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Chris Murray
City Manager
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October 30, 2020

Dear Mr. Murray,

Thank you very much for the invitation to share our views about police oversight in Toronto. In our view there are significant deficiencies and gaps in Ontario's police oversight and accountability mechanisms. These failings disproportionately impact those Torontonians – including Black residents, Indigenous persons, those with precarious housing or living with addictions and mental health issues – who unjustifiably bear the brunt of police stops, searches, and use of force. We believe the City of Toronto and the Toronto Police Services Board are in a position to remedy some of these failings.

In your letter to us you outlined three questions – I have responded to each one in turn below.

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

There are numerous issues with the current police oversight regime in Toronto, and indeed in Ontario more broadly. Many of these shortcomings were identified in Justice Tulloch's comprehensive 2017 review of Ontario's police oversight system.¹ Key findings and recommendations included:

- The Office of the Police Review Director (OIPRD) currently performs more of a screening and filtering function rather than an investigative one. Most police complaints are investigated by the police service of the subject officer, eroding public trust in police oversight. The OIPRD should not only oversee complaints, but should also investigate them as it is more impartial and independent than police services.
- The Special Investigation Unit's (SIU) mandate should be modified to be made more effective. The report recommended that the mandate define which serious injuries could be acted on, that all incidents involving a firearm be included in the mandate, that the SIU have discretion to lay a charge for offences uncovered during investigation, that the mandate include special constables and auxiliary members of a police force, and that the SIU be given discretion to conduct investigations into any criminal matter when it is in the public interest to do so.
- The obligation to notify the SIU should be set out in legislation, with over-notification being preferred to under-notification.

¹ Hon. Michael H. Tulloch. (2017). *Report of the Independent Police Oversight Review*. Retrieved October 30, 2020 from https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/police_oversight_review/.

These and other flaws in Ontario's police oversight and complaints systems remain unaddressed. Numerous legislative amendments that were passed in 2018 in response to these recommendations were repealed in 2019. Ontario continues to have a system where most police complaints are investigated and adjudicated by the police service they involve. Indeed, when the new *Special Investigations Unit Act* comes into force it will significantly *reduce* the scope of police obligations to notify the SIU.

Since Justice Tulloch's report in 2017 there have continued to be concerning reports about the failings of Ontario's police oversight mechanisms. Just this week, for example, CBC News reported that "just one percent of complaints made to the OIPRD about Toronto police officers in the last five years has led to a disciplinary hearing."² Furthermore, over the last 10 years, only 12% of investigations where the SIU laid charges against Toronto police have led to a disciplinary hearing against the officer involved.³ And none of the 21 Toronto police officers who were charged by the SIU but not convicted in court appeared before a police disciplinary hearing.⁴

Criminal charges against police officers are rare. The SIU Director can only lay charges if it is determined that there are reasonable grounds to believe an offence has been committed; prosecutors only proceed if there is a reasonable prospect of conviction using the criminal standard of proof - proof beyond a reasonable doubt. Disciplinary hearings are subject to a lower standard: prosecutors must only prove misconduct rather than criminal fault, and adjudicators use the lower evidentiary threshold of clear and convincing evidence. Because of these differences, one would expect disciplinary hearings to often follow from criminal charges, and retain the prospect of succeeding even where a criminal case has been dismissed. The stark contrast between the number of criminal cases pursued by the independent investigators and prosecutors and disciplinary hearings controlled by police services is deeply concerning.

This lack of effective oversight is especially concerning when viewed in relation to the disproportionate impacts it will have on Black Torontonians, Indigenous persons, and others with disproportionate amounts of police contact. For example, a 2020 report commissioned by the Ontario Human Rights Commission (OHRC) found that over the past twenty years Black people have been significantly over-represented in SIU cases involving the Toronto Police Service.⁵ Despite comprising 8.3% of Toronto's population, Black people were involved in 25.4% of SIU investigations between 2013-2017.⁶ During this same time period 38.5% of SIU "use of force" cases involved Black people, with Black males being over 4 times more likely to be in a "use of

²Nicole Brockbank. (2020). *Only 1% of public complaints against Toronto cops led to a disciplinary hearing in past five years*. Retrieved October 30, 2020, from <https://www.cbc.ca/news/canada/toronto/public-complaints-police-disciplinary-hearings-1.5778459>.

