

From: Ade Olumide Ade
Sent: December 10, 2022 6:57 PM
To: Avellino, Mafalda
Cc: Kogan, Jaclyn
Subject: Re: deputation to York Regional Police Board?

Dear Mafalda Avellino,

Thank you for your email.

The name of the Presenter is Ade Olumide

The topic is Request 1 and Request 2 re an Anonymized 120 Days Police Complaints Transparency Bill of Rights

Anonymized 120 Days Police Complaints Transparency Bylaw

Executive Summary 120 Days Police Complaints Transparency Bylaw

This Board should immediately implement a 120 Days Police Complaints Transparency Bill of Rights which includes; Comprehensive Ontario Police Services Act 165(1).. investigation is concluded within **120 days** ...(2) If the timing ... are not met ...give **notice ... every 30 days** ...(a) the complainant ... 167(2) ...shall **publish a de-identified summary...** on the Internet". There are ethical benefits in setting a precedent that can save lives in other provinces, Canada and the USA.

Request 1- Anonymized 120 Days Police Complaints Transparency Bill of Rights from 2019 to date which includes s167 Comprehensive Ontario Police Services Act and the 15 deficiencies listed below,

Request 2- Third party or Auditor General or Ombudsman Human Rights Review of all misconduct, service, policy, and internal complaints from the 2019 Comprehensive Ontario Police Services Act to date, so as to identify opportunities for improvement of existing policies and develop case study training materials AND OR consistent with the Japanese Kaizen continuous improvement principles, this review should be every 2 years.

Transparency is not anti-police because bad cops are in the minority, likely 10% or less and good cops are reputational victims of bad cops, therefore they also want the 120 Days Police Complaints Transparency Bylaw. For example, a USA NDI database was started by an Association of Law Enforcement Directors. Groups of academics or media or law enforcement associations in Alberta, Idaho, Chicago, Los Angeles, New York, Florida created police misconduct databases mentioned below.

They include names and are therefore generally conditional on public information sources like a finding of misconduct, a court case or media report, but since only 1% of complaints to the

OIPRD reach a hearing, **99% of complaints are hidden from the public**. In court the test for striking a claim is assuming the allegations are true, is there a common law cause of action? was a statute violated? Therefore, an anonymous database can deter systemic racism or arbitrary [contrary to Police Act 1(2,4,5)] OIPRD or Chief tests for not investigating or deciding that an investigation will not lead to sanctions or a hearing and Board tests for policy complaints.

Police priority 1 should be fighting crime, therefore Olumide does not support 100% defunding the police, he supports de-tasking the sworn police officers from non-crime fighting duties like mental health, traffic, construction site, Executive Services, Corporate Accounts, HR & Support, Community Relations and reallocating the savings to fund initiatives that address the root causes of crime.

In Newfoundland & Labrador and New Brunswick, the legislated deadline for a police misconduct investigation is 90 and 60 days respectively (no extensions), in Ontario, there is no deadline. A police misconduct investigation is not a criminal investigation, an anonymized copy of all Ontario Privacy Commissioner decisions (including access requests that relate to criminal investigations) are online. Ontario should be applauded for coming up with a “de-identified summary ... on the internet”

The request for a 120 Days Police Complaints Transparency Bill of Rights can be immediately implemented without changes to legislation. Police misconduct has a disproportionate effect on Indigenous people, visible minorities, caucasian female police officers. Ontario should speed up the proclamation of the Comprehensive Ontario Police Services Act so that a Chief of Police will have the power to suspend a police officer, without pay, when that officer is charged with or convicted of a serious offence.

Requests 1 & 2 are necessary because in hundreds of years, neither the RCMP or the military or any big City police force in North America has solved the problem of bad cops total financial and opportunity costs. There can be no question that the low cost (dedicated Privacy Act employee and internet portal) of a transparency bill of rights will reduce the cost of bad cops by creating a deterrent that counteracts the incitement from 4-year investigations and the lack of investigation or hearing of meritorious complaints.

