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POLICE COMPLAINTS REVIEW

BEFORE: THE HONOURABLE PATRICK LESAGE

Held at: Metro Hall
Toronto, Ontario

October 28th, 2004

1 --- Upon convening at 6:00 p.m.
2
3 DEAN NATHALIE DES ROSIERS: Good evening.
4 Thank you for coming tonight to an evening to participate
5 in a public meeting regarding Ontario's system of dealing
6 with public complaints regarding Police conduct.
7 My name is Nathalie Des Rosiers, I'm the
8 former president of the Law Commission of Canada and now
9 I'm the Dean at Civil Law at University of Ottawa, so I
10 was delighted to be asked by Mr. LeSage to moderate this
11 evening.
12 Patrick LeSage was asked in June by the
13 Attorney General of Ontario to review the current system
14 of dealing with public complaints regarding Police
15 conduct.
16 As you well know, Mr. LeSage is the former
17 Chief Justice of the Superior Court of Ontario. During
18 his distinguished twenty-eight (28) years on the bench he
19 has presided over some of Canada's most publicized and
20 complex cases and prior to becoming a judge, Mr. LeSage
21 began his career as a Crown Attorney in the Ontario
22 Ministry of the Attorney General and he became Director
23 of Crown Attorneys for Ontario.
24 In 1975 he was appointed to the County and
25 District Court; became Associate Chief Justice of this

1 Court in 1983 and in 1994 he became Associate Chief
2 Justice and then in 1996, Chief Justice of what is now
3 the Superior Court of Ontario. He held that position
4 until September 2002, when he became senior resident at
5 Massey College at University of Toronto.

6 Mr. LeSage was awarded several honorary
7 degrees from the University of Windsor and from
8 Laurentian University and he has earlier this year, he
9 has joined the firm of Gowling as Counsel and works in
10 the firm's Advocacy Department of Toronto.

11 I'm going to let Mr. LeSage speak and
12 explain what he has done this summer and summarize a
13 little bit what -- what's up for -- for this evening.

14 HONOURABLE PATRICK LESAGE: Thank you.
15 Thank you, Dean. This sounds like -- a little bit like
16 coming back to school after the summer vacation and tell
17 us what you've done this summer.

18 Well, I guess what I've done this summer
19 since my appointment to do the -- conduct this Review, is
20 that I've met with well over a hundred (100) groups
21 across the province. I've met informally with groups and
22 individuals in Toronto, Kingston, Ottawa, Sault Ste.
23 Marie, Thunder Bay, Kenora, Windsor, Hamilton, London,
24 and Ohsweken, which is the Six Nation Reserve just south
25 of Brantford.

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1 Many of the groups and individuals I met
2 also provided me with written submissions. In addition,
3 written submissions were received from a large number of
4 both groups and individuals who did not have an
5 opportunity to meet or speak with me.

6 Those submissions were received from a
7 wide spectrum of groups including Police-related groups,
8 community groups, legal groups, and First Nations
9 communities, both those that I have met with in person
10 and those who have submitted in writing briefs for my
11 consideration.

12 The -- originally we had a mid-August
13 deadline for submissions that had been -- we had set that
14 early on in the process and then quickly realized that a
15 number of people were not able to get their submissions
16 in by that time and we extended it to the end of
17 September.

18 Now, I should tell you, however, that we
19 are -- we're still receiving written submissions, but I
20 think that probably the end of this week or the very
21 latest, the end of next week, will be the -- the end of
22 receiving written submissions. Because it is more than
23 past the time when I should begin my -- my final, or at
24 least, preliminary writings.

25 We have compiled a compendium for our own

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1 use of the meetings that we've had to-date and of the
2 points that have been made about the Police -- the public
3 complaints process.

4 Among those issues, and these are just
5 some of the issues that have been raised with us and many
6 of the items I will enumerate have been raised
7 innumerable times. For instance, who should be able to
8 make a complaint?

9 Should it just be the person who is
10 directly affected by the complaint or should third
11 parties be allowed to make complaints or should third
12 parties in certain circumstances be allowed to make
13 complaints? Or should an interested group who was,
14 perhaps, not a witness, had no direct connection with the

15 event -- should they be allowed to -- to make a
16 complaint?
17 Another issue is what support or
18 assistance should be made available to Complainants,
19 particularly those persons who, perhaps, because of
20 language, literacy, or a host of other reasons are unable
21 to formulate a complaint themselves. And so what --
22 what's support it is and to what extent should assistance
23 be provide to those people?
24 We have discussed almost from the
25 beginning, the structure of a informal resolution

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1 process, because that has been a repeated theme from
2 groups that we have spoken with. The limitation period -
3 - what should be a limitation period? Should there be a
4 limitation period for the filing of complaints?
5 A question which is raised in many, many
6 instances, and that is the question of who should be
7 responsible for the investigation of the complaints? And
8 if it is not the Police who are to do the investigation,
9 what qualification should these investigators have?
10 Another issue is whether employees of a
11 Police Service other than Police Officers, civilian
12 employees, or Special Constables -- should they be
13 governed by the complaint system?
14 The role of Police Service boards in the
15 complaint system is a matter that has been discussed by
16 many. The retention of records of complaints, the
17 standard to be met before a hearing should be directed.
18 That is, the standard -- what standard of proof or what
19 standard of evidence should be before the -- the person
20 who would determine whether or not a hearing should be
21 directed.
22 And then at that hearing, what should be
23 the standard of proof? There are two (2) traditional
24 standards of proof that exist in the general law of this
25 country and that is the criminal standard which is proof

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1 beyond a reasonable doubt and the civil standard, which
2 is balance of probabilities. Or should there be a
3 standard in between that, which is the one that is most
4 frequently applied today?
5 Who should preside at a hearing if a
6 hearing is directed? And the appropriate appeal
7 mechanism, appropriate penalties, and a lot of discussion
8 about audits of the Police complaint process and
9 particularly, about policy complaints and what might be
10 referred to as systemic issues.
11 Well, those are some of the topics that
12 have been raised with us. And those ones that I've
13 referred are ones that have appeared numerous times in
14 the agenda of the various -- the over a hundred (100)
15 groups that I have met.
16 Before I report to the Attorney General, I
17 felt it absolutely essential that we hold some public
18 meetings. It seemed antithetical to an inquiry into a
19 public complaint process that we did not hold public
20 meetings. These other meetings of which I've spoken were
21 not private meetings, but yet they weren't public in the
22 sense that this meeting is this evening.
23 So, it was important to us that members of

24 the public are able to understand the issues and hear the
25 views of those that I have met with this summer, some of

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1 which I've just summarized; others which you will hear
2 from some of the presenters this evening.

3 I also want to have those that I have met
4 to hear what others that I have met have told me. After
5 these meetings, I'm inviting anyone to -- who wishes
6 still to make a written submission to make sure that it
7 gets to my by the end of next week which, I think, is
8 November 5th -- November 15th? Thank you.

9 My report will then be based on what I
10 have learned from the meetings that I have had with the
11 groups and the individuals across this broad province and
12 these public meetings and any comments I have received or
13 will subsequently receive.

14 Before we begin hearing from you this
15 evening, I'd like to turn the program back to Dean Des
16 Rosiers, who will provide you with some information
17 regarding how the meeting will progress. And she will be
18 the Chair of the proceedings this evening.

19 Now, I would like to have said that you
20 could make your presentation in any language. I regret
21 to say that we do not have the facility for that, but you
22 may make your presentation in either of Canada's official
23 languages, that is English or French. Dean Des Rosier?

24 DEAN NATHALIE DES ROSIERS: Thank you very
25 much. So I just want to tell you, the people who have --

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1 who are on the list to present tonight are people that
2 responded to the Notices of Public Meeting and have asked
3 to make a presentation.

4 Obviously, the -- the intent of tonight is
5 to participate in the development of public policy on
6 this important issue. So it is a meeting that is -- aims
7 at eliciting suggestions for change, suggestions for
8 improvement to the system for Mr. LeSage to listen to and
9 to consider.

10 So, the -- the rules are quite strict
11 because we have a long list of people who have asked to
12 present, so -- and they have been told that they only
13 have five (5) minutes to make their presentation. So
14 it's very important to stick to the five (5) minutes.
15 And I will help you out in maintaining that five (5)
16 minutes, so I will let you know when the five (5) minutes
17 have -- have lapsed.

18 So, we'll proceed with the order that has
19 been put on the door there. And I -- obviously, I'd like
20 -- I think it will be easier if people don't applaud in
21 between the -- the Presenters, because we lose time. And
22 -- so, I'll ask you to refrain from applauding.

23 And we will take a break at 7:45 to just
24 stretch our legs a little bit, come back quite promptly
25 so that we have enough time to listen to everyone. It's

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1 very important that -- that we have the opportunity to
2 listen to everyone.

3 So, I -- without further ado -- ado, I
 4 think we should start right now. I have to tell you,
 5 though, that if you feel that you haven't been properly
 6 heard, I think, please send your -- your comments. You
 7 know, if you feel you've been interrupted, you have the
 8 opportunity to send the rest of your comments before
 9 November 5th.

10 I'll -- you know -- we have the -- I have
 11 the address and there's the very good e-mail and the --
 12 the -- the website, Policecomplaintsreview.on.ca is -- is
 13 the -- where -- in fact, you should know as well, that
 14 all the transcripts of tonight's proceedings and of the
 15 previous public meetings are going to be on the website
 16 as well.

17 So you may want to think about all that
 18 you are going to say is going to be on the website as
 19 well. So, the -- the e-mail address, if you want to send
 20 further comments to Mr. LeSage, is
 21 submissions@Policecomplaintsreview.on.ca. So, and
 22 further on I will again, give you this -- this e-mail
 23 again.

24 So, let's start, Ms. Jane Price and Ms.
 25 Belinda Cole, Friends of Dufferin Grove Park. I ask you

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1 if you would just want to take a place at the front here
 2 and make your -- yes, if you -- thank you.

3 MS. JUTTA MASON: Thank you. I'm afraid
 4 I'm neither Jane Price nor Belinda Cole. My name is
 5 Jutta Mason and I am here for Friends of Dufferin Grove
 6 Park. There are various ways to get in trouble with the
 7 Police and I've just come from our park's farmer's market
 8 where there are many hundreds of people milling around
 9 buying vegetables. And because it's a cold night, we
 10 have a drum set up, with a fire in it.

11 And thankfully we have a fire permit. But
 12 we had a fire permit a month ago as well and I'm going to
 13 read to you from our web site, which is
 14 www.dufferinpark.ca,. And we, in our park, have had
 15 enough difficulties with Police and safety, that we have
 16 actually set up a separate area just for talking about
 17 what happens with Police. And, so:

18 "On Saturday evening, September the
 19 25th at 10:00 p.m. two (2) Officers
 20 from 14 Division found several families
 21 in the park fire circle having a park
 22 campfire."

23 We have campfires in our Park all the time
 24 and we have a permit all year around.
 25 "The Officers wrote them a ticket for

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1 fifty-five dollars (\$55) and summoned a
 2 fire truck, which came with the sirens
 3 on."

4 Actually two (2) fire trucks came with the
 5 sirens on and put the fire out. I guess the marshmallows
 6 might have got wet as well.

7 Now, I'm -- I'm pretty sure that neither
 8 the Superintendent of 14 Division nor our City
 9 Councillor, would -- would disagree with me when I think
 10 that Police had more important things to do than catch
 11 families having marshmallows roasts. And those big fire

12 trucks had more important things to do than throw cold
 13 water on family campfires, but we still had a -- this
 14 gentleman, one (1) of the parents got a fifty-five dollar
 15 ticket. And so we're now having to put a surcharge on
 16 all the other families who are having campfires.

17 Now, when we try to complain about that,
 18 about marshmallows being doused with cold water and
 19 people getting tickets for family fires, the problem was
 20 a bureaucratic one, which is that we have had a campfire
 21 there all -- all day long with the Native Festival. We
 22 have a lot of things in our park. We had a pow-wow, and
 23 I was too tired to give the people their proper permit.
 24 And so the Police came and gave them a fifty-five dollar
 25 ticket because they didn't have the paper in hand.

13

1 And -- and -- some people said to me, well
 2 why didn't you just phone the Police and complain and
 3 say, look this is silly, why wouldn't you just cancel
 4 that ticket? Well, the second part on our web site says
 5 this, which is that:

6 "Our experience with 14 Division are
 7 generally going up the ladder, has not
 8 given us much hope that a reasonable
 9 request would succeed. The Police
 10 frequently drive through the park well
 11 above the five (5) miles per hour speed
 12 limit..."

13 That's the by-law.

14 "Police frequently conduct illegal
 15 searches of male teenagers, especially
 16 if they're black. Police are often
 17 hard to get hold of if there is a
 18 threat as perceived by us, especially
 19 if the park user is simply violent but
 20 doesn't have a weapon. Even with a pit
 21 bull threat we've had more than an hour
 22 delays.

23 We have had to work out most of our
 24 problems without the cooperation of the
 25 Police. So picking up the phone and

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1 asking them to cancel that ticket
 2 didn't come readily to mind."

3 Now, we have had heard that perhaps as
 4 much as 70 percent of the Toronto Police Service Officers
 5 don't live in Toronto, that they live in Brampton or Peel
 6 or Barry or whatever. We're not sure that's true.
 7 Somebody said that it might be even higher.

8 But it does seem very much the case to us
 9 that the Police Officers that we see are remarkably
 10 unfamiliar with the neighbourhood where they're
 11 operating, other than the obvious trouble makers.

12 And so, for example, a campfire in the
 13 city would seem strange to them and perhaps people of
 14 different persuasions of all sorts would seem strange to
 15 them.

16 Now, the last thing on our web site, and
 17 this is also the end of my little thing here, is that:

18 "It seems to us that our reading of the
 19 legislation suggests, at least to us,
 20 that the Toronto Police Service Chief

21 has discretionary powers that are
22 considerably broader than what he is
23 currently exercising and that there are
24 two (2) things that we would ask for."
25 The one (1) is what I think probably

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1 almost everybody is asking for, which is, for heaven's
2 sake, to expand who can make a complaint about the
3 Police. So that it isn't just the person that got pushed
4 or got ticketed or whatever, because there are many other
5 people involved very often. And, in other words, who's
6 an interested party? Please us down that want that
7 expanded.

8 And the second thing is, to reduce the
9 formality of the Police complaints process. I have
10 actually had to complain where I was summoned into a room
11 that was then, I was told, it was like a Court room, and
12 -- and everything was very official.

13 We would really like the Police Chief to
14 ask the Superintendents to let us speak to the Officers
15 after the event occurs, preferably the next day, with no
16 fault. I think I'm saying the right thing here, which
17 is, that the Police Officer can't get in trouble for what
18 he says to us, we don't care about that, we've already
19 been in trouble.

20 And we can't get in trouble for what we
21 say to the person, that in other words that it could be
22 as informal as possible, simply to break out of the
23 bubble that it seems to us that they exist in. Thank
24 you.

25 DEAN NATHALIE DES ROSIERS: Thank you

16

1 very much. Tim Danson for the Toronto Police
2 Association.

