



## Black Legal Action Centre

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# CC26.2 Attachment 1

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1. In your view, are there gaps or deficiencies in the current oversight or complaints processes or bodies for policing in Toronto?

The Black Legal Action Centre (BLAC) is of the opinion that there are significant gaps and deficiencies in both the bodies mandated to execute police oversight in Toronto, and in the complaints process in the city.

One of the most significant deficiencies in the oversight of policing in Toronto is the lack of true independence in existing civilian oversight entities. In an academic paper titled “Policing the Police: Public Perceptions of Civilian Oversight in Canada”, a study was conducted that revealed that regardless of racial background, most respondents felt that police complaints should be investigated by independent (non-police) investigators. The study went on to reveal that less than 5% felt that complaints should be investigated by police personnel from the same police service.<sup>1</sup> The research suggests that, at the time of the survey, Ontario residents were not getting the type of police oversight that they expected.<sup>2</sup> This was confirmed in the findings of Justice Michael Tulloch who reported that under both the Ontario Civilian Commission on Police Services (OCCOPS) and the Office of the Independent Police Review Director (OIPRD), almost all complaints were investigated and adjudicated by internal or in-house investigators.<sup>3</sup> Other criticisms with the complaints process include: investigation integrity, investigation length, case feedback, case outcomes and disciplinary decisions.<sup>4</sup> BLAC is of the opinion that greater independence of civil oversight entities can increase trust in the police and can also facilitate increased community compliance. BLAC agrees with the sentiment that public mistrust of accountability systems can result in mistrust of the police themselves.<sup>5</sup>

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<sup>1</sup>Kwon, J., & Wortley, S. (2020). Policing the Police: Public Perceptions of Civilian Oversight in Canada. *Race and Justice*, 2153368720924560.

<sup>2</sup> Ibid

<sup>3</sup> Tulloch, M. H. (2017). Report of the independent police oversight review. Ministry of the Attorney General.

<sup>4</sup> Kwon, J., & Wortley, S. (2020). Policing the Police: Public Perceptions of Civilian Oversight in Canada. *Race and Justice*, 2153368720924560.

<sup>5</sup> LeSage, P. J. (2005). Report on the police complaints system in Ontario. Ministry of the Attorney General.

The lack of true independence relates directly to another flaw in the oversight system which is the consistent referral of complaints back to the police services in question. Despite this being the position of BLAC, it is important to note that these views are not unique to our clinic. Rather, they are reflective of academics, members of impacted communities and other stakeholders who work with and/or are impacted by decisions made regarding police oversight in the city. In March 2019, Wendy Gillis of the Toronto Star, reported that Gerry McNeilly, who was the OIPRD director between 2008 and 2019, felt that Ontario's police complaints system was taking a "step backwards" with new legislation that would reduce the independence of its investigations.<sup>6</sup> Gillis reported that between 2017 and 2018, "the OIPRD referred 1,153 complaints back to the same police services, retaining just 119".<sup>7</sup> It is important to note that this revelation was not new. Justice Michael Tulloch (2017) in his findings regarding police oversight had already revealed that the majority of complaints received by the OIPRD were still referred back to the police service that was under scrutiny for an internal investigation. What was evident was that despite being championed for its mandate and efforts, human rights and community organizations have consistently expressed doubt as to the levels of success claimed.<sup>8</sup> We believe that consistent referral of complaints back to the police body in question puts into question the true independence of oversight bodies and undermines objectivity in the complaints process.

October 27, 2020, Nicole Brockbank of CBC News reports that nearly all of the police officers disciplined in cases before disciplinary tribunals over the span of a decade were able to keep their jobs despite convictions for crimes.<sup>9</sup> While we are not asserting that these officers should have absolutely lost their jobs, we are in agreement with the position posited by former chair of Toronto Police Service Board, Alok Mukherjee who stated in Nicole Brockbank's report that "police officers must be held to a higher standard" and that "we need to do away with this old system of disciplining police officers."<sup>10</sup>

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<sup>6</sup> Gillis, Wendy. "Civilian oversight is taking 'a step backwards' in Ford's overhaul, outgoing police watchdog says", (30 March 2019), online: <<https://www.thestar.com/news/gta/2019/03/30/civilian-oversight-is-taking-a-step-backwards-in-fords-overhaul-outgoing-police-watchdog-says.html?rf>>

<sup>7</sup> Ibid

<sup>8</sup> Kwon, J., & Wortley, S. (2020). Policing the Police: Public Perceptions of Civilian Oversight in Canada. *Race and Justice*, 2153368720924560.

