstituted under new legislation separate from the *Police Services Act*. To improve information sharing and reduce inefficiencies, they will also be empowered to refer matters falling outside their mandate to one another, as appropriate, for consideration.
- 22 Other changes in the bill would increase the accountability and transparency of each oversight body. The OSIU, consistent with our longstanding recommendations, will be required to disclose Director's reports publicly in most

⁹ "Improving Transparency and Accountability in Policing Oversight," Ministry of the Attorney General news release (2 November 2017), online: <<https://news.ontario.ca/mag/en/2017/11/improving-transparency-and-accountability-in-policing-oversight.html>>.

cases involving decisions not to charge. The OPCA – which, as the OIPRD, previously referred nearly all complaints about police misconduct to chiefs of police – will begin investigating these complaints directly within the next five years. The OPDT will solely adjudicate police disciplinary matters, and public complaints will no longer be adjudicated internally by police services.

Remaining gaps in Bill 175

- 23 While I commend the government for these positive changes to Ontario’s police oversight regime, there remain several gaps in the legislation that could hinder full, transparent, and effective police accountability.

Ensuring civilian representation

- 24 As currently drafted, there are insufficient safeguards in the legislation to ensure that complaints about police officers and police service boards will be investigated by *civilians*, rather than police officers or former police officers.
- 25 Public confidence in the independence and impartiality of those entrusted with investigating police is essential for credible police oversight. Although investigators who have a policing background might well be independent and impartial in their approach, the public might understandably perceive a conflict of interest. As I noted in my submission to Justice Tulloch, community confidence requires that civilian oversight bodies take all reasonable steps to avoid organizational structures and practices that give rise to a perception of bias.
- 26 In light of these concerns, Bill 175 prohibits the Ontario Policing Complaints Agency from appointing serving police officers as investigators and allows the Minister to limit the number of investigators who are former police officers.¹⁰ Serving and former officers also cannot be members of the Ontario Policing Discipline Tribunal, but there is no similar prohibition on Tribunal employees.¹¹ The Ontario Special Investigations Unit cannot employ serving officers, and its Director cannot be a former or serving police officer.¹² However, there are no limits on the number of former police officers that it may employ.

¹⁰ Bill 175, *Safer Ontario Act, 2017*, Schedule 2, *Police Oversight Act, 2017*, s 47(2) and (4).

¹¹ Note, the Director of the OSIU cannot be a former police officer. *Ibid*, Schedule 3, *Ontario Policing Discipline Tribunal Act, 2017*, s 2(2).

¹² *Ibid*, Schedule 2, *Police Oversight Act, 2017*, s 6(2), Schedule 4, *Ontario Special Investigations Unit Act, 2017*, s 5(2). This is consistent with the existing provisions of the *Police Services Act*, s 113(3).

- 27 The bill also does not address the issue of current or former police officers being appointed as the Inspector General, deputy Inspectors General, or inspectors. This means that police oversight organizations could include serving officers or be primarily constituted of former police officers. When investigating the SIU, my Office found that this was a serious issue that undermined the organization’s perceived independence.
- 28 In addition, there does not appear to be any provision to prohibit investigators who have a policing background from handling cases involving their former police services for the OPCA, OPDT or the Inspector General – although the bill does preserve this existing safeguard for the SIU.
- 29 Given the importance of public confidence in the police oversight process, I made the following recommendations in my submission to the Independent Police Oversight Review¹³ to enhance the perceived and actual independence and credibility of Ontario’s police oversight bodies:

Recommendation 1

Ontario’s police oversight bodies should take immediate steps towards ensuring greater civilian representation within staff and management.

Recommendation 2

Ontario’s police oversight bodies should ensure that no former police officers are placed in a position in which they are dealing with cases involving their former police service in any capacity.

- 30 Consistent with these recommendations, the Standing Committee on Justice Policy may wish to revise the draft bill to add or amend the relevant sections as follows:

Police Services Act, 2017 (Schedule 1)

Inspector General of Policing (Part VI)

[Add] Inspector General of Policing

¹³ In my submission to the IPOR, these two recommendations appear as follows: Recommendation 1 is Recommendation 5, Recommendation 2 is Recommendation 8.

79(1.1) (1) A member or former member of a police service, special constable or former police constable or an auxiliary member or former auxiliary member of a police service may not be appointed as Inspector General of Policing.

(2) A member of a police service, a special constable, or an auxiliary member of a police service may not be appointed as a deputy Inspector General.

[Add] Limit on officers, constables

87 (1.1) (1) The Inspector General may not employ or appoint as an inspector a member of a police service, a special constable, or an auxiliary member of a police service.

(2) The number or proportion of persons who were a member of a police service or a special constable and that are appointed as inspectors shall not exceed any limits that may be prescribed by the Minister.