3 MR. TIM DANSON: George Tucker is with me
4 as well, he's a Director with the Police Association.
5 After twenty-five (25) years of practise, it's impossible
6 for me to refer to you as Mr. LeSage, you know, I'm sure
7 it will say Justice LeSage because it's a habit.

8 But first of all, on behalf of the Toronto
9 Police Association, I would like to thank you for the
10 opportunity to address the issue of civilian oversight.
11 This is clearly a vitally important issue that requires
12 both care and sensitivity.

13 Civilian oversight of any Police Service
14 in a democratic society is essential. And this basic
15 principle has the full support and endorsement of the
16 Toronto Police Association. All they ask for is
17 fairness, balance and most important, to keep politics
18 out of the process.

19 Whatever civilian oversight regime that
20 you recommend, it is essential that those responsible for
21 the -- for its implementation are completely independent,
22 free from political interference, and are persons who
23 discharge their responsibilities in a completely
24 professional, objective, and impartial manner.

25 There can be no agendas, hidden or

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1 otherwise, and they must be immune from outside
2 pressures. The best system in the world isn't worth the
3 paper it's written on if the people responsible for its
4 implementation are not people of absolute integrity.

5 We also feel that there should be the
6 appropriate, and, this goes without saying, but due
7 process, natural justice protections built into every
8 aspect of the regime, including full and complete
9 disclosure where appropriate, obviously in the more
10 serious matters. And we believe in a full right of
11 appeal on the merits.

12 We feel that the burden of proof must be
13 proportional to the potential penalty and must be
14 something more than a mere balance of probabilities. And
15 certainly on the more serious matters that touch upon
16 criminal or quasi-criminal, the burden of proof should be
17 beyond a reasonable doubt.

18 We also feel that the mandate principles
19 and objectives of the new regime, must be clearly stated
20 in the legislation itself.

21 It's the hope of the Toronto Police
22 Association that the new regime focuses on the positive,
23 not the negative, and recognizes the outstanding work of
24 the men and women of the Toronto Police Service and other
25 Police Services in the Province of Ontario.

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1 These are highly professional Police
2 Officers, who are genuinely committed to public service.
3 It's a very difficult, challenging and often dangerous
4 job, and decisions have to be made very quickly.

5 These Police Officers are entitled to
6 respect and to be supported by both Governments and the
7 Public. We believe that far too often perception becomes
8 reality, and too often there is a visceral over-reaction
9 to the perception, resulting in extreme unfairness to
10 Members of the Toronto Police Service.

11 We believe that most disagreements and
12 disputes arise by reason of honest differences of opinion
13 and perspective. And sometimes good intentions, well
14 meaning people under stress and in difficult
15 circumstances, may say or do things that they later
16 regret.

17 And we feel that most of these disputes
18 can and should be resolved in a non-adversarial
19 environment, and that non-adversarial environment needs
20 to be encouraged.

21 We therefore urge you, Justice LeSage, to
22 make mediation and reconciliation, rather than
23 confrontation, the cornerstone of the new regime. We
24 feel that, strongly feel, that an alternative dispute
25 resolution regime best serves the interests of the Public

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1 and Members of the Toronto Police Association and Police
2 Services throughout Ontario.

3 And indeed, the way the last speaker ended
4 is really where -- where we are, we are really on the
5 same page. And there are situations that are serious and
6 will have to be dealt with in one (1) form, but by and
7 large, it's a question of communication and understanding
8 and that's the -- the direction that we certainly urge

9 upon you. Thank you.

10 DEAN NATHALIE DES ROSIERS: Thank you.

11 Thank you. Mr. Howard Shulman, 519 Anti-violence
12 Program. Mr. Shulman...?

13 MR. HOWARD SHULMAN: Thank you for the
14 opportunity to speak today. I'd like to start off just
15 by giving a -- a background, because I believe it's
16 important to provide a -- a context into which
17 individuals that -- that I've seen at the 519 Anti-
18 violence Program, have had to deal with over the past six
19 (6) years that I've been involved in assisting
20 individuals with Police complaints.

21 I think the first concern that comes to
22 mind is the initiation of the -- of the complaints
23 process itself. Clients who have made inquiries
24 regarding the complaint system at their local divisions
25 or at Police Headquarters have oftentimes been informed

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1 by Police personnel that the way to make a complaint is
2 to fill out the complaint form and then return it to
3 their local division.

4 Clients were not provided with the option
5 of making a complaint in writing or filing the complaint
6 with the Ontario Civilian Commission on Police Services,
7 nor are clients provided with any information regarding
8 how the complaint system, as a whole, works.

9 Needless to say, the prospect of walking
10 into the Police station to file a complaint against an
11 Officer who could potentially work out of that station is
12 a little more than intimidating for many individuals.

13 This is especially true of clients who
14 have come from countries where acts of homosexuality can
15 mean being incarcerated or even put to death. Some
16 individuals are fearful that by bringing a complaint
17 against the Police, they will endanger their refugee
18 claims or be deported.

19 Finally, because Police -- or because
20 English is not their first language, communication can be
21 difficult with Police personnel. Even those who -- and
22 even those who have grown up in Toronto have told me of
23 being intimidated by the thought of entering the Police
24 station to launch a complaint.

25 Especially when it means the double

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1 situation of not only making a -- a Police complaint, but
2 oftentimes having to come out as a lesbian, a gay person,
3 a bisexual, or transgendered transsexual individual.

4 The next level where there have been
5 concerns is that when the client does not have, or was
6 refused, the name and/or the badge number of the Officer
7 that they wish to complain about. The process of
8 retrieving that information from the Toronto Police
9 Services has been frustrating.

10 When I have contacted the local division
11 to try and obtain the information of which Officer or
12 Officers attended the scene in question, I've usually
13 received one (1) of the three (3) following responses.
14 The first is that they -- that I have -- would have to
15 contact the radio room or the second is that they do not
16 have that information, or in some cases, that information
17 was provided to me over the telephone.

18 Over the past six (6) years when I've
 19 contacted the radio room, I've been informed one (1) of
 20 five (5) things. The first is that I would have to
 21 contact the local division. The second is that they do
 22 not keep that information.

23 The third is that they only keep that
 24 information for thirty (30) days or that the only what
 25 that I could obtain that information is by making a

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1 request from the Freedom of Information Unit. Or
 2 finally, in some cases again, that information would be
 3 provided to me over the telephone.

4 So, to this day, I am not really clear
 5 exactly, what the correct Police practice is and it seems
 6 to be a luck of the draw to have that information
 7 provided quickly to me over the telephone.

8 There have been inconsistencies with the
 9 procedures of the Freedom of Information Unit as well.
 10 One (1) client was informed in writing that their
 11 information request would not be granted unless they
 12 provided the Unit with, quote:

13 "Two (2) pieces of government
 14 identification, at least one (1) of
 15 which should include a photograph and a
 16 signature."

17 A similar request for one (1) piece of
 18 identification was made for at least two (2) other
 19 clients. And on the whole, the majority of requests are
 20 completed without asking for any identification.

21 The main problem with the Unit, currently,
 22 is the slowness in which the information is released. In
 23 one (1) instance it took nearly two (2) months. This is
 24 of special concern given the fact that individuals only
 25 have a limited amount of time to launch a complaint.

23

1 I'm sorry, am I...? Okay.
 2 DEAN NATHALIE DES ROSIERS: A minute.
 3 MR. HOWARD SHULMAN: So, I'm -- I'll just
 4 cut to the chase here. In order to remedy the complaint
 5 system it has to be transparent and it has to be fair. To
 6 achieve this, they're -- we're suggesting a number of
 7 options, some of which I'm sure will be repeated, so I
 8 apologize to those who come after me.

9 The first is that the organization
 10 investigation complaints must be an independent body.

11 The second is that filing complaints needs
 12 to be more accessible for individuals.

13 The third is that obtaining information
 14 regarding the complaint system needs to be produced and
 15 distributed within individual communities and it needs to
 16 be available in different languages. Third parties
 17 should again be allowed to file complaints so that
 18 witnesses and agencies within the communities can once
 19 again be heard.

20 The efficiency of the complaints process
 21 needs to be dramatically improved. There needs to be
 22 consistency in procedures that are followed.
 23 Investigative staff should have at least a basic
 24 competency of the communities that they are service --
 25 that they are serving, and finally, investigative staff

1 needs to be willing to accept complaints about behaviour
2 that is systemic. Thank you.

3 DEAN NATHALIE DES ROSIERS: Thank you
4 very much. Mr. Peter Biro...?

5 MR. PETER BIRO: Biro's fine.

6 DEAN NATHALIE DES ROSIERS: Okay, sorry
7 about that.

8 MR. PETER BIRO: I was delighted to hear
9 Tim and the Police Association say that they want to
10 ensure that politics is kept out of the process. I hope
11 that that -- I'm taking that as a -- as an -- perhaps
12 optimistic and naive signal that the Police Association
13 also intends to stay out of the political process itself.

14 But that aside, I -- I'm delighted to hear
15 the comments that have -- that have proceeded me and I
16 intend to only echo them and thank you for the
17 opportunity to do so.

18 Sometimes redundancy is an important thing
19 and a good thing when it comes to matters of vital
20 importance which -- to which we all pay lip service, but
21 which our institutions frequently fail to heed.

22 So, I'm going to do just a little bit of
23 what has already been done and I come really here by way
24 of public interest to advocacy as a commercial and civil
25 litigator, not as an expert in the Police complaints

1 process. But as certainly, an individual who
2 professionally has represented people with serious
3 grievances in the system -- in civil matters and -- and
4 as a civil libertarian.

5 And thank you, Justice LeSage -- and you
6 remain Justice LeSage as far as I'm concerned -- for the
7 opportunity to come back and address you publicly and
8 just echo some of the comments that were made in an
9 earlier session.

10 There can't be any doubt that in a free
11 and democratic society, any agency of the State which is
12 effectively licenced to impose discipline and order on
13 the citizenry, and to do -- to do so with the use of
14 coercive force, must be held to the highest standards and
15 must be more accountable than most institutions for its
16 actions and, in particular, for its use and misuse of its
17 powers and its authority.

18 While the law enforcement infrastructure
19 is highly sophisticated and it contains within it,
20 multiple levels of checks and balances, including various
21 degrees of civilian participation and oversight at
22 different levels, the ultimate gatekeeper, so to speak,
23 of political accountability to the public, must be the
24 public complaints system itself.

25 Ultimately, regardless of what internal

1 processes and systems may exist to monitor, to
2 investigate and to respond to Police misconduct, the
3 public right and ability to complain and to do so
4 effectively, is the last best chance that Society has to
5 ensure accountability and integrity in the system. Short

6 of the often inaccessible and unduly onerous process --
 7 an un-affordable process of legal proceedings themselves.
 8 So, an effective complaints process is
 9 also integral to an open society, one (1) that is
 10 genuinely free and democratic, as much as to a consumer
 11 society such as the one that has evolved in a post-Nader
 12 world. And I say that bearing in mind that maybe next
 13 Tuesday I'll be proven wrong and that we're not in a
 14 post-Nader world, but I guess the chances are pretty good
 15 that I'm right about that.
 16 And that either the customer is always
 17 right, the dictum that really is part of that consumer
 18 society that has its corollary in -- on the rights side,
 19 that the citizen, if not is always right, the citizen
 20 always has rights. Or, at a minimum, even if the
 21 customer isn't always right, the customer's complaint is
 22 always to be taken very seriously.
 23 And I just want to make a few points and
 24 refer to, what I think, is the list of -- of critical
 25 principles that should govern reform and my -- the

27

1 predecess -- my predecessor, I think articulated those
 2 points probably better than I will, but I prepared to say
 3 them so I will enumerate them.
 4 Number 1 -- in no -- no particular order,
 5 but my order is number 1: Accountability to the
 6 Complainant and the general public, first organizing
 7 principle.
 8 The second is to ensure independence of
 9 the investigative process. That is, independence and
 10 impartiality of the investigators, vis-a-vis, both the
 11 subject Officers, as well as the Police Service itself,
 12 including the Chief of Police, the Unit, the
 13 administrative apparatus within the Police Service and
 14 members, both Police and civilian and of the Police
 15 Service.
 16 Number 3: To provide for genuine and not
 17 merely symbolic civilian oversight of an authority over
 18 the complaints process and on this point, the -- the -- a
 19 sort of a footnote I would make is that the Police
 20 Services Board, itself, can't play that role. I don't
 21 have time to articulate the reasons for that.
 22 We recognize that that is a civilian
 23 oversight body, but that's the governing body of the
 24 Police Service. That's not the body that should be
 25 charged with this particular responsibility.

28

1 Number 4: To -- to ensure that complaints
 2 can be easily made easily and in a variety of context
 3 with a minimum of formality and technicality. They
 4 should be able to be made verbally or in writing by any
 5 means of communication and to any member of the Police
 6 Service.
 7 Again, I don't have time to elaborate on
 8 that; I refer Justice LeSage to the first paragraph in
 9 the -- in the heading called, "Areas of Concern", which
 10 is Tab 1 of a brief that I've filed to address that
 11 particular issue.
 12 Again, my -- the -- the prior -- the
 13 earlier speaker addressed that very, very eloquently.
 14 That's absolutely critical. You've got to make it as

15 easy as possible for people to complain and then the
16 process has to have some kind of mechanism to sort of
17 cull these -- these complaints and then streamline them.
18 Number 5: To instill public confidence in
19 the integrity, reliability and trustworthiness of law
20 enforcement authority in the province by ensuring that
21 there is a system of complaints that is not only
22 independent, transparent, accountable and thorough, but
23 also that demonstrates the commitment -- and this is
24 important -- to imposing discipline and serious
25 consequences for misconduct that has been found to have

29

1 occurred. Thank you for your time.
2 DEAN NATHALIE DES ROSIERS: Thank you
3 very much.
4 Mr. John Sewell from the Toronto Police
5 Accountability Coalition.
6 MR. JOHN SEWELL: Thank you, Madam Chair.
7 DEAN NATHALIE DES ROSIERS: Thank you.
8 MR. JOHN SEWELL: I wanted to -- there's
9 four (4) members of our group here and I wanted to point
10 them out: Harvey Simmons (phonetic), Michael Julio
11 (phonetic), Anna Willets (phonetic), and Richard Hudler
12 (phonetic). They're all sitting there smiling. That's a
13 good thing to do, isn't it. We have a brief that, in
14 fact, I think we have filed with you. I have some copies
15 with me this evening. There's a couple of points I
16 wanted to make.
17 The first one is that no complaints -- no
18 complaints process will function well in a situation
19 where the Police Force is not managed well. If it's
20 managed badly, you're just going to have tons of
21 complaints, which I think a lot of us feel, we're in that
22 position now.
23 So it's absolutely critical that Police
24 Forces are governed by strong Police Service Boards. And
25 we hope that that will be one (1) of the recommendations

30

1 that, in fact, we need strong, responsive, and
2 responsible Police Service Boards in each community.
3 I think most of us feel we don't have that
4 at the moment and -- and unless we have that, we aren't
5 going to ever get a complaint system that works because
6 there'd be too many things that are done wrong through
7 that management.
8 The second point I wanted to make is to
9 draw your attention to the proposal by the Ottawa Witness
10 group, which we think deserves considerable attention,
11 which is the idea of establishing the office of a citizen
12 advisor.
13 That's the office that would provide
14 advice about the lodging of complaints and then help
15 Complainants and support Complainants as they make their
16 way through that process in -- including the use of
17 alternative dispute resolution mechanisms.
18 We think it's worked well in the Workman's
19 Compensation situation; I think it certainly bears merit.
20 I believe -- we believe, I think, that it's best if
21 that's established on a city or regional basis. So there
22 would be an office for Toronto, as an example, and for
23 Ottawa and for other large cities and -- and for regions,

24 rather than one (1) province-wide body.
 25 Thirdly, we think it's absolutely critical

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1 the complaint mechanisms be strong and independent enough
 2 and respected enough to deal effectively with a powerful
 3 Police culture. Our hope is that in time, this Police
 4 culture will be replaced by something that is healthier
 5 to all concerned. But as we look toward that outcome,
 6 it's critical that a good complaints mechanism be
 7 established that can effectively counter that culture.