Deterrent To False Complaints

WHEREAS the concern that complaints transparency would incite false allegations against police officers is incorrect because Police Services Act 79(2) implies that beyond all reasonable doubt evidence of any false complaint against an officer should lead to charges and a summary conviction offence with a penalty of up to \$2,000 and or up to 2 years in prison. If the allegations are of a criminal nature, that would also be an indictable offence based on Criminal Code 140 (1) “(a) making a false statement that accuses some other person of having committed an offence; (b) doing anything intended to cause some other person to be suspected of having committed an offence that the other person has not committed” that is punishable by up to 5 years in prison.

Comprehensive Ontario Police Services Act Complaints Transparency Deficiencies

Laws are only as good as the ethical judgment of law enforcement officers; however, legislators should not ignore loopholes that are being interpreted as permission to commit abuse of process by doing indirectly (violating s21b party to offence, 22.2, 23, 219 negligence that creates a risk to life or health or safety or security, 341a fraudulent concealment, 380(1a) defraud a service, Criminal Code) what cannot be done directly. The Act:

1. Does not expressly state that the one-page complaint summary or reconsideration request should be as **written by the complainant**, with the reason for any redaction that is contrary to the complainant's consent if applicable.
2. Does not include a de-identified internet summary (maximum of one page) of **ALL service or policy** complaints that were **screened out** by the OIPRD (public) or the Chief (internal).
3. Does not include a de-identified internet summary (maximum of one page) of **ALL service or policy** complaints that were **screened in** by the OIPRD (public) or the Chief (internal).
4. Does not include a de-identified internet summary (maximum of one page) of **ALL misconduct** complaints that were **screened out** by the OIPRD (public) or the Chief (internal).
5. Does not include a de-identified internet summary (maximum of one page) of **ALL misconduct** complaints that were **screened in** by the OIPRD (public) or the Chief (internal).
6. Does not include a de-identified internet summary of **AL Chief or Board or OIPRD service or policy or misconduct investigation or review decisions** re complaints **screened in** by the OIPRD (public) or the Chief (internal).
7. Does not include a de-identified internet transparency of the reasons for extending a misconduct investigation **beyond 120 days** and the reasons for the complainant's objection to an extension, if applicable.
8. Does not include a de-identified internet transparency of the reasons for OIPRD (public) or Chief (internal) **changing a complaint classification** from policy or service to misconduct or vice versa and the reasons for complainant to a change in classification, if applicable.
9. Does not include a de-identified internet transparency of the reasons for misconduct complaint: **refusal to investigate** or **discontinuance of an investigation** due to a resignation or other reasons or **complete reasons** why a completed investigation does not lead to a hearing (similar to CANLII, an internet summary is appropriate for quick reviews based on keyword searches), so that the public can hold the Chief and or Board and or OIPRD accountable for potential abuses [doing indirectly (violating a law) what cannot be done directly] of this and other provisions *158(1)(d)(ii) "having regard to all the circumstances, dealing with the complaint is not in the public interest"* *164 (1) "may cause*

an investigation to be discontinued if ... having regard to all the circumstances, continuing the investigation is not in the public interest”.

10. Does not include a de-identified internet transparency of the complainant or officer **reconsideration request** (if applicable) re refusal to investigate or discontinuance of an investigation.

11. Does not include a de-identified internet transparency of the OIPRD and or Chief and or Board **reply to a reconsideration** request.

12. Does not include a de-identified internet transparency of redacted contemporaneous **reasons for not providing notice** so that the public can hold the Chief and or Board and or OIPRD accountable for potential abuses [doing indirectly (violating a law) what cannot be done directly] of this and other provisions 165(3) *“notice does not apply if, in the opinion of the Complaints Director or chief of police, giving the notice may prejudice the investigation”.*

13. Does not include a de-identified internet transparency **from 2019** which although not yet proclaimed, is the date of the enactment of the Comprehensive Ontario Police Services Act so as to inter alia facilitate a human rights review of the complaints so as to improve existing policies and training.