**[Amend – changes underlined] Restrictions on inspections
Commissioner or O.P.P.**

89 (1) An inspector shall not conduct an inspection regarding a matter related to the Ontario Provincial Police if the inspector **was formerly** employed in the Ministry, unless the inspector **was formerly** employed on secondment in the Ministry.¹⁴

Employed by entity

(2) An inspector shall not conduct an inspection regarding a matter related to an entity if the inspector **was formerly** employed by the entity.

Employed by police service board

(3) An inspector shall not inspect a chief of police under this Part if the inspector and the chief **were formerly** employed by the same police service board.

Policing Oversight Act, 2017 (Schedule 2)

Ontario Special Investigations Unit (Part II)

[Add] Limit on officers, constables

7 (2.1) The number or proportion of persons who are former officials and that are appointed as investigators shall not exceed any limits that may be prescribed by the Minister.

¹⁴ My suggested revision to s 89(1) would apply if the reference to the inspector being employed in the “Ministry” is a reference to the inspector being employed with the “Ontario Provincial Police.” However, the meaning of this subsection is somewhat unclear.

Note, the same amendment would also need to be included in the transitional *Ontario Special Investigation Unit Act, 2017*.

Public Complaints, Investigations and hearings (Part IV) – OPCA

[Add] Restriction

68 (2) An investigator who was a member of a police service shall not be assigned to participate in an investigation that relates to a member of that police service, and shall not participate in such an investigation.

Ontario Policing Discipline Tribunal Act, 2017 (Schedule 3)

[Add] Restriction

4 (1) A person who is or was a person referred to in section 56 of the *Policing Oversight Act, 2017* may not be appointed as an employee.

Ensuring effective Ombudsman oversight

- 31** While under Bill 175 my Office would have jurisdiction over the Ontario Special Investigations Unit, the Ontario Policing Complaints Agency, and the Inspector General of Policing, it contains non-disclosure and confidentiality provisions, which as currently drafted, might seriously impede Ombudsman investigations of these organizations.
- 32** Under the *Ombudsman Act*, public sector bodies are required to comply with my Office's requests for information and documents during an investigation. Information in my possession is in turn protected by strong secrecy requirements. However, Schedule 1, the *Police Services Act, 2017*, contains a confidentiality provision that might shield relevant information in the possession of the Inspector General from my Office.¹⁵ Similarly Schedule 2, the *Policing Oversight Act, 2017*, contains non-disclosure provisions, which recognize the need for disclosure under the *Human Rights Code* and to the Information and Privacy Commissioner, but not to my Office. These non-disclosure provisions together with confidentiality provisions contained in the bill could frustrate my Office's attempts to obtain information during investigations of the Ontario Special Investigations Unit and Ontario Policing Complaints Agency.¹⁶ Schedule 4, *Ontario Special Investigations Unit Act, 2017*, contains similar secrecy provisions in connection with the OSIU.¹⁷

¹⁵ Bill 175, *Safer Ontario Act, 2017*, Schedule 1, *Police Services Act, 2017*, s.87(7).

¹⁶ *Ibid*, Schedule 2, *Police Oversight Act, 2017*, ss.10(10), 13, 50(10), 52.

¹⁷ *Ibid*, Schedule 4, *Ontario Special Investigations Unit Act, 2017*, ss. 9(10), 12.

- 33 In order to ensure my Office has the access to information it requires to carry out its oversight role effectively, the Standing Committee may wish to consider amending the bill, as follows:

Police Services Act, 2017 (Schedule 1)

Inspector General of Policing (Part VI)

[Amend – changes underlined] Confidentiality

87 (7) Any inspector appointed under this section shall preserve secrecy in respect of all information obtained in the course of his or her duties under this Act or the regulations and shall not communicate any such information to any person except,

- (a) as may be required in connection with the administration of this Act or the regulations;
- (b) to the inspector’s counsel;
- (c) as may be required for law enforcement purposes;
- (d) as may be required under the *Ombudsman Act*; or**
- (e) with the consent of the person, if any, to whom the information relates.

Policing Oversight Act, 2017 (Schedule 2)

Ontario Special Investigations Unit (Part II)

[Amend - changes underlined] Limits on disclosure

10 (10) The SIU Director, an employee in the Ontario Special Investigations Unit or an investigator may disclose personal information collected under this section only if,

- (a) the individual to whom the information relates has identified that information in particular and consented to the disclosure;
- (b) the disclosure is required by law, **including as required under sections 19 and 25 of the *Ombudsman Act* and section 31 of the *Human Rights Code***;

...

[Amend – changes underlined] Confidentiality

13 The SIU Director and every investigator, employee in the Ontario Special Investigations Unit and person exercising powers or performing duties at the direction of the SIU Director shall preserve secrecy in respect

of all information obtained by him or her in the course of exercising a power or performing a duty under this Part, and shall not communicate any such information to any person except,

- (a) as may be required in connection with the administration of this Act, **the Ombudsman Act**, the *Police Services Act, 2017*, the *Ontario Policing Discipline Tribunal Act, 2017* or the regulations made under any of them;

...