8 And our brief, in fact, deals with all of
 9 the issues that Mr. Justice LeSage referred to earlier,
 10 you know, the -- the fact that third parties should be
 11 allowed to complain about systemic things and on and on.

12 One (1) point that one (1) member of our
 13 group has made, is that it's absolutely necessary to know
 14 who you're complaining about and therefore it's important
 15 that Police be identified. Our group has been taking the
 16 position that it would be nice if Police have name badges
 17 on so they can be identified. We have not been able to
 18 get the Police Board to agree to that.

19 But it seems that those kinds of things
 20 are absolutely critical about people being able to
 21 negotiate a complaint in a rational way. As we've heard,
 22 it's very hard to get that information from the Police
 23 themselves, but if they're actually wearing a name tag,
 24 as many, many, many other forces in -- in western cities
 25 do, then that will obviously help.

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1 And so -- so, there's a number of things
 2 that related directly to ensuring that a complaint
 3 mechanism is part of a larger process of good government
 4 for Police Forces. Did I miss anything?

5 MS. DEAN NATHALIE DES ROSIERS: Thank
 6 you.

7 MR. JOHN SEWELL: There we go.

8 MS. DEAN NATHALIE DES ROSIERS: Thank
 9 you.

10 MR. JOHN SEWELL: And we will leave a
 11 couple of briefs with -- thank you very much.

12 MS. DEAN NATHALIE DES ROSIERS: That's
 13 perfect. Thank you. Dr. Rosenthal...?

14 DR. PETER ROSENTHAL: Good evening.

15 HONOURABLE PATRICK LESAGE: Before you
 16 begin, I should tell you that at the Ottawa Public
 17 Meeting, there was a mathematician, who wished to
 18 testify. And because he told me what it was ahead of
 19 time what he wanted to testify about, I decided it didn't
 20 bear any relevance to the issue. So he accused me of
 21 being unfair to mathematicians.

22 So, I want the record to show that Dr.
 23 Rosenthal is a Professor of Mathematics at the University
 24 of Toronto, as well as a well known lawyer.

25 DR. PETER ROSENTHAL: I will try to make

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1 sure I don't slip into my mathematics mode. I am very
 2 happy to -- I'd be happy to talk to you about mathematics

3 too.

4 But I'm... I'm very happy to talk to you
5 about this subject because, with the present Police
6 complaint system, people ask me what they should do about
7 a problem with the Police. I never tell them to go
8 through the complaint system. It just doesn't function
9 in a way that's productive. And I'm sure that, Chief
10 Justice LeSage, that you are going to remedy that to some
11 great extent, and I will just make a couple suggestions
12 as to the extent.

13 The most important thing that has to be
14 remedied is the independence. If I could leave one (1)
15 word with you, I would like to leave the word,
16 independence. It has to be independent of the Police.
17 Now the Toronto Police Services Board, in their written
18 submission to you, said that want an independent new
19 body. But they also say they should have Police
20 representatives on it, and so on.

21 And some people, in talking about it say,
22 why should the Police be different from lawyers who are
23 heavily involved in their discipline process, or doctors
24 who are heavily involved in theirs? But I think there
25 are some fundamental differences. And one (1) of them is

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1 the extraordinary power that Police Officers have over
2 people, most of the time, hopefully they use it properly,
3 but even when they use it properly, it's extraordinary
4 physical power.

5 And secondly, complaints often arise in
6 the context of possible criminal proceedings or actual
7 criminal proceedings, against the victim of the
8 complaint. So it's a -- a battle that's going on.

9 That's not the situation when somebody
10 complains about a doctor, the doctor can't then punish
11 the Complainant. And also, a person can -- can go and
12 see another doctor, but you can't say: I want to be
13 arrested by different Police Officers. You don't -- you
14 don't get the choice. It's a quite different situation,
15 and it requires a different -- different remedy.

16 And really, independence is what's
17 required, in my submission, and independence means
18 independence. There should be a Board, that adjudicates,
19 and there should be investigators that investigate and
20 they should be well qualified investigators, but not from
21 Police Services. There are other investigators
22 available. That would be the most important point I
23 should like to make.

24 I'd like to very briefly comment on the
25 limitation period. Six (6) months is much too short,

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1 especially in light of the fact that people are often
2 involved in a potential criminal process as well,
3 involving themselves. And it may be very risky to come
4 forward while you're still facing trial in the criminal
5 context.

6 So, I would urge upon you a minimum of a
7 two (2) year limitation period would be appropriate.

8 There's -- some people have raised the
9 possibility of combining discipline and civil
10 proceedings, and I would suggest that's going to make
11 your job even much more complicated if you try to deal

12 with that. And you should keep them separate.
 13 They have separate purposes, of course. I
 14 mean discipline proceedings are to reform the Police
 15 Force, and civil proceedings are to compensate the
 16 victim. And they should stay separate, in my submission.
 17 And lastly, as Mr. Sewell indicated, I --
 18 I think the suggestion from the Ottawa group, of having
 19 an advisor that people can go to, to sort of help them go
 20 through the complaints process is a very useful one (1).
 21 Unfortunately, the Ottawa Witness group
 22 seems to think if you have that, then you don't need so
 23 much of an independence of adjudication. I would urge
 24 upon you, the most important thing is independent
 25 adjudication, and there should be also, assistance for

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1 Complainants in going through the process. Thanks, very,
 2 very much.
 3 HONOURABLE PATRICK LESAGE: Thank you.
 4 DEAN NATHALIE DES ROSIERS: Thank you
 5 very much.
 6 So, Ms. Elizabeth Bruckmann from the
 7 Parkdale Legal Services Clinic.
 8
 9 (BRIEF PAUSE)
 10
 11 DEAN NATHALIE DES ROSIERS: Well, I'll
 12 come back.
 13 We have Mr. Laws, Dudley Laws from the
 14 Black Action Defence Committee.
 15
 16 (BRIEF PAUSE)
 17
 18 MR. DUDLEY LAWS: Yes, good evening. In
 19 addition to what the Black Action Defence Committee has
 20 already submitted, I will have some additional
 21 suggestions and recommendations for the formation of the
 22 civilian complaints system.
 23 The creation of an independent civilian
 24 complaint system against Police misconduct, is urgently
 25 needed to combat the wide spread of Police abuse of

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1 power.
 2 For many years, several commissions of
 3 inquiry have been conducted in order to inquire and to
 4 make recommendations for the creation of an independent
 5 body. The Police community's desire to investigate
 6 itself has always impeded the formation of such a body.
 7 The present state of Police community
 8 relations is at an unacceptable level, and can only be
 9 improved by Police accountability. In our view, a
 10 competent body that will adjudicate complaints against
 11 Police Officers, will also achieve Police accountability.
 12 We feel that during the review and the
 13 implementation of an independent civilian oversight body,
 14 the following factors should be taken into consideration.
 15 HONOURABLE PATRICK LESAGE: I'm sorry,
 16 what was that?
 17 MR. DUDLEY LAWS: The following factors
 18 should be taken into consideration.
 19 The civilian oversight body must consist
 20 of civilians with no ties to members of any Police

21 family, agencies, or association. That the people of the
 22 oversight body should be civilians from various
 23 communities, City Councils, religious ministers, and
 24 members of community organizations.
 25 That the location of any intake office of

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1 the civilian oversight body, should not be located in any
 2 Police facilities or Police Stations.
 3 A third party in documenting and
 4 submitting complaints, should assist persons with
 5 complaints against Police, if the need arises.
 6 That each complaint hearing be assigned to
 7 a panel not less than three (3) persons. The panel
 8 should forward its findings and decision to the Chair of
 9 the complaint system, who will take the appropriate
 10 action.
 11 That the complaint system be well
 12 publicized through the various communities, with
 13 locations and telephone numbers.
 14 That Police Officers are compelled by law
 15 to cooperate with the Chair and other officials of the
 16 oversight body. That the Chair of the oversight body or
 17 its official, will be given powers to subpoena any Police
 18 Officer, and/or any member or members of the -- of the
 19 public, in respect to investigation of a complaint.
 20 That the Complainant and the Police
 21 Officer be given written decision of the complaint when
 22 completed.
 23 That a record be kept of complaint made
 24 against each Police Officers.
 25 The only involvement that the Complainant

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1 must have in -- is laying the complaint and giving a
 2 statement to the independent civilian body. The only
 3 involvement that the Police Officer or Officers must
 4 have, is to give an account of his or her action, in
 5 response to the complaint.
 6 It is also recommended that protection be
 7 given to the Complainants, by informing the Police
 8 Officer or Officers and the Police Division, that the
 9 Officer -- where the Officer is stationed.
 10 That the Complainant has been made against
 11 him or her, that there must not be any act of
 12 intimidation towards the Complainant by any Police
 13 Officers, including the Officer in question.
 14 Also, there should be a directive
 15 indicating that disciplinary action should be taken
 16 against any Police Officer or Officers who harass,
 17 intimidate, and threaten a Complainant, or ask a
 18 Complainant to withdraw or to abandon his or her
 19 complaint.
 20 The Black Action Defence Committee expect
 21 that these recommendations will form a part of the new
 22 independent body. The members of -- the members of our
 23 community expect to be presented with the final draft of
 24 the recommendation before its implementation of the
 25 complaint system.

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1 It is the hope of our organization and our
2 community, that we will have a complaint system that is
3 fair, honest, independent, accountable, and one (1) that
4 our community will endorse and support.

5 More than any other issue within the
6 criminal justice system, the need of an independent
7 civilian system to address the abuse of power by Police,
8 is most urgent and important.

9 The present state of community relation
10 must be addressed, so that citizens can have confidence
11 and trust in all Police Services.

12 It is our organization's view, that Police
13 accountability is an important factor in the restoration
14 of confidence and trust in the criminal justice system,
15 starting with a positive Police community relationship.

16 The issue of the establishment of an
17 independent civilian system, has been over researched.
18 The time has come to ensure its implementation.

19 DEAN NATHALIE DES ROSIERS: Thank you.

20 HONOURABLE PATRICK LESAGE: Mr. Laws,
21 there's just a couple things I was going to comment, and
22 there were points that you raised, and that is that the -
23 - any planned changes be made public for discussion
24 before any legislation is implemented.

25 I can tell you that, and I tell the others

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1 who are here, that my involvement will simply be a report
2 to the Attorney General. The Attorney General has
3 indicated, as I understand it, that he will make my
4 report public.

5 So, therefore at least my recommendations
6 will be out in the public before any changes are made by
7 Government. I think that's --

8 MR. DUDLEY LAWS: Yes, you can also carry
9 over concern to him to tell him that you'd like to see
10 the recommendations that you made to him, before the
11 implementation.

12 It is very important that we -- we have
13 gone through this so many times --

14 HONOURABLE PATRICK LESAGE: Well, I
15 think --

16 MR. DUDLEY LAWS: -- for the last twenty
17 (20) odd years, we have been trying to bring about a
18 system that is respectable, accountable and honest, and
19 it has been impeded.

20 This must be the time when you, sir, will
21 make recommendation that we can respect and support.

22 HONOURABLE PATRICK LESAGE: Well, I think
23 you made a good point when you said this matter has been
24 reviewed more than amply, more than sufficiently, and it
25 certainly has had many reviews over a number of years and

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1 there are a lot of good ideas out there. I will do my
2 best.

3 MR. DUDLEY LAWS: Okay. Thank you.

4 DEAN NATHALIE DES ROSIERS: Thank you
5 very much.

6 Ms. Akande, from the Urban Alliance on
7 Race Relations.

8

9 (BRIEF PAUSE)

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 11 MS. ZANANA AKANDE: Actually, when I
 12 submitted the names, I submitted three (3) names, and I
 13 see one of the gentleman here, I submitted mine, --
 14 MS. DEAN NATHALIE DES ROSIERS: Yes.
 15 MS. ZANANA AKANDE: -- and Sri and Dharma
 16 (phonetic). Now I don't see Dharma, so Sri, if you would
 17 like to come forward, please, because they were all
 18 submitted at the time, am I not correct?
 19 DEAN NATHALIE DES ROSIERS: Certainly,
 20 sure.
 21 MS. ZANANA AKANDE: We have just recently
 22 submitted a written submission, and you know we have
 23 spoken before about this and here we are again. And so I
 24 want to use my five (5) minutes, there are five (5)
 25 minutes, and Sri may speak after me, so I'll -- I'll use

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1 my three (3) minutes and give him the other.
 2 To make three (3) points, four (4) really,
 3 that have been made before, but I think it's important.
 4 One (1) of them is new, and I think it's a good idea to
 5 comment on the fact that the Toronto Police Service Board
 6 has put forward the issue of -- of omitting the
 7 possibility of people taking the Toronto Police Service
 8 Board to Court, at least it's a recommendation, if in
 9 fact they have received review from an independent review
 10 system.
 11 Now, that -- that is as -- if that is to
 12 be considered seriously, it's unconscionable. Why should
 13 someone give up their rights in order to get true
 14 consideration before an independent review Board?
 15 So I wanted to bring that point forward
 16 because it's been much discussed and we always wait until
 17 things are written in steel and in stone before we object
 18 to them. I want it to be right out in front and say it's
 19 objectionable.
 20 The next point I want to talk about is
 21 independence. I mean, this is an issue that we have come
 22 at from every side that we possibly could. Independent
 23 review -- civilian review means just that. It means that
 24 the Police should not be involved in the investigation
 25 and nor should they be involved in the adjudication of --

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1 of the -- of the fault once it's found.
 2 And that cannot be over emphasized
 3 sufficiently. It will do absolutely no good to have a
 4 change in the Review Board if this independence isn't
 5 there.
 6 It has to also be seen to be independent.
 7 This is an issue that we have discussed for many years
 8 and it is obvious why. There is not the sense of
 9 confidence that if the Police are reviewing themselves
 10 and investigating the -- the problem, that in fact it
 11 will be dealt with fairly.
 12 The third thing that I want to deal with
 13 is OCCOPS. So often we are told, Well you know there is
 14 another level and the OCCOPS is the -- the body which
 15 oversees all of this civilian review. Let me tell you
 16 that first of all OCCOPS isn't known thoroughly, and
 17 secondly, when it is known, it gives, for some, an