<sup>9</sup> Brockbank, N. Few Toronto police officers fired despite criminal convictions, discipline decisions show | CBC News. (2020, October 27). Retrieved October 30, 2020, from <https://www.cbc.ca/news/canada/toronto/toronto-police-discipline-1.5777218>

<sup>10</sup> Ibid

Other general deficiencies in police oversight include a lack of transparency into the decision making of entities like the Special Investigations Unit (SIU). This is an oft cited criticism of the body that is still relevant today. Ontario, which has had the longest experience with the SIU model, has consistently struggled with issues of independence, police co-operation and conviction rates.<sup>11</sup>

2. Currently, the Ontario Civilian Police Commission, the Office of the Independent Police Review Director and the Special Investigations Unit provide oversight on certain policing matters. What additional or different accountability mechanisms could improve the oversight of policing in Toronto?

While the advent of additional mechanisms may improve the oversight of policing in Toronto, true advancement cannot be met without the improvement of the already existing practices and policies within police oversight. Extensive research, investigations and literature has already been done on the additional measures that can be introduced to bring about improvements in this area. Despite this, many of the concerns relating to the issues still remain. Creative oversight mechanisms, such as public inquiries, criminal, regulatory or civil liability tools cannot replace political regulation of and policy direction to the police.<sup>12</sup> **Outside of government intervention, there needs to be a genuine and sustained effort to bring about improvements in self-governance, increased transparency and increased autonomy and strengthening of civilian oversight entities.**

Following the widely heralded recommendations of Justice Michael Tulloch (2017) regarding police oversight, it was felt that Bill 175 would aid in reducing racial bias within policing and contribute to strengthening police-community relationships.<sup>13</sup> New legislation has followed that has tempered the efforts of Bill 175, and has essentially limited the protection of civilian police complaints system to impose disciplinary actions.<sup>14</sup> We feel that an increased capacity to impose such disciplinary actions would improve the oversight of policing in Toronto. In its current form, these bodies do not appear to serve as a significant deterrent to police whose actions amount to misconduct in the execution of their duties.

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<sup>11</sup> Roach, K. (2014). Models of civilian police review: The objectives and mechanisms of legal and political regulation of the police. *Crim. LQ*, 61, 29.

<sup>12</sup> Ibid

<sup>13</sup> Ombudsman of Ontario. (2018). Oversight enhanced: Submission to the standing committee on justice policy regarding Bill 175, Safer Ontario Act, 2017. SCJP; Samuels, K. (2019, February 2). Safer Ontario act will increase distrust and erode police legitimacy. Toronto Star.

<sup>14</sup> Kwon, J., & Wortley, S. (2020). Policing the Police: Public Perceptions of Civilian Oversight in Canada. *Race and Justice*, 2153368720924560.

Historically, what has become evident is that the decisions that arise from disciplinary mechanisms for police, who have participated in misconduct, have overwhelmingly gone in their favour. We feel that such a system diminishes the credibility of police oversight and is indicative of a lack of considerable improvement in oversight efforts. Ultimately, what is evident is that “true civilian accountability - despite the series of reforms - remains out of reach”<sup>15</sup> and that residents of Ontario who desire independent oversight, are still often dismissed as “anti-police”.<sup>16</sup>

Despite the inclusive mandate of the Ontario Civilian Police Commission (OCP), questions have come up relating to whether its efforts could be amplified, if matters for which it has no particular expertise are eliminated from its mandate.<sup>17</sup> As it stands, it still has the potential to lead to confusion, the potential for the appearance of bias and decision making outside of its OCP’s core expertise.<sup>18</sup>

Generally speaking, we are of the opinion that despite its efforts, there still exists ambiguities in the decisions and recommendations put forth by the OCP. For instance, it was reported on August 7, 2020 that following a two-year investigation, the Ontario Civilian Police Commission had released a report with recommendations to the Windsor Police Service and Windsor Police Services Board.<sup>19</sup> Former Toronto police officer Jake Shen believes that the report is disappointing and could have been more specific.<sup>20</sup> Greater specificity would have helped largely in regards to how the police service can increase transparency in its hiring and promotional processes. Officer Shen believed that the report had the potential to bring about widespread change among police agencies in Ontario, but felt that it was a “wasted opportunity”.<sup>21</sup>

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<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> Tulloch, M. H. (2017). Report of the independent police oversight review. Ministry of the Attorney General.

<sup>18</sup> Ibid

<sup>19</sup> Report from Ontario Civilian Police Commission directs Windsor police to address transparency and diversity | CBC News. (2020, August 07). Retrieved October 30, 2020, from <https://www.cbc.ca/news/canada/windsor/windsor-police-service-board-ontario-civilian-police-commission-report-1.5677281>

<sup>20</sup> Ibid

<sup>21</sup> Ibid

3. Is there anything else you would like to tell the City of Toronto about oversight and accountability in policing?

The Black Legal Action Centre is of the opinion that reneging on the recommendations put forth by Justice Michael Tulloch and the legislation of the Comprehensive Ontario Police Services Act, 2019, has had a detrimental effect on oversight and accountability in policing within Toronto.

Additionally, action needs to be taken to ensure that there is significant representation from BIPOC communities on civilian-led oversight agencies. Without an explicit commitment and demonstrated action towards this effect, it would be arguably impossible to ensure that the needs and perspectives of these groups are represented.