14. Does not expressly state the lack of jurisdiction to violate the **Criminal Code or Charter**, it should be amended as follows; 158(1)(d)(ii) *“having regard to all the circumstances which includes compliance with the Criminal Code and the Charter of Rights, dealing with the complaint is not in the public interest”* 164 (1) *“may cause an investigation to be discontinued if ... having regard to all the circumstances which includes compliance with the Criminal Code and the Charter of Rights, continuing the investigation is not in the public interest”*

15. Does not expressly state **active criminal investigations** so as not to exclude complaints arising from a closed or dormant (more than 1 year) criminal investigation so that the public can hold the Chief and or Board and or OIPRD accountable for potential abuses [doing indirectly (violating a law) what cannot be done directly] of this and other provisions; *Postponement due to active criminal investigation or proceeding* 163 (1) *...Same, if Crown Attorney, prosecutor consulted re active criminal investigation* (2) *... Same, if Crown Attorney, prosecutor advises re active prosecution* (3) 165(3) *“notice does not apply if, ... giving the notice may prejudice the active investigation”.*

Constitutional Open Court Principle Applies To Police Complaints

Pais v. Toronto Police Service, 2022 CanLII 102580 (ON CPC) The Open Court Principle [17] The Commission’s adjudicative records are generally open to the public, in accordance with the open court principle: see *Toronto Star v. AG Ontario*, [2018 ONSC 2586](#). The *Tribunal Adjudicative Records Act*, 2019 (“TARA”) requires that the Commission make its adjudicative records available to the public, subject to its authority to make a confidentiality order. Adjudicative

records include the notice of appeal, transcript, evidence that is admitted in the proceeding, parties' submissions, and the Commission's decisions, along with the other documents listed in s. 1(2) of TARA.[18] As public access to adjudicative records is protected by [s. 2\(b\)](#) of the [Canadian Charter of Rights and Freedoms](#), restrictions on access are exceptional. Pursuant to s. 2(2) of TARA, the Commission may order that all or part of an adjudicative record be treated as confidential and not disclosed to the public if it determines that:

(a) matters involving public security may be disclosed; or
(b) intimate financial or personal matters or other matters contained in the record are of such a nature that the public interest or the interest of a person served by avoiding disclosure outweighs the desirability of adhering to the principle that the record be available to the public.[19] The test established by the Supreme Court of Canada for ordering publication bans provides further guidance when considering whether to override the principle that tribunal records should be open to the public: *Toronto Star* at paras. [89-93](#); *R. v. Mentuck*, [2001 SCC 76](#) at para. [32](#). The test was recently recast by the Supreme Court of Canada in *Sherman Estate v. Donovan*, [2021 SCC 25](#) ("*Sherman Estate*").[20] *Sherman Estate* outlines a three-part test. All three prerequisites must be met in order to properly impose a discretionary limit on openness:

1. court openness poses a serious risk to an important public interest;
2. the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
3. as a matter of proportionality, the benefits of the order outweigh its negative effects. [21] The person seeking to restrict access to adjudicative records has the onus of displacing the general rule of openness. Upholding the presumption of openness generally involves a recognition that neither individual sensibilities nor mere personal discomfort associated with participating in judicial or quasi-judicial proceedings are likely to justify a restriction on the open court principle. [22] **The public has a vital interest in understanding police discipline proceedings given the significant power police officers hold in our society. This requires that the public generally have a full understanding of the information relevant to those proceedings:** see *Ottawa (City) Commissioners of Police v. Lalande*, [1986 CanLII 2511](#) (ON SC) and *CBC v. Chief of Police*, [2021 ONSC 6935 \(CanLII\)](#).