18 impression of a false confidence.
 19 This is a body that does not do anything
 20 substantial as -- as far as review of citizens'
 21 complaints. A delegation of over thirty (30)
 22 organizations went to it in May 2003, with experts
 23 presenting to them, around the issues that we're
 24 discussing today. We have yet to -- hear from them.
 25 So, what it does, is it implies that there

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1 is a system there and that the system does not work. And
 2 it is useless. It is a worse lie than not to have it at
 3 all.
 4 It can't be fixed by tinkering with it, it
 5 must be removed. At least -- at least its functions from
 6 the civilian complaints. Sri...?
 7 MR. SRI-CUGGAN SRI-SKANDA-RAJAH: I just
 8 want to add two (2) things. I want to reinforce what my
 9 president has said, what's stated by Professor Rosenthal
 10 himself, namely, that there should not be a situation
 11 where a complainant has to surrender up any civil
 12 litigation prospects in order to achieve a settlement of
 13 the complaint in this particular body.
 14 I don't think the two (2) things are --
 15 are necessarily -- one another, and I think it's
 16 important to emphasize that -- that right of a civilian
 17 to go to a civilian litigation should be retained.
 18 The other point that is important to bear
 19 in mind, is the Ontario Civilian Commission on Police
 20 Services, is really a body that has very little in the
 21 form of power to do an independent investigation. The
 22 experience of organizations like the Urban Alliance has
 23 been that when you do go to that body, that body returns
 24 the matter back to the Police Service, where it -- it's
 25 literally a revolving door, that doesn't really produce

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1 any results.
 2 The only notable decision that has come
 3 out of that body is the finding of -- of fault in
 4 relation to a complaint regarding Mr. Gardner. I won't
 5 say more than that at this point.
 6 But it's very important for the
 7 communities to have confidence. And the communities
 8 have, for more than twenty-five (25) years, demanded an
 9 entirely civilian staffed body, at the level of the
 10 investigations, adjudication, or any other form of
 11 resolution. And that is something that we have to go
 12 back to, because in 1996, an already inadequate system
 13 was dismantled, and we are here again looking at it.
 14 Since it --
 15 HONOURABLE PATRICK LESAGE: I didn't hear
 16 the word that prefaced the, something "system was
 17 dismantled in 1996"?
 18 MR. SRI-CUGGAN SRI-SKANDA-RAJAH: The
 19 Harris Government in 1996 amended the Police Services Act
 20 in such a manner that the only person who could complain
 21 is the victim himself.
 22 HONOURABLE PATRICK LESAGE: Yes. No, I
 23 guess my point specifically was I was trying to determine
 24 whether you said the previous system was adequate or
 25 inadequate?

1 MR. SRI-CUGGAN SRI-SKANDA-RAJAH:
2 Inadequate.
3 HONOURABLE PATRICK LESAGE: Inadequate.
4 Right.
5 MR. SRI-CUGGAN SRI-SKANDA-RAJAH:
6 Inadequate, because it never met the requirements of the
7 submissions that civic society had made over twenty-five
8 (25) years, repeatedly.
9 Since it looks like I'm also part of
10 another delegation, I better not say too much at this
11 point. Thank you --
12 MS. ZANANA AKANDE: We wear many hats.
13 DEAN NATHALIE DES ROSIERS: Thank you.
14 MS. ZANANA AKANDE: Good night.
15 DEAN NATHALIE DES ROSIERS: Thank you.
16 HONOURABLE PATRICK LESAGE: Thank you
17 very much.
18 DEAN NATHALIE DES ROSIERS: Mr.
19 Sapiano...?
20
21 (BRIEF PAUSE)
22
23 MR. EDWARD SAPIANO: Edward Sapiano,
24 Toronto criminal defence lawyer.
25 I'm not going to touch on all the points

1 that I raised in my submissions -- written submissions to
2 this Review Committee, because most of them have been
3 covered.
4 However, a few points I do want to touch
5 on. With respect to transparency and accountability,
6 it's my respectful submission to this Review Committee,
7 that if all the decisions of the Tribunal, the
8 adjudicators, are written and published and retrievable
9 by members of the public, this will go a long way to
10 achieving those objectives of transparency and
11 accountability.
12 It will further empower members of the
13 public, and indeed, members of Police brass, to recognize
14 and identify and deal with evolving problems, before they
15 reach the crisis that Toronto is now facing, with respect
16 to allegations against Officers. And I speak of course
17 of the numerous arrests that have happened in the last
18 number of months.
19 So transparency, and an accessible
20 collection of all reasons. And those reasons shouldn't -
21 - as I say, name the adjudicators, hence accountability,
22 it should name the subject Officers, and it should name
23 the Complainants. With some exceptions for allegations
24 of perhaps sexual assault, where privacy concerns arise
25 for the complainants, not for the Police Officers.

1 Because no one in our society enjoys
2 privacy privileges, or privacy claims, when they are
3 accused of doing something improper. No other profession
4 enjoys that, certainly not mine.
5 The other point I want to touch on is

6 standard of proof. We heard Mr. Tim Danson speak about
 7 that issue, and suggest that if the allegation is -- he
 8 used the phrase quasi-criminal or criminal, then the
 9 standard of proof should be elevated to beyond a
 10 reasonable doubt. Well, I've got a novel suggestion. If
 11 the allegation is criminal, then let's prosecute the
 12 Officer in a Criminal Court of law, like the rest of us.

13 It's my respectful submission that any
 14 time an allegation made out by an individual is criminal
 15 in nature. Then if it is not prosecuted in the criminal
 16 justice system, we have established a parallel system of
 17 justice for Police Officers, which is inconsistent with
 18 our fundamental principles of justice, and indeed,
 19 inconsistent with the notion of a free and democratic
 20 society.

21 I'm not going to be -- oh, I would touch
 22 on one (1) point. A few people have suggested that
 23 Police Officers ought not to be investigators or
 24 prosecutors or adjudicators.

25 My view on that differs from some of My

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1 Colleagues and associates, in that certainly
 2 adjudicators, investigators and prosecutors, in my view,
 3 ought not to be active, currently active Police Officers.
 4 But I recognize that there's a utility in employing
 5 perhaps retired, some retired Police Officers in these
 6 various capacities.

7 But I emphasize, that retired Police
 8 Officers are not the only source of very able
 9 investigators in our society. You do not have to be a
 10 Police Officer to be an investigator, there's plenty of
 11 other examples of investigators in various walks of life.

12 So, certainly no active Police Officers,
 13 but I do not automatically exclude retired Police
 14 Officers.

15 Finally, just I want to touch on the
 16 location of the complaint. I think a few people have
 17 voiced the notion that complaints should be able to be
 18 filed in many locations. I think anywhere is a phrase --
 19 term someone used, but I would submit to this Review
 20 Panel, that the -- there's been a suggestion that there
 21 be one (1) location at the foot of Islington. That
 22 suggestion has arisen in -- in the media somewhere, I
 23 don't know it -- its source.

24 But I -- in response to that suggestion, I
 25 would point out where are we today? Where have you

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1 called members of the public to assemble? Right downtown
 2 in Toronto.

3 In my respectful submission, if you, this
 4 Review Committee, felt a need to have us assemble in
 5 downtown Toronto, it speaks to why a single facility at
 6 the foot of Islington is inadequate.

7 Those are my submissions, and I thank you
 8 very much.

9 HONOURABLE PATRICK LESAGE: Thank you,
 10 Mr. Sapiano.

11 DEAN NATHALIE DES ROSIERS: Mr. Peter
 12 Bruer, St. Stephens Community House...?

13

14 (BRIEF PAUSE)

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16 MR. PETER BRUER: Thank you, Mr. LeSage,
17 for this opportunity. St. Stephens is a Community House
18 serving the West Downtown area. We have provided a
19 written submission to the Commission, and so I'm really
20 just going to touch on I guess the point closest to my
21 heart. I'm the Manager of the Conflict Resolution
22 Service, the Alternative Dispute Resolution Service, the
23 Mediation Service, at St. Stephens.
24 It's been spoken about tonight, and you've
25 mentioned yourself, the idea of alternatives to

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1 investigative processes in managing Police complaints.
2 Clearly investigative processes that
3 determine facts of situations and look at the rights that
4 people have, and their obligations and so on, are
5 necessary. But I guess I would submit that there are an
6 awful lot of complaints and situations of complaint,
7 where that kind of process isn't going to resolve the
8 difficulty.
9 And there's an element of the relationship
10 between the Police Services across this Province and the
11 public that they serve, that doesn't have anything to do
12 with facts and rights, it has to do with trust and
13 respect.
14 It has to do with what the Police
15 themselves call the importance of effective partnerships
16 between Police and communities, and the trust that they
17 have in each other and so on. And investigative
18 processes simply don't do the whole job in resolving some
19 of those kind of complaints.
20 So, I want to add my voice, and the voice
21 of community mediators across the Province, I guess, to
22 the appeal to recommend alternative dispute resolution
23 mechanisms in a complaint process. And to add to that I
24 guess, to appeal that those be real alternative dispute
25 resolution mechanisms. Not simply investigation by

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1 another name, not arbitration, when it's supposed to be
2 mediation, not fact finding with a sugar coating on it.
3 But truly transformative relationship
4 based, interest based kind of problem solving, to put
5 together again, the relationship between the cop on the
6 beat, and the person in the community that they have to
7 serve and see the next day. To put together again the
8 relationship between the Police Service and that critical
9 community that they serve. We serve the downtown area,
10 there are a great deal -- a great many cultural and class
11 and other kinds of communities, the relationship with the
12 Police is tremendously important in both directions.
13 So an appeal, I guess, to ensure that
14 we're really doing alternative dispute resolution and not
15 just investigation with another name.
16 I guess I'll conclude by saying that I
17 think the importance here is not just that we can do a
18 better job with complaints and manage to take all that
19 negative energy out of the system and so on. But that in
20 fact we are presented with a real opportunity here, to
21 use the fact that there are going to be complaints, and
22 that this is not a perfect relationship between the State
23 and citizen, between the Police and the public.

24 Use that fact, that energy, as an
25 opportunity in fact, to do something positive to get us

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1 better able to relate to each other, to give us the
2 capacity to have a meaningful relationship in that
3 difficult relationship.
4 If we can do that, we've demonstrated
5 something about our society that goes far beyond simply
6 dealing with complaints and ensuring people's rights are
7 -- are managed. Those are important things. But there's
8 a real positive here I think, that we can work with as
9 well. That's what we do, that's what we think of when we
10 think of alternative dispute resolution.
11 And I think I'd like to recommend that you
12 do that kind of thinking as well, and see if you can
13 convince the AG to do that kind of thinking. Thank you.
14 HONOURABLE PATRICK LESAGE: When you
15 speak of alternative disputes, you are -- primarily are
16 you speaking of mediation?
17 MR. PETER BRUER: That's right.
18 HONOURABLE PATRICK LESAGE: Right.
19 MR. PETER BRUER: It's --
20 HONOURABLE PATRICK LESAGE: Is there a
21 particular type of mediation that you speak of? I know
22 people use a lot of terms, like interest based and rights
23 based, but is there any specific type that you --
24 MR. PETER BRUER: It's a -- it's a good
25 question, because part of the problem is there aren't any

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1 definitions in the field at this point, it's relatively
2 new, we're working through.
3 When I talk about mediation and the kind
4 of -- the kind of processes I'm appealing to you to
5 include, I am talking about processes that are primarily
6 concerned with the values that people have, the effects
7 of a situation on people, the reasons people do the
8 things they do, what people need in order to feel that
9 they are comfortable again with the situation.
10 And not what rights people have, and what
11 the facts of the situation are, and whether or not people
12 happen to agree about the facts.
13 So, interest based, yes, and relationship
14 building. What we call transformative mediation, where
15 the objective of the process is not so much to solve the
16 immediate problem, but to put back together the
17 relationship between the people in conflict so that they
18 can solve the problem themselves. So that the capacity
19 to resolve the problem lives with those people, not with
20 the system. That's again, the positive I guess I'm
21 looking for.
22 So, yeah, it's a -- it's a very good
23 question, and that goes to my point, making sure that we
24 do alternative dispute resolution that isn't just another
25 word for a rights based system, or another word for

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1 arbitration or adjudication.
2 And I'm happy to provide more information

3 about our thoughts that way off-line, if you like.
 4 HONOURABLE PATRICK LESAGE: I've read
 5 your submission, but it was some time ago, and I've sort
 6 of forgotten the details of it, but thank you.
 7 MR. PETER BRUER: Thank you.
 8 DEAN NATHALIE DES ROSIERS: Thank you
 9 very much.
 10 Ms. Jennifer Chambers, Empowerment
 11 Council.
 12 MS. JENNIFER CHAMBERS: Thank you for
 13 inviting us to speak today. You have a copy of a
 14 submission from us earlier. The Empowerment Council
 15 represents twenty thousand (20,000) clients from the
 16 Centre for Addiction and Mental Health, psychiatric
 17 consumer survivors and people with addictions.
 18 What the Police term, "emotionally
 19 disturbed persons" and people with addictions have
 20 thousands of encounters with Police every year in Toronto
 21 alone. Many have found members of the Police Service to
 22 be compassionate and humane. There have also been bad
 23 experiences with Police that most people feel powerless
 24 to be able to remedy.
 25 For several years following our

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1 involvement in the Yu (phonetic) and the Williams
 2 inquests, Survivors had a good working relationship with
 3 the Toronto Police Service. We delivered weekly classes
 4 at the Toronto Police College and organized a conference
 5 with the Urban Alliance and Race Relations involving the
 6 Toronto Police Service and alternatives to the use of
 7 lethal force by Police.
 8 For the last two (2) years, we've had no
 9 point of contact; nowhere to bring our concerns about the
 10 policing of our community. It's important to keep in
 11 mind when examining the system for individual complaints
 12 that there needs to be a place to bring systemic concerns
 13 as well.
 14 The flaws we've noted in our current
 15 system for complaints have been noted by many and we
 16 won't -- and are detailed in our submission. I won't
 17 repeat them all now. I want to emphasize what we consider
 18 the worst problem of the current system. It encourages
 19 fear to keep from seeking the protection of the system
 20 when they experience mistreatment by the Police.
 21 To require people who are reporting
 22 mistreatment by Police to deliver their complaint to the
 23 Police Division, to Police Officers is such an
 24 overwhelming disincentive to complain it almost seems to
 25 be designed as such. The further restriction allowing

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1 only the directly affected to make a complaint almost
 2 guarantees the mistreatment of the most vulnerable people
 3 will go unaddressed.
 4 What is it that people fear? Retribution.
 5 People fear the Police will find a way to hurt them for
 6 complaining. Do we know if Police punish complainers?
 7 No, we don't know, but actual or perceived, this fear
 8 compromises the entire complaints process because the
 9 process is non-independent.
 10 Results can be tragic. I've been asked by
 11 Tom Walker to tell the story of Robert, his brother, who

12 died after being pepper sprayed by Police. At the time
 13 of the incident that lead to his death, Robert Walker was
 14 in crisis. Sirens were flashing, he was surrounded by
 15 Police Officers, many of them simultaneously shouting for
 16 him to get down when they pepper sprayed him.

17 According to Robert, he had reason to fear
 18 the Police, to feel he'd be safer in public than behind
 19 closed doors, even when he was undressed in the cold,
 20 walking in the streets.