³ *Ibid.*

⁴ *Ibid.*

⁵ Ontario Human Rights Commission. (2020). *Use of force by the Toronto Police Service: Final Report*. Retrieved October 30, 2020, from <http://www.ohrc.on.ca/sites/default/files/Use%20of%20force%20by%20the%20Toronto%20Police%20Service%20Final%20report.pdf#overlay-context=en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black> at 40.

⁶ *Ibid.* at 52.

force” case than White males.⁷ SIU investigations involving Black civilians are more likely to result from proactive policing – discretionary decisions to stop or engage with civilians – than reactive policing activities such as calls for service.⁸ The report also found that Black people were approximately eight times more likely to be involved in a police shooting death than their presence in the general population would predict.⁹

All of the above examples point to the deficiencies in the existing police complaints and oversight mechanism. There are also, however, gaps in the complaints and oversight framework. This issue will be further addressed below.

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?

For many years the Canadian Civil Liberties Association has been advocating for the creation of an independent audit body. Currently all of Ontario’s police complaints bodies rely primarily on individuals to bring forward complaints. The SIU, whose jurisdiction should be is triggered without action by the injured individual, also relies on incident notification procedures to trigger an investigation. The SIU does not have a mandate to conduct systemic investigations.

Police accountability mechanisms that rely primarily on complaints and known incidents are insufficient.

First, relatively few individuals who experience mistreatment at the hands of the police come forward to file a police complaint.¹⁰ There are many reasons for this. Many individuals that experience negative encounters with police officers are often simultaneously facing multiple personal challenges, from precarious housing to mental health challenges, to addictions, to criminal charges. People may not be aware of the process for filing complaints - indeed a recent study found that, of those Torontonians who indicated they would file a police complaint if they experienced mistreatment, only 4% indicated they would file their complaint with a civilian police oversight agency, suggesting that the vast majority were unaware of this avenue of redress.¹¹ Even those who are aware of the process may not have access to the resources they need in order to successfully file a complaint. Individuals may also have been intimidated by police, fear reprisals for filing a complaint, and/or believe that they will not be treated fairly in the process. These concerns can be particularly salient for those who have been repeatedly

⁷ *Ibid.* at 52-53.

⁸ *Ibid.* at 73.

⁹ *Ibid.* at 49.

¹⁰ Research on unreported mistreatment at the hands of police is not extensive. However, a 2016 Crime Survey for England and Wales estimates that only 10% of those who have had negative experiences with the police will file a formal complaint. See: Office for National Statistics. (2016). *Perceptions of police contact and complaints process, years ending March 2004 to March 2010, Crime Survey for England and Wales*. Retrieved October 30, 2020 from <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/adhocs/005773tables28perceptionsofpoliccontactandcomplaintsprocessyearsendingmarch2004tomarch2010csew>.

¹¹ Jihyun Kwon & Scot Wortley.(2020). *Policing the Police: Public Perceptions of Civilian Oversight in Canada*. Race and Justice XX(X), doi: 10.1177/2153368720924560

targeted by police and have a pre-existing distrust of law enforcement. In a recent study of public perception of police oversight mechanisms in Toronto, Black respondents were “significantly” more cynical about the legitimacy of the police complaints process than Chinese or White respondents.¹² Compared to Chinese and White respondents, fewer Black respondents felt that a complaint against the police would be treated fairly.¹³ eg. surveillance) or because they are not aware of their legal rights.

Because of these barriers to filing complaints, complaints-based mechanisms will only ever capture a small portion of police misconduct. They will also tend to disproportionately fail Black Torontonians, Indigenous persons, those with precarious housing, individuals living with mental health and addictions challenges, sex workers, and other communities that already experience systemic discrimination.