Media Reports Highlighting Problems With The Police Complaints Process

<https://www.cbc.ca/news/canada/toronto/public-complaints-police-disciplinary-hearings-1.5778459> "3,806 complaints made to the OIPRD about Toronto Police .. two per cent, were substantiated, and only one per cent have gone before the Toronto police disciplinary tribunal... a disciplinary hearing was never held because the OIPRD **took too long to complete its report**... The system is not for the complainant and it's in favour of the officers .. the Chinese and Southeast Asian Legal Clinic in Toronto told CBC News that the slim chance of a public complaint ever going to a disciplinary hearing ... doesn't necessarily recommend it. "The system is not working for the public"

<https://www.cbc.ca/news/canada/toronto/ways-to-improve-police-oversight-ontario-1.5780527> "CBC News asked experts and stakeholders how they would ... improve **transparency and accountability** for both police services and the public ... As with investigations, where police often still investigate their own, experts say that police should not be the ones disciplining their own officers"

<https://www.aptnnews.ca/national-news/transparency-major-issue-at-police-watchdog-unit-in-quebec-says-new-report/> “ police watchdog **lacks transparency** when investigating complaints made by Indigenous people according to a new report by an Independent Civilian Observer”

<https://www.ottawalife.com/article/rapes-and-lies-the-cancerous-misconduct-at-the-ottawa-police-service> "... gross incompetence of the OPSB can be measured by their inaction on multiple files where OPS cops have committed serious and at times violent crimes against both citizens and their fellow employees without consequences. The OPSB's propensity to turn a blind eye to the victims of rape, sexual assault and misogyny have made them all accessories by default to the ongoing rape culture at the OPS. ...they have behaved as meek cowards ...while allowing OPS Chief ... to boss them around like children ... Ironically, it was ... who constantly and very harshly criticized Mayor ... city staff and other councillors over a **lack of transparency** her preponderance for **secrecy and not disclosing information** to the public or hiding behind convenient rules created by her fellow politicians and police management to not disclose information ... “

<https://www.cbc.ca/news/canada/ottawa/police-officer-mental-health-report-by-fake-psychologist-sexual-harassment-1.6083291>**the force had said there was no ...investigation... but reversed course after CBC** ...inquiring about the possibility of an internal investigation... called the OPS decision to do a criminal investigation "lip service." **"Why didn't they listen to me 15 years ago?** I feel like they're just playing games,"

<https://www.cbc.ca/news/politics/rcmp-discipline-mendicino-1.6321653> "The challenge that we're seeing is the time it's taken for these things to be investigated, for decisions to be made and for corrective measures to be implemented," he said. "But hopefully, we'll get to a place where the **two-year, three-year, four-year decision making process comes back down** to something that's reasonable and both parties involved can have closure in a reasonable timeframe."

Some Provinces Do Not Permit Extension Of The Deadline For Police Misconduct Investigations

WHEREAS New Foundland and Labrador “NFLD” & New Brunswick “NB” have 90 & 60 day legislated deadlines respectively, for police misconduct investigations, **no extensions, but there is no Ontario deadline.**

Royal Canadian Mounted Police Act 45.63 The Commissioner shall notify in writing the complainant and the member or other person .. the status of the investigation to date not later than 45 days after being notified of the complaint and monthly after that during the course of the investigation unless, in the Commissioner's opinion, to do so might compromise or hinder any investigation ... 45.64 As soon as feasible after the investigation of a complaint is completed, the Commissioner shall prepare and send to the complainant, the member or other person ..

Alberta Police Act 45(1) ... the chief shall cause the complaint to be investigated ... (7) If a complaint is being investigated .. the chief of police must advise the complainant in writing at least once every 45 days as to the progress of the investigation.

British Columbia Police Act Confidentiality of investigations 95(2) Despite subsection (1), the police complaint commissioner may make a disclosure described in subsection (1) if she or he considers it in the public interest. ...99 (1) An investigation into the conduct of a member or former member must be completed within 6 months .. unless (a) the police complaint commissioner grants one or more extensions ..(b) the discipline authority directs further investigation ... [if member's or former member's request for further investigation is accepted] or ... [adjournment of discipline proceeding for further investigation]. (2) The police complaint commissioner may grant an extension ... only if the police complaint commissioner is satisfied.. (a) new investigative leads are discovered that could not have been revealed with reasonable care; (b) the case or investigation is unusually complex; (c) an extension is in the public interest.