21 According to Robert, two (2) weeks before
 22 this incident, he was in a similar situation. That time
 23 when he went down, he was beaten badly by Police and
 24 ended up in the hospital. There are disturbing pictures
 25 of him taken the morning after; he was bruised from head

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1 toe. That was the end of Tom's statement.

2 If there had been a place that felt safe
 3 for him to take his previous encounter, the last one
 4 might not have gone so far.

5 The features of a decent system for
 6 complaints, we consider, are primarily independence, that
 7 there be no conflicts of interest. In this we agree with
 8 the Police Association. Complaints should go to a
 9 location separate from Police, to an independent
 10 civilian-controlled body that accepts third-party
 11 complaints, verbal or written, about all with significant
 12 powers within a flexible time frame, with jurisdiction
 13 over formal and informal resolution processes.

14 Complaints would be retained within the
 15 complaint system, not erased as they might be from
 16 someone's employment record. Equal access to justice for
 17 all -- and I might say that this -- copies of the process
 18 in some regulatory bodies -- The College of Nurses, for
 19 example, where even anonymous complaints are accepted --
 20 they're kept separate from the person's employment and
 21 investigated if enough complaints of that nature come
 22 forward.

23 Equal justice to people -- equal justice
 24 for all people can also require that extra effort be made
 25 for some. For vulnerable communities to be able to

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1 access the process, this body needs to be connected with
 2 communities in order for mutual assistance, education,
 3 outreach and intake. There should be annual reports
 4 analysing patterns and making recommendations which
 5 should be audited by an independent auditor for
 6 independence and integrity, adequate funding is required.

7 And I just wanted to -- to add, finally,
 8 that around the discussion of location, which I hadn't
 9 heard before, if the location isn't central, very poor
 10 people are not going to be able to access it. Some
 11 people, literally, can't afford to go anywhere that they
 12 can't walk and they're often the people who are most
 13 vulnerable. Thank you very much.

14 HONOURABLE PATRICK LESAGE: Where would
 15 you suggest?

16 MS. JENNIFER CHAMBERS: Down -- in a
 17 central downtown location. All of the shelters are --
 18 are scattered around the downtown area and they're the
 19 people who -- who really, right now, are -- are most
 20 unable to -- to make any kind of complaints.

21 HONOURABLE PATRICK LESAGE: Scattered
 22 around in existing associations or groups or should it be
 23 offices open just for that purpose, or would there be
 24 associations that could be the recipient to --
 25 MS. JENNIFER CHAMBERS: I think --

1 HONOURABLE PATRICK LESAGE: -- funnel
 2 them in?
 3 MS. JENNIFER CHAMBERS: -- I think as
 4 well as having a place where the -- the independent body
 5 would be located.
 6 It would also be a good idea for there to
 7 be relationships made with existing groups, so that
 8 people involved with these groups have contacts with the
 9 organization, they're trained in the process of intake
 10 that would assist the civilian oversight body, to gather
 11 information. Because often those are the only people who
 12 -- who people are originally going to feel safe enough to
 13 complain to.
 14 For example, our community of psychiatric
 15 consumers and survivors would go to a self help group,
 16 where they might not go to anyone else. They're often
 17 afraid of -- of what will go on their record, even if
 18 they went to a mental health professional.
 19 So, if -- if there is a relationship
 20 between psychiatric consumer survivor advocacy
 21 organizations and this civilian body, that would assist
 22 in -- in making the relationship happen, then there'd be
 23 a lot more protection for -- for those people.
 24 HONOURABLE PATRICK LESAGE: Thank you.
 25 DEAN NATHALIE DES ROSIERS: Thank you.

1 Mr. Philip, the Tamil Anti-Racism
 2 Committee...?
 3
 4 (BRIEF PAUSE)
 5
 6 MR. ANTON PHILIP: I'd like to thank you
 7 for this opportunity you've given to us. At the end of
 8 this I will give a written submissions, yes.
 9 The necessity to double up a dual policy
 10 complaint process, has to be examined in larger context.
 11 Police have considerable latitude to exercise special
 12 powers, that civil society, through Government, bestows
 13 on them. In that context, it is imperative that such
 14 conduct be transparent and accountable.
 15 From the early '70s, complaints about
 16 Police conduct were increasing and in some instances,
 17 such complaints seems to emanate from the various black
 18 communities and other marginalized and vulnerable
 19 communities.
 20 As a result of this increasing concern
 21 about Police behaviour, the Government authorities
 22 involved came up with a compromise solution, that
 23 compromise solution in effect, satisfied neither civil
 24 society nor the Police interests.
 25 The demand from the civil society was that

1 complaints about Police behaviour be made to an entire --
 2 entirely civilian body, which took down the Police
 3 complaints, and had all the powers to fully investigate
 4 the matter. Including such investigative tools, like
 5 search warrants, protection of witnesses, civilian
 6 decision makers, making the finding about the behaviour,
 7 and the type of penalty or punishment to be imposed.

8 The Police on the other hand, had
 9 different interests ranging from the Police Chief on the
 10 one (1) hand, the senior management on the other hand,
 11 and the Police Association with -- another agenda.

12 The resultant complaints body was destined
 13 to with little success, because they were dependent on
 14 Police investigating themselves -- themselves.

15 Police walls of silence that prevented a
 16 proper investigation. Inadequate disciplinary action
 17 taken against non-cooperative Police witnesses. The
 18 doctoring of the Police notebooks, thus distorting the
 19 true facts, that led to the complaints about the various
 20 incidents.

21 The result of all these was a complete
 22 lack of trust in the complaint process, by large segments
 23 of the community affected by the Police behaviour.

24 In this atmosphere, the head of Government
 25 in 1996, dismantled fully an already inadequate complaint

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1 process that existed, and further -- and denied the right
 2 of witnesses, and non-Government organizations to launch
 3 complaints about the Police behaviour.

4 The final breakdown of public confidence
 5 in this entire complaint system has now necessitated that
 6 we have to revisit the issue.

7 What is very discouraging is that
 8 society's efforts to properly tackle this fundamentally
 9 important matter, is the efforts Police personnel at
 10 levels to refuse to be accountable. Literally every
 11 profession, from doctors, accountants, engineers, et
 12 cetera, have a regulatory body or a tribunal, that is
 13 able to hold that profession to safeguard satisfactory
 14 investigations and taking the necessary disciplinary
 15 steps that receive public confidence.

16 In conclusion, the demands of the SIM
 17 (phonetic) society: One, complaints bodies staffed
 18 entirely by civilians, no retired bodies personnel from
 19 any Police service; civilian -- second, civilian as --
 20 civilians as decision makers; the third, the right to
 21 make complaints by victims by witnesses and by non-
 22 governmental organizations.

23 The fourth, proper investigator tools
 24 such as search warrants, and the power to seize and
 25 preserve material evidence.

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1 The fifth, the appropriate course of
 2 referencing of complaints about Police personnel made by
 3 complainants, entirely independent of each other.

4 Sixth, taking of disciplinary action
 5 against Police where contact of the investigation is
 6 obstructed.

7 Seven, the communication of investigated
 8 facts to other Police services, where the Police -- where

9 the Officer whose behaviour is investigated, resign from
 10 a particular Police service, prior to decision being made
 11 about the Police Officer's conduct, thus escaping the
 12 complaint's body's jurisdiction and secures employment
 13 with another Police service.

14 Eighth, a more vigorous range of penalties
 15 that can be metted out with the complaint's body
 16 following an investigation and adjudication. Thank you.

17 SRI-CUGGAN SRI-SKANDA-RAJAH: If there
 18 any questions, we would be happy to answer them, Mr.
 19 Justice LeSage.

20 HONOURABLE PATRICK LESAGE: I don't think
 21 so, thank you.

22 SRI-CUGGAN SRI-SKANDA-RAJAH: Thank you.

23 DEAN NATHALIE DES ROSIERS: Thank you
 24 very much.

25 So, Mr. Simpson, from the Psychiatric

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1 Patient Advocate Office.

2 MR. DAVID SIMPSON: Good evening. I'd
 3 like to thank you for the opportunity to be here this
 4 evening and to talk about the work of the Psychiatric
 5 Patient Advocate Office and the clients that we work with
 6 across the Province of Ontario.

7 As you know, the Psychiatric Patient
 8 Advocate Office was established in 1983, to protect the
 9 civil and legal rights of in-patients of the ten (10)
 10 Provincial Psychiatrist Hospitals.

11 Since that time, with Mental Health
 12 Reform, seven (7) of those hospitals have now been
 13 divested and our mandate has changed a little bit, in
 14 that with the changes with Bill 68 in 2000, it also led
 15 to general hospitals with psychiatric units, being able
 16 to designate us as Rights Advisors.

17 So we now provide service in fifty (50) of
 18 fifty-five (55) General Hospitals in Ontario that have
 19 Mental Health Units.

20 The other change for us, too, is the
 21 provision of rights advice to individuals placed on
 22 community treatment orders, and their substitute decision
 23 maker, if they were deemed to be found incapable of
 24 consenting to the community treatment order themselves.

25 I've completely re-written what I was

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1 going to say tonight, so I don't have a scripted message.
 2 You do have our Submission that we submitted, it's got
 3 about twelve (12) recommendations that are specific to
 4 the mental health population, and how we would like to
 5 see the Police Complaints review system put into place.

6 A majority of the clients that we deal
 7 with are very vulnerable, perhaps because of their
 8 illness, sometimes because they're disenfranchised or
 9 disempowered, and don't have a voice or don't feel that
 10 they can express that voice.

11 Many of our clients, too, are also
 12 transient or they make frequent moves. Part of that is
 13 because of Government imposed poverty, where most of our
 14 clients are in receipt of Social Assistance benefits,
 15 which means they are forced to live below the poverty
 16 line.

17 Many of our clients, too, are vulnerable

18 because of a history of abuse or victimization. Some,
19 because they are at the low point of their illness, may
20 not be able to meet time lines that are set out in a
21 Police review process.
22 Some of our clients, too, have had a past
23 experience with the Police that has been anything but
24 positive, although many of our clients, too, have had
25 positive experiences with the Police.

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1 And there is, too, for our clients,
2 sometimes a fear that if they call the Police because
3 they require assistance, in fact the Police may take them
4 to the hospital, and that may in fact be the last place
5 where they want to be, so they'll avoid the Police at all
6 cost.

7 And in many of the small towns across
8 Ontario, where we provide service, because we're
9 providing service from the Manitoba border, right down to
10 Windsor, and now with the provision of the community
11 based rights advice program, we're probably delivering
12 service now every month in ten (10) to fifteen (15)
13 different languages.

14 And I think as a multi-cultural Ontario,
15 it's really important that a Police complaint system,
16 allow for people to engage that system in the language of
17 choice. For many of our clients with a mental illness,
18 as they are at the low point of their illness, many of
19 them in fact will revert to their first language, and
20 often that isn't English.

21 So it's important that if a system is
22 established, that people be able to communicate in their
23 own language. That if there's written decisions or forms
24 or paperwork, that those things also be available in
25 their language of choice.

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1 We can't operate in just French and
2 English anymore, because we've moved beyond that. And so
3 I think it's important that the new system in fact
4 reflect the diversity that we see in Ontario nowadays.

5 The other thing for many of our clients
6 too, is the whole idea of stigma around mental illness
7 and mental health.

8 Many of our clients have a history, as the
9 Police will often say, that they have a mental health
10 history, and that often leads to them being treated
11 differently than other people in the community.

12 And that is very regrettable, we've heard
13 horror stories, I've seen clients that have come to us
14 that are bruised and battered. I've seen clients whose
15 artificial limbs have been removed, because they're
16 potential weapons. I've seen colostomy bags removed,
17 because they're afraid in fact that they're going to use
18 that and throw fluids at Police Officers and stuff like
19 that.

20 I think if we can put a man on the moon,
21 we ought to be able to have a system that's respectful of
22 people with mental illness, and be able to deal with them
23 at whatever point in their illness they're at.

24 And what are some of the barriers to
25 access for our clients? We have seen a trend towards

1 criminalization of the mentally ill, over the last few
2 years. And this belief that if you can get your client
3 into the forensic system, in fact they'll get a gold
4 standard of care.

5 But some of the barriers to access are
6 including things like a limitation period, if it's too
7 short you may in fact not have time to exercise your
8 rights.

9 If you don't have the money to access your
10 records, so that you can prepare a defence, that becomes
11 a barrier to access.

12 If the process is very complicated or
13 legalistic, perhaps the system needs to look at having
14 amicus or an advocate or a friend of the Court in place,
15 to help people manoeuvre a very complicated process.

16 If there's not a transparent process, if
17 you can't contact to make a Police complaint through a
18 toll free number, in fact, then you may not have access.

19 Do I have just a couple more minutes?
20 Okay.

21 DEAN NATHALIE DES ROSIERS: Just one (1)
22 minute.

23 MR. DAVID SIMPSON: Just one (1) minute.
24 And too, for many of our clients, it's a lack of
25 knowledge or a lack of support to be able to navigate a

1 Police complaint system.

2 So what would an ideal system look like?
3 And I'll just go through a few of the key components.

4 Independence is key if this is going to be
5 successful. There needs to be an annual reporting of the
6 activities of the Police Complaints Commission, and a --
7 and an annual reporting on the state of Police Services
8 in Ontario.

9 There has to be mechanisms in place for
10 all motion investigations.

11 Any legislation should in fact include a
12 sunset clause that says something to the affect that
13 follow -- three (3) years following implementation, that
14 a complete review of the system will be done.

15 We think there needs to be an advisory
16 committee that is in place, even to design and set up the
17 new process, but then to be there right through until the
18 sunset review, that reflects the diversity of Ontario.

19 The complaints process has to be
20 accessible, available and accountable, and that means
21 that in fact, the office has to be decentralized.

22 The people across Ontario have to be able,
23 in their own community, to walk into a place and in fact
24 to make a complaint. And those offices cannot be located
25 in a Police Station, a Courthouse or anything like that.

1 There has to be some sense of safety and security for
2 people that they can go in and make a complaint and
3 exercise their rights without fear for retaliation,
4 retribution, coercion, any of those things.