Note, the same amendments would also need to be included in Part III Ontario Policing Complaints Agency s.50(10) and 52, and the transitional *Ontario Special Investigation Unit Act, 2017* (Schedule 4) at ss. 9(10) and 12.

Ensuring an effective Ontario Special Investigations Unit

- 34** My Office's previous investigations into the Special Investigations Unit highlighted historical problems with police co-operation and timely response when it came to compliance with SIU directions and requests. Under the circumstances, the wording of section 33(1) of Schedule 2, the *Police Oversight Act, 2017* and section 32(1) of the transitional Schedule 4, *Ontario Special Investigations Unit Act, 2017*, causes concern. While these provisions require that officials comply "immediately or as otherwise specified under this Act" in response to OSIU directions and requests, this duty is substantially modified by the following phrase "**unless it is impracticable to do so.**" The determination of what is "impracticable" is open to diverse subjective interpretations, which may continue to frustrate the OSIU's efforts to conduct timely and effective investigations.
- 35** The intent of these provisions is to make it mandatory for police services to comply and co-operate with the OSIU. That intent is undermined – and the section neutered – by the qualifier "unless it is impracticable to do so." We have seen historically the reluctance of police chiefs to respect and comply with the SIU's mandate. This wording will enable and reinforce the problem the section was intended to remedy. Imagine the blow to transparency and accountability if open meeting legislation said meetings should be public "unless it is impracticable to do so".
- 36** I therefore strongly urge the Standing Committee to remove this highlighted phrase from the sections in question in order to preserve the intent of the legislation to ensure effective oversight and accountability.

De-escalation training – a key missing piece

- 37 In 2016, I released *A Matter of Life and Death*, my report on our investigation into the direction provided to police by the Ministry of Community Safety and Correctional Services for de-escalating conflict situations. Our investigation resulted in 22 recommendations to improve the Ministry’s guidance on how police are trained to use force and de-escalation techniques.¹⁸ The Ministry of Community Safety and Correctional Services accepted my recommendations for a new use-of-force model and training for police that would emphasize de-escalation techniques in conflict situations. Following two decades’ worth of recommendations by coroners’ juries and others to improve Ontario police training in de-escalation, our investigation showed that Ontario lags far behind other jurisdictions in this area.
- 38 Despite the Ministry’s commitment to implement my recommendations, and recognition that change is necessary, no concrete progress has materialized. We have heard a few public statements from the present Minister and her predecessor, but there is no new use-of-force model, and de-escalation training remains inconsistent – it varies widely from one police service to another.
- 39 Unfortunately, Bill 175 misses an important opportunity by failing to make specific reference to de-escalation training and adoption of a new use-of-force model. If this bill is to fully address the current crisis in confidence in policing, it should acknowledge that it is necessary to focus on the way that police interact with vulnerable citizens, such as those in crisis as a result of mental illness or addictions. Officers must be trained to understand the value of using their mouths before their guns. If the objective of this legislation is to make Ontario safer, a new use-of-force model that requires officers to use de-escalation in dealing with persons in crisis, and mandated de-escalation training, are key missing pieces.
- 40 Making police oversight bodies more accountable and transparent is crucial, but change must also happen on the front lines. Mandatory training on de-escalation would save lives, improve public confidence in police and, ideally, result in fewer troubling cases before the OSIU and other bodies covered by this bill.

¹⁸ Ontario Ombudsman, *A Matter of Life and Death: Investigation into the direction provided by the Ministry of Community Safety and Correctional Services to Ontario’s police services for de-escalation of conflict situations*, (Ombudsman Report) P. Dubé (Toronto: Ombudsman of Ontario: 2016), online: <<https://www.ombudsman.on.ca/Resources/Reports/A-Matter-of-Life-and-Death.aspx>>.

- 41 The time for study and consultation is long past. It is time for concrete and substantial changes in the way police are trained, carry out their duties, and are held accountable in Ontario. Ontarians are counting on the Assembly to make this happen.
- 42 Accordingly, the Standing Committee may wish to consider amending Schedule 1, the *Police Services Act, 2017*, as follows:

Police Services Act, 2017 (Schedule 1)

[Amend – changes underlined] *Declaration of principles (Part I)*

1. Policing shall be provided throughout Ontario in accordance with the following principles:

...

9. The need to ensure that any use-of-force model and police training emphasizes de-escalation of conflict in crisis situations.

Conclusion

- 43 Bill 175 represents a crucial step toward robust and transparent civilian oversight of police in this province. Ontarians are entitled to police oversight bodies that are transparent, accountable, effective and efficient. I encourage that the bill be amended to reflect the proposals in this submission, to further enhance this work. I commend the government's commitment to enshrining these principles in law and look forward to my Office's expanded role in this important area.



Paul Dubé
Ombudsman of Ontario