Manitoba Police Act 73(1) A police chief must, as soon as practicable, notify the independent investigation unit (a) when the police service receives a formal complaint ... (b) when the police service is conducting an investigation ... 73(3) When an investigation into a matter referred to in subsection (1) has been completed, the police chief must provide the civilian director with the results of the investigation... 76 The minister may make regulations respecting ... (b) public reporting on the results of such investigations, including the form and content of the reports.

New Brunswick Police Act 28.1(1) If the chief of police conducts an investigation .. the chief of police shall, within 30 days after the filing of the complaint (a) appoint as an investigator 28.2(1) Within 60 days after the appointment of an investigator, the investigator shall provide the chief of police with the full details of the investigation, including... (e) a summary of the investigator's findings and conclusions.

Newfoundland and Labrador Constabulary Act 24(3) Upon receipt of a complaint under subsection (1), the chief, or the deputy chief shall investigate the complaint and that investigation shall be completed as soon as is practicable but no later than 3 months from the date the complaint is filed or received.

Nova Scotia Police Act Referral to chief officer 71 (1) A complaint ... shall be referred to the chief officer of that police department in accordance with the regulations... (4) The chief officer shall report all complaints to the Complaints Commissioner at the time and in the manner prescribed by regulation [*Police 36 (1) An investigation must be completed no later than 60 days after the date the complaint was first made. (2) Despite subsection (1), the Complaints Commissioner may, on request before or after the time limit has expired, extend the time to complete the investigation if the Complaints Commissioner is satisfied that there are reasonable grounds for granting the extension and the extension will not unduly prejudice any member*].

Ontario Police Act 62 (1) If a complaint about the conduct of a police officer is referred under clause 61 (5) (a) to the chief of police .. the chief of police shall, on receipt of the complaint, promptly give notice of the substance of the complaint to the police officer who is the subject of the complaint unless, (a) in the chief of police's opinion, to do so might prejudice an investigation into the matter; ... 68 (1) The Independent Police Review Director shall cause every complaint retained by him or her under clause 61 (5) (c) to be investigated and the investigation to be reported on in a written report. ... (3) If at the conclusion of the investigation the Independent Police Review Director believes on reasonable grounds ... misconduct as defined in section 80 or unsatisfactory work performance, he or she shall refer the matter, together with the written report, to the chief of police ... (5) Subject to subsection (6), the chief of police shall hold a hearing ... 83(17) If six months have elapsed .. no notice of hearing shall be served unless the board, ... or the Commissioner, ... is of the opinion that it was reasonable, under the circumstances, to delay serving the notice of hearing.

Prince Edward Island Police Act 27(1) Within 90 days of being designated to conduct an investigation, or within such longer period as may be determined by the chief officer of the respondent, an investigator shall.. (b) submit a written report of his or her findings to the chief officer of the respondent.

Quebec Police Act 175. Not later than 45 days after deciding to hold an investigation and as needed thereafter during the course of the investigation, the Commissioner shall notify in writing the complainant, the police officer .. and the director of the police force .. of the status of the investigation, unless, in the Commissioner's opinion, to do so might adversely affect the investigation. 176. The investigation report shall be submitted .. within six months, except where the commissioner is satisfied that exceptional circumstances warrant otherwise.

Saskatchewan Police Act 41(1) In the case of a public complaint ... the chief shall give notice in writing to the PCC and the member .. the status of the complaint: (a) not later than 60 days after the day on which the report is recorded by the person who received it; and (b) every 60 days after the expiry of the period mentioned in clause (a) during the course of an investigation. ... (3) If the PCC receives notice pursuant to this section, the PCC shall, as soon as is practicable, give notice in writing to the complainant of the status of the complaint.