5 DEAN NATHALIE DES ROSIERES: Thank you.

6 You submitted a --
7 MR. DAVID SIMPSON: I never talk just
8 five (5) minutes.
9 DEAN NATHALIE DES ROSIERES: Yeah. Do
10 you have your -- you submitted a -- the last weekend,
11 just leave them here if you have.
12 MR. DAVID SIMPSON: Sure.
13 DEAN NATHALIE DES ROSIERES: That's okay.
14 It's just that we have -- just want to make sure
15 everybody gets to be heard. Okay. Thank you.
16 MR. DAVID SIMPSON: Yeah. Perfect.
17 Thank you.
18 DEAN NATHALIE DES ROSIERES: Mr. McKenna,
19 the Public Safety Innovation.
20 MR. PAUL MCKENNA: Through you, Madam
21 Chair, good evening Mr. LeSage, thank you for creating
22 this forum for public presentations on this vital topic.
23 I begin briefly by framing the four (4)
24 areas that will be the focus of my remarks tonight.
25 First, I would like to voice my support

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1 for the principles outlined in your terms of reference.
2 Second, to illustrate the fundamental need
3 for substantive civilian oversight based on my own
4 experience in public safety and policing.
5 Third, to suggest models that you wish to
6 consider for assessing the quality of any system of
7 Police complaints and finally, just some concluding
8 remarks about future issues and concerns that your review
9 can anticipate as it moves towards completion.
10 Clearly, the public interest in community
11 safety and well being supports the notion that Police
12 Officers be held to a significantly high standard of
13 accountability. This concept must, however, operate in a
14 context that also clearly recognizes the rigorous
15 responsibility and fundamental unpredictability those
16 Officers face in their daily working lives.
17 The key principles outlined in your
18 reviews terms of reference are I believe, valuable
19 touchstones for your work and should be applied to
20 absolutely authenticate your recommendations.
21 As a consultant working in the realm of
22 policing, I have had occasion to see Police organizations
23 from I think a unique perspective. Having spent nearly
24 two (2) decades working as a civilian member of a large
25 Provincial Police service and as a Police advisor

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1 assisting Police associations, Police chiefs and Police
2 services boards, I can state that a competent arm's
3 length mechanism is vital to the adjudication of public
4 complaints concerning the Police.
5 Having worked in several jurisdictions
6 across Canada including Newfoundland and Labrador,
7 Ontario, Saskatchewan and Alberta, I can report that
8 certain Police issues repeat themselves with an
9 enormously high degree of predictability. It may be said
10 that fire burns equally in Mount Pearl, Mississauga,
11 Moose Jaw and Medicine Hat.
12 It may be said that the very nature of
13 policing creates certain fundamental challenges that
14 require the enlighten guardianship that civilian

15 oversight seeks to provide. The legal framework for any
16 system of Police oversight of public complaints is a
17 matter others will speak to in detail.

18 The proposed forensic infrastructure will
19 benefit from your own sage assessment. However, I would
20 like to quickly list several models that might be
21 worthwhile for testing the reflexes of any system that
22 you deem to propose.

23 First, continuous learning. The system
24 must have means and mechanisms for ensuring that the
25 lessons learned are looped back into the Police realm

1 consistent with principles of continuous improvement.
2 Quality management. The people processes,
3 policies and programs for civilian oversight must
4 exemplify at a minimum the kind and quality of
5 performance we are requiring of our Police Officers.

6 And balance, consistent with the popular,
7 and this is a copyrighted title, the balance scorecard
8 approach to planning a civilian system of oversight must
9 be cognisant of elements like vision and strategy,
10 internal business processes as well as the relevant
11 financial customer satisfaction and learning and growth
12 perspectives.

13 If I may operate by way of an analogy,
14 those seized with the responsibility for providing
15 civilian oversight of policing must conduct themselves in
16 an even handed manner consistent with the three (3)
17 intertwined components suggested by Mr. Justice Vinney
18 (phonetic) in his dissenting opinion in Regina vs Regan
19 (phonetic) at paragraph 156, when speaking about the
20 Minister of Justice concept. And I'm quoting:

21 "The first is objectivity which is to
22 say the duty to deal dispassionately
23 with the facts as they are, uncoloured
24 by subjective emotions or prejudices.
25 The second is independence from other

1 interests that may have a bearing on the
2 prosecution.
3 The third, related to the first, is lack
4 of animus, either negative or positive
5 towards the suspect or accused."

6 As you approach the completion of your
7 task, Mr. LeSage, you may well anticipate several speed
8 bumps that will test the mettle of your vehicle for
9 change, ie. Your recommendation.

10 And I'll bullet point them; transcending
11 the opposition, transcending the opposition of Police
12 associations, securing the highest -- highest calibre of
13 individual support in achieving recommendations,
14 sustaining the political will to undertake meaningful and
15 substantive change, securing ongoing platforms for public
16 education and input and finally, overcoming bureaucratic
17 fortitude in resisting meaningful change toward the
18 implementation of innovations and Police oversight.

19 In closing, I repeat my thanks for this
20 opportunity. I wish you well in your deliberations and I
21 look forward to your recommendations for the future.
22 Thank you. And I've left my comments with your staff.

23 DEAN NATHALIE DES ROSIERS: Thank you.

24 Thank you very much. Is Ms. Bruckmann from Parkdale
25 Legal Services Clinic here?

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1 We will take our break -- our well-
2 deserved break, so may I invite you -- it's -- I have
3 quarter to 8:00 -- may we come back promptly at 8:00 and
4 we will continue the list and if we have time and there
5 are still issues that have not been brought up, and
6 people want to make some very short comments, they will
7 have probably the opportunity to do so. Okay? Thank you
8 very much, at 8:00. Merci.

9
10 --- Upon recessing at 7:43 p.m.

11 --- Upon resuming at 8:00 p.m.

12
13 DEAN NATHALIE DES ROSIERS: Well, thank
14 you for being back promptly at 8:00. There is somebody
15 on the list that must drive tonight to -- to Sarnia, so -
16 - so we thought it probably would be better to hear him
17 first, so Mr. Boone -- and you know, Mr. Boone, please,
18 from the Civil Awareness Response Enquiry, before you
19 drive to Sarnia, if you can address us?

20 MR. GARY BOONE: Good evening. My name
21 is Gary Boone, cofounder and Director of the advocacy
22 group known as C.A.R.E. The acronym for C.A.R.E. is the
23 Civil Awareness Response Enquiry and we are, as she said,
24 located in Sarnia. We're an hour west of London,
25 Ontario. Representatives with me tonight are Cindy

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1 Winner (phonetic), Doug Work (phonetic) and his wife
2 Nadine, and they are just over here to my left.
3 I, Cindy and Doug and Susan's concern for
4 the well being of our community, indeed, every day people
5 like most of you here tonight and of no legal background,
6 but we have a strong conviction for change within this
7 system. We appreciate the opportunity in presenting the
8 short version taken from the original presentation
9 presented in London September 22nd, to the Police
10 Complaints Review Committee.

11 As a reflection of support we are
12 receiving on a local level, I'd like to start with a
13 quote from the Chair of our Sarnia Police Services Board
14 and Sarnia Mayor, Michael Bradley, in which he states:
15 "Powers afforded to the Police Chiefs
16 under the Police Services Act could
17 impede civilians with complaints against
18 Police services from coming forward."
19 End quote.

20 And, in fact, it has.
21 Since the formation of C.A.R.E. in July of
22 this year, we've had many citizens approach us to discuss
23 the present system and following are just some of the
24 points we'd like to cover: Obtaining, filing, and
25 delivering a complaint.

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1 Alternate locations other than Police
2 services and OCCOPS should be made available for

3 civilians to pick up Police complaint forms, for example,
 4 a post office, City Hall, hospitals, etcetera, or an
 5 independent regulatory body. A complaint should be
 6 submitted to a completely removed body from that of
 7 Police services.

8 Educating the public. The complaint
 9 process should be made easily accessible and
 10 understandable to the public in an efficient, easy-to-
 11 understand format to guide them through this process.

12 In short, a complete sample complaint form
 13 should be part of a package received by a potential
 14 complainant, with a written procedure showing an
 15 appropriate and detailed outline for filling out and
 16 filing a complaint.

17 The starting line to request a review or
 18 appeal is a very difficult process, and should only be
 19 made easily accessible and understandable to the public,
 20 and again, should not only be available from the Police.

21 The six (6) month time limitation. It's
 22 not realistic, and it needs to be better defined. When
 23 dealing with a complaint or an appeal, determining the
 24 six (6) month time line for submitting the complaint
 25 needs review, as it currently does not seem to be

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1 accurate or decisive.

2 A position for consideration would be the
 3 length of the investigation, it could take longer than
 4 six (6) months, therefore a complaint could be possibly
 5 rejected. A complainant should have the ability to lodge
 6 a complaint against Police Services up to six (6) months
 7 following the outcome of their Court proceedings.

8 Further to that, the accumulation and
 9 storage of evidence, also needs review and should in fact
 10 follow the same time lines.

11 Dealing with an investigation of a
 12 complaint. An independent body other than OCCOPS should
 13 be appointed. We believe residents of Municipalities
 14 should be the appointees with an elected Government
 15 official, as an overseer. These independent appointees
 16 would provide unbiased opinions and transparency,
 17 without any barriers in collecting information and
 18 evidence, the perceived opinion would not be that of
 19 being one (1) sided, and/or controlled by Police
 20 Services.

21 The Hearing process. When the outcome of
 22 the investigation process requests or orders a hearing,
 23 control of the hearing should again not be in the hands
 24 of the Police Chief and that of Police Services. The
 25 selection of the hearing Officer, the prosecuting

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1 attorney and location of the hearing should be detached
 2 from Police Services. Currently there are no guidelines
 3 for this.

4 When the process begins and the witness or
 5 witnesses are interviewed, and information gathered,
 6 there should be a meeting of review between all parties.
 7 If there is a clear violation that the Officer has
 8 committed an offence under the Ontario Police Service
 9 Act, disciplinary action should be passed immediately.
 10 But if unclear, a hearing may be ordered to prove a
 11 violation.

12 Legal use of the hearing process also
 13 needs review. They should have better legal standing
 14 with more ramifications than that what we currently seem
 15 to possess.
 16 The appeal process also would require
 17 attention. Procedures need to be established for
 18 creating a path back to a new hearing or legal Court
 19 proceedings.
 20 Collection of information, evidence and
 21 disclosure. The collection of information and evidence
 22 is almost impossible for a civilian to obtain during --
 23 due to, 1, the lack of information available, and 2, the
 24 knowledge required.
 25 A civilian does not know who to go to, and

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1 a civilian does not know where to go and ask for
 2 information. Disclosure becomes the issue here.
 3 Information and evidence needs to be shared equally.
 4 As an example, some of the civilians have
 5 spoken with C.A.R.E. representatives and have said,
 6 they've had issue with obtaining the names and badge
 7 numbers of Police Officers involved with an incident,
 8 when they feel a complaint should be filed, therefore
 9 that portion of the complaint form cannot be completed.
 10 Independent appointees could eliminate
 11 this and either validate or eliminate the complaint.
 12 This would force due diligence for disclosure in a timely
 13 manner.
 14 In closing, I'd like to thank you for the
 15 time tonight, and again, we're pleased to be part of this
 16 review process in this public forum. Thank you.
 17 DEAN NATHALIE DES ROSIERS: Thank you
 18 very much.
 19 Mr. Moriah, the African Canadian Legal
 20 Clinic...?
 21
 22 (BRIEF PAUSE)
 23
 24 MR. JIM MORIAH: Good evening. I'd like
 25 to thank the Review Committee for giving us the

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1 opportunity to be here this evening to make some
 2 submissions.
 3 I'm appearing today on behalf of the
 4 African Canadian Legal Clinic, the A.C.L.C., as we're
 5 known as, is a legal clinic that's part of the Legal Aid
 6 Ontario Clinic system, which serves and represents the
 7 African Canadian community.
 8 I will just let you know first off, that
 9 I'm not going to be going through what we have in our
 10 recommendations that are -- that were in our submissions,
 11 that were given to you in September. I believe that you
 12 have the ability to read those.
 13 So, what we will do, or what I will do on
 14 behalf of the clinic and on behalf of what we believe is
 15 the African Canadian community -- is to go through what
 16 we believe is the reasons, or are the reasons, that
 17 basically define why there should be an independent
 18 public complaints process.
 19 In determining the best approach to
 20 revamping the Police complaints process, it's obviously

21 necessary to consider what exactly we're trying to
22 accomplish here.
23 In my belief, this can be best summed up
24 in one (1) word; accountability. And although numbers
25 and statistics can be a gauge of any system's success or

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1 failure, accountability does encompass more than that.
2 When dealing with the complaints system,
3 and especially a complaint system for any high profile
4 body such as the Police Service, the public perception
5 and trust in the system is actually paramount to the
6 issue of accountability and, of course, this has been
7 seen in the Terms of Reference where accountability and
8 public perception were mentioned again and again.

9 Now, our past A.C.L.C. submissions have
10 highlighted numerous statistics in reports that support
11 our call for an independent Police complaints process.
12 Because this is a community meeting, or community
13 oriented meeting tonight, though, we will look at the
14 perception of the current complaint system as it affects
15 the African Canadian community and how is it -- has
16 affected numerous clients that we have seen come through
17 our doors and we have helped or tried to help through the
18 process.

19 And I -- I know that somebody has already
20 spoken with respect to the issue of, yes there have been
21 good and bad experiences with respect to the Police. I
22 myself and -- from speaking with the lawyers also at the
23 Clinic, I think I'd be amiss to say that there have been
24 that many good experiences with respect to the Police
25 complaints process.

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1 In reviewing the system, Honourable
2 Justice LeSage has been asked not only to consult the
3 public, but also to consider the historical context of
4 civilian oversight. In that frame of mind, from the
5 African Canadian community perspective, it's also
6 important to consider the historical relationship of the
7 African Canadian community with the Police service.

8 The grim reality is that we, as African
9 Canadians, are disparately affected by Police abuse and
10 misconduct and in the experience of African Canadians, we
11 are often frustrated in our attempts to seek remedies and
12 accountability for Police wrongdoing.

13 Numerous reports have found that we are
14 more likely to be stopped and questioned by the Police
15 and they have concluded that systemic racial bias exists
16 at all levels of the criminal justice system. Our courts
17 have taken judicial notice of the widespread of --
18 existence of racism in Canada and the pervasive nature of
19 anti-black racism in Ontario within the criminal justice
20 system.

21 Even the Supreme Court of Canada, in the
22 decision -- or in decisions such as R.V. Goden (phonetic)
23 have noted the submissions of the A.C.L.C., that African
24 Canadians are over represented in the criminal justice
25 system and are likely to represent a disproportionate

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1 number of those who are arrested by the Police. This
2 only corroborates, and I say this because it's not a
3 matter of us needing to have these reports to understand
4 this is what was going on, this only corroborates the
5 widespread perception among African Canadians that they
6 are disproportionately subjected to Police scrutiny on
7 the basis of race.

8 With respect to systemic discrimination
9 and lethal use of force by Police, African Canadians have
10 been primary targets. Police shootings of African
11 Canadians resulting in death or serious injury have been
12 grossly disproportionate.

13 A study of official deaths caused by
14 Police -- and this is the only study I will actually
15 speak of tonight, everything else is in our submissions
16 that were given to you -- and this was with respect to
17 the Police in Toronto and Montreal between 1994 and 1997,
18 showed that Police were exonerated in all fatal shootings
19 involving black victims.

20 Because the impact of abusive Police
21 powers impacts African Canadians, our community is a
22 vital stakeholder in any process involving oversight of
23 the Police. In this context, the need for accountability
24 for Police wrongdoing is critical for the African
25 Canadian community and a review of the Police complaints

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1 system must necessarily include and be strongly informed
2 by the African Canadian community perspective. And in
3 that regard, I do thank the Review Committee for giving
4 us the opportunity to make these oral submissions and
5 submit written arguments as well.