An independent audit body, focused on ensuring that police officers are respecting individuals’ constitutional and human rights, can address many of these failings. They would be able to conduct ongoing audits of use of force, strip searches, street checks, search and seizure practices, conditions of confinement, and multiple other police practices. The utility of an audit-type investigation is most dramatically illustrated by the Ontario Human Rights Commission’s (OHRC) ongoing inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service. By requesting and independently analyzing police data, the OHRC has been able to shed light on highly concerning patterns of discrimination against Black Torontonians - notably, their experience with over-charging and with police use of force. This type of independent auditing and investigation should not be left to periodic special investigations and inquiries. It should be ongoing, and form a core part of police oversight processes.

We recognize that the Province has recently appointed the first Inspector General of policing, who will be focused on ensuring that police services across Ontario comply with the *Community Safety and Policing Act*.¹⁴ The mandate of this office, however, is broadly construed and is not explicitly focused on individuals’ constitutional and human rights and we have already heard criticisms from those who have been impacted by police violence that the oversight provided by the Inspector General will not be truly independent because the appointee is a former police officer. It will also be some time before the full inspectorate office is operational. The governing legislation is not yet in force and the immediate task of the new Inspector General will be working to set up the provincial Inspectorate of Policing and develop the associated regulations.¹⁵ Finally, the policing challenges faced by Toronto, the province’s largest municipality, are unique and would be better served by a dedicated municipal audit body.

¹² *Ibid.*

¹³ With respect to verbal abused, 66.4 of White respondents felt their complaint would be treated fairly, 46.2% of Chinese respondents felt the same, and 41.2% of Black respondents felt the same. In contrast, 37.9% of Black respondents felt their complaint would be treated unfairly, compared to 21.0% of White respondents and 19.6% of Chinese respondents. *Ibid.*

¹⁴ Solicitor General of Ontario. (2020). *Ontario’s First Inspector General of Police Appointed*. Retrieved October 30, 2020 from <https://news.ontario.ca/en/release/58643/ontarios-first-inspector-general-of-policing-appointed#quickfacts>.

¹⁵ *Ibid.*

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


The City of Toronto, working in partnership with the Toronto Police Services Board (“TPSB”), has the ability to remedy this gap in police accountability and oversight. The TPSB can require audits of a wide range of police practices, and regularly receives reports on such issues as police use of force and strip searches. For the most part, however, these reports are researched and written by the police service. The Board has also, on occasion, commissioned external experts to investigate and write independent reports on particular policing issues or events.¹⁶ Often, however, these independent investigations take place only after significant public outcry and concern.

The City of Toronto could work with the Toronto Police Services Board to formalize a standing audit body focused on respect for individual *Charter* and human rights. We do not believe this is the only improvement to police accountability and oversight that could be addressed on a municipal level. Research and discussion may identify other shortcomings. We note, for example, that both the Board and the City of Toronto have for several years been attempting to expand the role of the City Auditor General to encompass oversight of the Toronto Police Service. On August 18, 2020, the Toronto Police Services Board voted to support City Council’s request to amend the City of Toronto Act to expand the Auditor General’s jurisdiction.¹⁷ In our view, it would be very productive to have the City continue to work with the Toronto Police Services Board on enhanced municipal police oversight and accountability structures.

We urge the City to engage with the Board and pursue the creation of a standing, independent audit body to monitor police respect for Torontonians’ constitutional and human rights.

Thank you for your consideration, I would be pleased to discuss these issues further.

Sincerely,



Abby Deshman
Director, Criminal Justice Program

¹⁶ See e.g., John W. Morden. (2012). *Independent Civilian Review into Matters Relating to the G20 Summit*; Frank Iacobucci. (2014). *Police Encounters with People in Crisis*; Ombudsman Toronto Report. (2017). *An Investigation into the Toronto Transit Commission’s Oversight of its Transit Enforcement Unit*.

¹⁷ Toronto City Hall. (2020). *Virtual Public Meeting Agenda: Tuesday August 18, 2020*. Retrieved October 30, 2020 from https://www.toronto.ca/wp-content/uploads/2020/09/8e5a-public_agenda_aug_18.pdf.