6 With respect to our individual clients --
7 and this is what we really want to talk about is the
8 clients that we see coming through the doors every day
9 that we're trying to bring through this system -- looking
10 at, first off just beginning to think about making a
11 complaint, there is a strong motivation to pursue
12 complaints often, but many end up being deterred by the
13 knowledge that their complaints will be investigated by
14 Police Officers and adjudicated by Police Officers. And
15 then sometimes with -- in terms of the investigation --
16 actually investigated by Officers, perhaps in the same
17 division of the Officer accused of the complaint or in
18 the complaint.

19 Now, this is often characterized as the
20 chilling effect and it influences the very decision to
21 lodge a complaint. There is obviously the understandable
22 feeling of intimidation and a great fear in having to
23 deal with Police Officers at the station.

24 And this is why there have been many
25 people who have made submissions this evening with

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1 respect to not having to deal with the Police and making
2 complaints. And having other alternative measures and
3 means of lodging complaints.

4 Now, because it is Police who are
5 investigating themselves, many of our clients are
6 distressful and they feel that this system is unfair,
7 biased and the odds are stacked against them.

8 And I -- I'm almost finished actually.

9 And so, individual clients who lodge
10 complaints are invariably frustrated by the lack of
11 impartiality and effectiveness in the system. I'm going
12 to talk about one thing and that has to do with idea of
13 perception.

14 Perception is very strong and especially
15 when we're talking about a public complaints process, it
16 is not just a matter of perception becoming a reality.
17 And I would, in terms of statistics, ask you look again
18 at our recommendations and look at our submissions which
19 note that a paltry number of the complaints that were
20 lodged against the Police, we actually taken to the
21 Hearing process and of that number and an even smaller
22 minuscule number was actually taken to the Hearing level.

23 Now, and sorry, and even a smaller amount
24 of that was taken to the level where Officers were
25 actually reprimanded in some manner.

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1 Now, often a lot of the problems that
2 we're dealing with are problems that people have talked
3 about today; investigative processes that aren't fair,
4 complaints not being taken seriously, pressure exerted by
5 complainants by Police Officers to withdraw or informally
6 resolve their complaint. And in that respect we're
7 thinking about issues like ADR.

8 It's our belief that there is an imbalance
9 of power when we're dealing with Police complaints and
10 when dealing with issues of mediation. And this has to
11 be addressed if there is going to be any issue of having
12 mediation in terms of the Police complaints process. Now
13 I will just close off quickly and those were pretty much
14 all of my submissions.

15 Now, the problems that are highlighted in
16 these meetings obviously need to be addressed and as many
17 people have said, they have been dealt with again and
18 again and it is really just time to start making
19 decisions and start making things happen in terms of
20 creating an independent Police complaints process.

21 In terms of accountability and in terms of
22 public trust, it is the African Canadian Legal Clinic's
23 submission and the submission of many of our clients who
24 we've spoken to that only through an independent Police
25 complaints process can this be achieved.

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1 And I would like to thank you again for
2 giving us the opportunity to make these oral submissions
3 and again, you do have our written submissions as well.
4 Thank you, very much.

5 DEAN NATHALIE DES ROSIERES: Thank you.
6 Thank you very much.

7 Mr. LaRose from the Jane-Finch Concerned
8 Citizens Organization...?

9

10 (BRIEF PAUSE)

11

12 MR. WINSTON LAROSE: Good evening and I
13 thank you for the opportunity. I am from the Jane-Finch
14 area and have been there for the last seven (7) or so
15 years intensively involved with that community. It's an
16 organization that's been around for twenty-seven (27)
17 years this year.

18 And my concern about the complaint process
19 is that I think that citizens who are innocent and have
20 not committed an offense and are entitled to enjoy some
21 rights and some freedoms within a civil society and not
22 treated that way and particularly those who those are of
23 African Canadian or African descent.
24 I think in any review or consideration for
25 change in this process which has Police investigating

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1 themselves, we must look at the fact that African
2 Canadians are disproportionately affected when it comes
3 to the issue of how they're treated at the station, how
4 their complaints are taken into consideration, whether,
5 in fact, they are able to express those complaints at all
6 and if after they've explained and complained, if there's
7 any due process that permits them to get some kind of
8 redress in terms of harms that they've suffered. None of
9 that is done properly at the moment.

10 We know in every instance almost where
11 Police have been -- done harm to a people, many of whom
12 come to us that they have never had to pay any kind
13 price. Even when they have been in fact found guilty of
14 that conduct, some later court might remove that
15 conviction.

16 I want to just talk just briefly about
17 what it means in the present system because I've
18 experienced this with some of people who come to me. The
19 nature of what we do is social advocacy but we provide a
20 lot of training for people in the Jane-Finch area, many
21 of them, they come from all parts the world. Listen,
22 it's highly densely populated by a great diversity of
23 peoples.

24 Now, a lot of these people, I start with
25 the children in the schools. We have a system now where

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1 children in the schools no longer are dealing just with
2 their teachers if they misbehave, Police are called.
3 I've had to go to numerous of those situations, long
4 before the parents even know.

5 There's no issue here about complaints,
6 because the child has no way of being represented or
7 presenting their side of the story through a reasonable
8 person. The school speaks for them even before the
9 parents has had an opportunity to go out there.

10 I've had to go to the Police Station to
11 rescue them, and I've had kids as young as eight (8)
12 years old, who have been placed in handcuffs, just for a
13 simple matter of something that's happened within the
14 school system.

15 Another aspect of this is, I have a lot of
16 people who live within their community, that Jane-Finch
17 is their home; they have a lot of Police intrusions into
18 their backyards. They try to complain at the Station,
19 they meet hostility, they're intimidated in all kinds of
20 ways, they cannot express themselves, and I can tell you
21 certainly, that they don't want to go to the Police
22 Station. It's the place they dread.

23 So, complaints cannot be made, and must
24 not be made to the Police, certainly they must not
25 investigate themselves.

1 I think it might be proper to encourage
2 some form of a system where community organizations, or
3 at least somebody that is able to facilitate the process,
4 where the person who has been harmed by Police, are able
5 to express what has actually happened, and that should be
6 monitored in a way that they have the capacity to do it
7 without any sense of fear.

8 I don't think that the Police process will
9 be harmed in any way as a result of that, because after
10 all, Police aren't executing some form of justice,
11 they're merely apprehending people to bring them to
12 justice. And I think we must remember that.

13 We are a civil society, we tend to say we
14 lead the way for other countries to follow. So we should
15 set standards that are higher. A Policeman shouldn't
16 shoot people in the street arbitrarily, unless they're
17 truly threatened.

18 My concern is that in our particular area
19 and in the City in general, and I'm sure, certainly in
20 the Province, that a lot of people who have complained --
21 the -- the issue of profiling has come up a number of
22 times, I'm sure you have all of that, so I'm not going to
23 spend much time on that but it is part of what I'm
24 addressing, those persons are ending up in Court, purely
25 because they've been walking down the street.

1 They're being stopped, they're being told
2 that you look like somebody that I think has committed a
3 crime, or a crime has happened down the road. And that
4 person, up until that time, an innocent, with no previous
5 convictions.

6 I have one (1) man who should have been
7 with me here tonight, but he's not been able to make it
8 on time. He's now in the Court, trying to defend the
9 position that he didn't commit any offence at all. He
10 has not been given a proper opportunity to make those
11 complaints.

12 So, it starts off with the complaints. We
13 have to fill these forms out, most of them don't
14 understand the language, they don't understand the forms,
15 they don't feel comfortable within the environment.

16 And I've been called dramatically from my
17 office, where I'm there until 8:30 at night most nights,
18 before I head home, by a mother whose child whose child
19 has been apprehended at the mall, the Police are
20 involved, to come to the Station with her. At the
21 Station she was intimidated in ways that -- I mean, she
22 was even afraid to represent her son. And we knew that
23 the son was innocent of the conduct.

24 But the key thing is that they have to be
25 able to express the truthfulness or maybe something about

1 what has transpired, some bits of information.

2 I would recommend that some kind of system
3 that is able to accommodate a community facility, a
4 community organization in the process, will certainly go
5 a long way towards trying to expedite that.

6 I know how difficult it is in any society,
7 particularly in the ones that we're living in now, where
8 there's fear everywhere. Everyone's afraid of being
9 harmed. We don't live anymore without intimidation, it
10 seems to me. So that if we are in school, we have to be
11 worried that Children's Aid Worker will come and take our
12 child away. We have to -- we can't scold our children,
13 we can't spank them, we can't do anything.

14 The key point is that there's a lot of
15 fear going on, everyone is concerned about their safety,
16 but we must not let that take away the freedoms that we
17 have enjoyed. Police power becomes abusive, all of us
18 suffer.

19 Thank you.
20 DEAN NATHALIE DES ROSIERS: Thank you
21 very much.

22 MR. WINSTON LAROSE: May I ask, I have
23 some notes written here, I haven't been able to make a
24 submission previously, and I missed the last session, is
25 there an opportunity to send you something by fax? I'd

1 certainly like to do that.

2 DEAN NATHALIE DES ROSIERS: Yes, I have
3 the fax number actually; 416-326-2699.

4 MR. WINSTON LAROSE: And I thank you
5 again.

6 DEAN NATHALIE DES ROSIERS: Thank you.
7 Ms. Murray, Anne Murray...?

8
9 (BRIEF PAUSE)

10 MS. ANNE MURRAY: Good evening and thank
11 you for the opportunity to present. I wish to address
12 the gap in the Ontario justice system related to serious
13 Police misconduct.

14 Civilians victimized by alleged Police
15 misconduct, do not have an effective avenue to pursue
16 accountability and justice. The existing process uses
17 the internal review system, where Police forces use their
18 own Officers to review civilian complaints. This process
19 has failed civilians.

20 Civilians believe the internal review
21 teams have covered up misconduct, and even criminal
22 activity, committed by the colleagues of Police Officers.
23 Civilians are demanding a better process.

24 They want a process established, where

1 their complaint is dealt with by people external to the
2 Police force, as many other people have said tonight.
3 Civilians believe an external review team will function
4 with more honesty and without impartiality.

5 It is important that you understand that
6 there really are situations in Ontario, where Police have
7 committed crimes against civilians. An example would be
8 obstruction of justice, related to disclosure laws.

9 Police are required to disclose all
10 evidence discovered during an investigation, so that a
11 trial is just and fair. Yet, despite many civilian
12 complaints, and an abundance of documented evidence,
13 Ontario Police Officers are not charge with obstruction
14 of justice when they violate disclosure laws during

15 trials.

16 Another example; breach of constitutional
17 rights. Constitutional rights exist in this country to
18 safeguard our right for justice. Despite documented
19 evidence, even from Judges in this Province, saying the
20 Police have breached the constitutional rights of
21 citizens, and thus have obstructed justice, Officers are
22 not charged.

23 At present, civilians do not have an
24 effective place to take complaints when they believe
25 there is Police crime. You might at the SIU; they will

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1 not deal with -- with our complaints, they only deal with
2 internal Police matters. Members of Parliament in this
3 Province, and our Attorney General, are not allowed to
4 discuss an individual civilian complaint related to
5 Police.

6 So, there's no option but to continue
7 using the biased internal review system, where
8 complaints, for years, have been unfairly assessed by
9 Officers' co-workers, their colleagues, and their
10 friends. This is unjust. This internal review system
11 must be terminated.

12 You might say, if you don't -- if you're
13 not satisfied with the Police review, then go to OCCOPS,
14 the Ontario Civilian Commission for Police Services.

15 All OCCOPS does is a paper review; they
16 don't even get personal input from the civilian. And to
17 get attention from OCCOPS, civilians have had to work
18 very hard. They have to do intense letter writing,
19 phoning, sending the documents, presenting petitions, and
20 using the media.

21 Even when an OCCOPS audit in Ontario has
22 shown negligence and mishandling of a serious Police
23 investigation, it does not seem to be OCCOPS' role to
24 demand justice, accountability, or punishment, for the
25 Police misconduct. Even when their Police review, even

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1 when a Police review has been determined to be fault --
2 very faulty, OCCOPS does not demand that anything is done
3 with that original faulty Police review, even though they
4 know that the review was wrong. There is no
5 accountability by OCCOPS to address individual justices
6 or crimes committed by Police Officers.

7 We need institutional reform. We ask that
8 the gap in the Ontario justice system be identified to
9 the Attorney General.

10 Please present these deficiencies in the
11 present system, that has allowed civilians to be
12 victimized and abused by Police.

13 Please request the creation of an unbiased
14 agency, committed to justice, an agency that has the
15 authority to implement just actions, against the crimes
16 of Police Officers that have been committed against
17 civilians, as well as the misconduct, the negligence, and
18 the dereliction of duty by the existing internal review
19 teams, the Police Officers who have failed to honestly
20 assess civilian complaints in the past.

21 In closing, I beg you to ask the Attorney
22 General to create a just process that would deal with the
23 Police crimes that have occurred in Ontario against

24 civilians.
25 We know -- you know the movie, no one is

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1 above the law. Criminal acts committed by Police against
2 civilians and violations of the Police Act, must be
3 recognized, identified and if appropriate, prosecuted.
4 Civilians who have been violated and abused by
5 injustices, have the right to demand a accountability and
6 justice.

7 Please ask the Attorney General to
8 initiate reforms, sooner than later. Reform is long
9 overdue. Thank you.

10 MS. DEAN NATHALIE DES ROSIERS: Thank
11 you.

12 Superintendent MacDonald from the Ontario
13 Provincial Police...?

14
15 (BRIEF PAUSE)

16
17 SUPERINTENDENT KEN MacDONALD: Thank you
18 for the opportunity to come to speak to you tonight,
19 Justice LeSage. My name Ken MacDonald and I'm with the
20 Ontario Provincial Police and I'm the Commander of the
21 Professional Standards and Internal Affairs Bureau.

22 I'd like to start off by stating that the
23 Ontario Provincial Police does agree that there is --
24 this is a great opportunity to make some very -- very
25 good changes to the Ontario complaints of Police, sorry,

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1 the complaints process in Ontario, and we support many of
2 the things that we've heard tonight. It probably doesn't
3 come to as much a surprise that some of the things I have
4 heard tonight, that I am in opposition to as well.

5 And I'd like to go through very quickly,
6 some of the ideas that Ontario Provincial Police are
7 using, that maybe some of the other services can
8 benchmark against with.

9 So, one of the first things is, is talking
10 about civilian managers with Ontario Provincial Police.
11 I believe that we are unique in Ontario that myself as a
12 Bureau Manager, I actually report to a civilian, a Deputy
13 Commissioner, who is a civilian Member and we have
14 civilian Members through all levels of our organizations.

15 Our frontline Detachments also are
16 governed by, in excess of one-hundred (100) Police
17 services boards, who set priorities for the local
18 service, and they are very involved with their process.

19 Just going through in bullet point, in
20 regards to some of our recommendations, what we would
21 like to see, is permitting in the electronic filing of
22 complaints. This further endorses the concept of
23 accessibility for all.

24 We would also like to permit the filing of
25 complaints on any Police service at any Police facility.

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1 The Ontario Provincial Police is opposed to accepting
2 anonymous complaints, in addition to third party

3 complaints. This, however, does not prelude -- preclude
 4 the fact that the O.P.P. will always examine
 5 circumstances of every complaint.

6 And it's the practise of our organization,
 7 if we have misconduct, even the slightest hint of
 8 misconduct, we we'll activate an internal complaint.

9 Public assess to information, to ensure
 10 transparency by making dispositions accessible to the
 11 public through the internet. I believe the College of
 12 Teachers and the Ontario College of Physicians and
 13 Surgeons have provided an excellent illustration of this
 14 type of public service through their websites.

15 And in addition to the aforementioned
 16 recommendation, we would like to see it expanded not only
 17 to include decisions made by Police Services, but also
 18 decisions made by OCCOPS or even divisional courts or
 19 Supreme Court in -- in reference to Police Hearings.

20 We believe the OCCOPS mandate should not
 21 be expanded to include an investigative capacity as it
 22 would result in the Commission assuming the role of
 23 policy maker, judiciary, investigative agency, auditors,
 24 appeal body and senior manager of every Police system --
 25 service.

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1 Parallel processes with respect to
 2 complaint investigations -- the OPP works in conjunction
 3 with a number of oversight bodies including the Human
 4 Rights Commission, the Ombudsman. In addition to OCCOPS
 5 and SIU we are already substantially directed through
 6 civilian oversight to the point where it's awfully
 7 difficult to determine who has primary carriage of an
 8 investigation. The OPP is not supportive of a new
 9 process that would create further complication in this
 10 area.

11 Suspensions. A Member should be subject
 12 to automatic suspension of his salary once convicted and
 13 dismissed as a Member of the Police Service by an
 14 adjudicator. Additionally, we recommend that appeals not
 15 automatically reinstate the salary as required by some
 16 Police Services process pursuant to the Statuary Powers
 17 Act.

18 I can tell you we've had people that are
 19 been on suspension with full pay up to -- up to and over
 20 eight (8) years at a time. So it's -- it's a real
 21 problem.

22 It should also be discretion of the
 23 Commissioner or the Chief of Police to suspend without
 24 pay where criminal charges are laid and only one (1)
 25 level of appeal where it follows suspension is

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1 appropriate.

2 Complaint resolution. I've only heard two
 3 (2) or three (3) people talk about this tonight and I --
 4 I honestly believe it's a lost art in society that we are
 5 -- we have to sort of learn to communicate and talk
 6 together.

7 And I guess my message to -- to everyone
 8 tonight, Justice LeSage, is this is a partnership that
 9 we're talking about and we're all in this together. And
 10 at the end of the day, when we're -- we're dealing with
 11 disciplinary action and complaints -- at the end of the

12 day probably 99 percent of the Police Officers will end
 13 up being Police Officers.
 14 And in spite of the correction that's
 15 taken, it's just the -- the -- the labour law that we're
 16 dealing with and that there's no -- there's no -- there's
 17 very little latitude as -- for Police managers to dismiss
 18 people. So I would really be advocating the resolution
 19 process. And even to the point where, you know, what
 20 I've heard today, that one (1) of the people were talking
 21 and they made a very good point about it being in favour
 22 of the Police because of differential power.
 23 One (1) of the things that we're exploring
 24 right now is to have independent mediators and, you know,
 25 it's something that I believe we should all be moving

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1 forward to.
 2 Just moving right along, Code of Conduct.
 3 The Ontario Provincial Police supports clarifying the
 4 Code of Conduct specifically as to what constitutes an
 5 offence. We believe our civilians, as well as our
 6 special constables, should be included. And also that
 7 the six (6) months time frame for Police services to lay
 8 a charge under the PSA should be expanded to one (1) year
 9 to allow for SIU investigations and criminal proceedings.
 10 Members of the Ontario Provincial Police
 11 generate millions of public contacts on a yearly basis,
 12 receiving public complaints in approximately five hundred
 13 (500) cases. And a statistical review of the OPP's
 14 record of public internal complaints would indicate that
 15 the present system is working very well.
 16 Most Police Officers from the front line
 17 to the senior managers believe that the existing system
 18 of the complaint investigation has merits and focus of
 19 any review should be to tighten the spokes on the wheel,
 20 not to replace it.
 21 DEAN NATHALIE DES ROSIERS: Are you
 22 almost --
 23 MR. KEN MACDONALD: Done. As an
 24 organization, we're committed to continually identifying
 25 means and ways to improve thoroughness, transparency,

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1 fairness, and efficiency of Police services included in
 2 the complaint investigation process. Thank you for the
 3 opportunity to let us present tonight.
 4 DEAN NATHALIE DES ROSIERS: Mr.
 5 Quartey...? Mr. Kenneth Quartey...? Thank you.
 6 MR. KENNETH QUARTEY: I'll take this
 7 opportunity to thank Madam, and Honourable Justice LeSage
 8 for giving me this opportunity to state my case. My case
 9 is a very unique one. It's taken seven (7) years and
 10 it's still ongoing. And five (5) minutes will not
 11 explain anything but I'll try very hard to do so.
 12 And I wish I had a opportunity to answer
 13 Superintendent Kenneth McDonald but maybe there'll be a -
 14 - that opportunity later on.
 15 DEAN NATHALIE DES ROSIERES: If you don't
 16 have time to do -- you can, as I said, you know, you can
 17 write down what --
 18 MR. KENNETH QUARTEY: Okay. All right.
 19 First of all my case started seven (7) years ago when I
 20 landed here at Pearson Toronto -- Pearson Airport and has

21 gone on every day for seven (7) years, every day. Every
 22 day there's harassment, I don't have a job and the Police
 23 have -- Ontario Provincial Police have told me they'll
 24 make sure that I have a welfare pension. It's a very
 25 serious case.

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1 I'll go straight on to tell you a few
 2 things they have done to me. For example, infringing on
 3 my civil liberties, waging a war of propaganda involving
 4 deliberate misinformation and concoction of lies to
 5 discredit and destroy my reputation. And this I call
 6 communist inferior tactics. They are worse than what
 7 happens in Russia.

8 They use my landlords, my teachers,
 9 everybody they can when -- when I go to work, against me.
 10 It's a very serious matter. Even my doctor. When I had
 11 a problem I went to the Police station to report, this
 12 was in 2000. They used my doctor to tell me that I'm
 13 mad. It's a very serious matter.

14 And when I go to supermarket, for example,
 15 they give advance notice to the managers to say I'm a
 16 thief so they should be -- look out -- checking what I'm
 17 doing. It's a very serious matter. And also for example
 18 they deny any chances of me getting a job. 2002 I didn't
 19 work at all, 2003, last year, I worked for only three (3)
 20 months and this year I've worked for only two (2) months.

21 Even yesterday while I went around looking
 22 for a job, they called the office managers, they came to
 23 me and they made me leave that place. Sometime there are
 24 cases when I am right in front of the manager and the
 25 call comes. The room is quiet and I hear everything.

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1 Every conversation which is happening.

2 There are cases, this one -- the last one
 3 happened only in April. Where an agency had sent me to a
 4 place to work and a call came in. Fortunately it was a
 5 cell phone, it was an industrial one with the powerful
 6 speakers, you could hear, it's a -- those speaker system.

7 So they said this gentleman has come here,
 8 he says watch him, we will come and talk to you. They
 9 made my life miserable. In two (2) months I lost my job.
 10 It's been going on for seven (7) solid years. But I
 11 think I will stop talking about that and go onto my
 12 observations.

13 And I have -- I'm shaking because I have
 14 suffered too much. I have described them under two (2)
 15 headings. One (1), the nature of the complaint systems
 16 in Ontario and two (2), the handling of the complaints of
 17 the -- by the Ontario -- by the Police services.

18 In the first one which is the nature of
 19 the complaints, I have one (1). The program areas of the
 20 Police Services act. And here I have Section 583,
 21 Section 591, Section 593, Section 550, four (4), sixty-
 22 six (66), and clearly what you see is that all the
 23 complaints should be forwarded to the Police bosses.

24 Now, I have been a Canadian since 2000 but
 25 originally I came from Africa. Now if a lion wants to

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1 make a dinner out of you and you running away from the
2 lion. And you go and seek shelter from -- you saw -- you
3 see somebody and you seek shelter and that guy say, you
4 go, go and talk to the lion not to make a dinner out of
5 you.

6 Do you think this is practical? This is
7 the situation which is happening. The lion is going to
8 eat your families. It will find a way to eat you. You
9 can't reason with the lion. That's the point.

10 Then also two (2), problems with the
11 Ontario Civilian Commission, and Police Services. Here I
12 have a -- my personal problem, when I had a problem and I
13 went to them, they said we can't help you because the
14 Ontario Provincial Police have said there's no case.

15 But they give three (3) reasons for
16 dismissing my case, and I was able to sit down, write a
17 counter-argument. I didn't know that you're the
18 Commander, I knew Commander Smith, Casey Smith. Okay.
19 Okay.

20 Oh, sorry...?

21 DEAN NATHALIE DES ROSIERS: I just want
22 to make sure, you're running out of time, and you should
23 address your -- your comments to --

24 MR. KENNETH QUARTEY: Okay, all right.

25 DEAN NATHALIE DES ROSIERS: -- Mr. LeSage

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1 because he's the one that makes the -- the report, you
2 know.

3 MR. KENNETH QUARTEY: Sorry, is -- it's
4 just a pain.

5 DEAN NATHALIE DES ROSIERS: I know,
6 that's it.

7 MR. KENNETH QUARTEY: Look, my wife is in
8 Africa --

9 DEAN NATHALIE DES ROSIERS: Yeah.

10 MR. KENNETH QUARTEY: -- the plan was for
11 my wife and children to come here. For seven (7) years
12 I've not be able to look after my children, my wife, I've
13 not seen them. Two (2) of my children I've never seen
14 before.

15 DEAN NATHALIE DES ROSIERS: Hmm hmm.

16 MR. KENNETH QUARTEY: And this lady is
17 looking after five (5) children in Africa.

18 DEAN NATHALIE DES ROSIERS: Hmm hmm.

19 MR. KENNETH QUARTEY: And sometimes three
20 (3) days I go hungry not eating, since 2001 I eat once a
21 day on the average. So that's the situation.

22 Okay, this -- the second one (1) is on the
23 -- what do you call it, the handling of complaints by the
24 Police. And what I realized was that power, corrupts and
25 it corrupts absolutely, when all the power is

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1 concentrated in the Police Force, it's a big problem.

2 What we have not talked about here is what
3 they call the Strategy Services Division, which normally
4 people call Secret Police. They are the problem. They
5 are the problem.

6 DEAN NATHALIE DES ROSIERS: Thank you.

7 And can you conclude --

8 MR. KENNETH QUARTEY: Okay, I'll -- I'll

9 conclude here --
 10 DEAN NATHALIE DES ROSIERS: Okay. Hmm
 11 hmm.
 12 MR. KENNETH QUARTEY: It's just like --
 13 it's just like a duck sitting on water moving peacefully.
 14 Well, if the water is murky and you can't see under --
 15 below the water, you see that the duck is paddling very
 16 furiously. Now this is how they work.
 17 Every single day they plan and do very bad
 18 things to me, but it's unfortunate that I cannot go more.
 19 I don't want to waste time, but I've given submissions to
 20 Honourable Patrick LeSage, which I -- who I respect very
 21 much, as a Chief Justice who --
 22 DEAN NATHALIE DES ROSIERS: Thank you.
 23 MR. KENNETH QUARTEY: -- who I respect
 24 very much. And I have gone through the justice system
 25 and I realize that the Justices are prepared to help us.

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1 DEAN NATHALIE DES ROSIERS: Thank you.
 2 MR. KENNETH QUARTEY: Because I
 3 understand that and I've seen it in the papers, that
 4 they're what you call it, there is -- they have problem
 5 greater than law, which --
 6 DEAN NATHALIE DES ROSIERS: Thank you.
 7 MR. KENNETH QUARTEY: -- which -- no, no.
 8 No, please, give --
 9 DEAN NATHALIE DES ROSIERS: Okay. Okay,
 10 one (1) second.
 11 MR. KENNETH QUARTEY: -- me one (1)
 12 second. Okay. Which gives anybody the authority to sue
 13 somebody, anybody in Government or in a position who
 14 should act and has not acted. And I like Justice LeSage
 15 to take into consideration, that -- because a lot of
 16 people have not acted --
 17 DEAN NATHALIE DES ROSIERS: Hmm hmm.
 18 MR. KENNETH QUARTEY: -- though it is --
 19 they had opportunity to act.
 20 DEAN NATHALIE DES ROSIERS: Okay.
 21 MR. KENNETH QUARTEY: I think I'll stop
 22 here, because I -- I'm very sorry I've been very -- seven
 23 (7) years with nobody listening to you is not easy --
 24 easy, especially when you have been told that you are
 25 mad, and so forth.

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1 DEAN NATHALIE DES ROSIERS: Thank you.
 2 MR. KENNETH QUARTEY: I'm very sorry.
 3 Thank you very much.
 4 DEAN NATHALIE DES ROSIERS: Thank you.
 5 HONOURABLE PATRICK LESAGE: Thank you,
 6 Mr. Quartey.
 7 DEAN NATHALIE DES ROSIERS: Mr.
 8 Belletti...?
 9
 10 (BRIEF PAUSE)
 11
 12 MR. LOUIS BELLETTI: Thank you for
 13 allowing me to address my concerns, especially with
 14 respect to Police Officers of this investigating Police
 15 Officers.
 16 The Toronto Police Services should never
 17 be allowed to investigate Police complaints against the

18 Police.

19 The Toronto Police Services motto to serve
20 and protect, in my opinion, serves and protects the
21 Police from being charged with violations of possible
22 Criminal Code violations. And from ensuring that the
23 Police are not found guilty of violations of professional
24 misconduct of the Police Services Act, when the Police
25 investigate one (1) of their own.

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1 The Toronto Police Services has a bias in
2 protecting themselves, and not finding their own members
3 guilty, but find that there is no evidence of wrongdoing
4 by the Police Force against the members of the public.

5 There seems to be two (2) codes of conduct
6 of enforcing the law. Members of the public can be
7 charged with violations of the Criminal Code by the
8 Toronto Police Services, but the Police frequently will
9 withhold evidence or not investigate evidence that would
10 find T.P.S. guilty of violation of the Criminal Code or
11 the Police Services Act.

12 The public must be assured that we are
13 protected from the abuse by those whose motto is, to
14 serve and protect. A civilian group of people whose
15 interest is in seeking justice must be created
16 immediately to investigate Police complaints so that
17 justice will be served and that T.P.S. members who
18 violated the Criminal Code will be charged with Criminal
19 Code violations and when T.P.S. breaches the Police
20 Services Act, then the T.P.S. will be disciplined
21 accordingly

22 We, as members of the public, must feel
23 safe and secure in the knowledge that the Police are not
24 permitted to violate the Criminal Code and the Police
25 Services Act just because they have a gun and the power

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1 to arrest. Our lives and safety are in jeopardy if the
2 Police are allowed to continue to investigate themselves
3 and if T.P.S. are permitted to continue with their
4 rampant disregard of enforcing the law against the T.P.S.

5 The independent commission will have its
6 own body of investigators drawn from a wide range of
7 backgrounds with all the necessary powers to be able to
8 effectively investigate serious matters of Police
9 misconduct whether or not a complaint has been made.
10 This commission will have to have a system that is
11 maintained and that has the confidence of the public and
12 these complaints are dealt with in a fair and judicial
13 manner.

14 I consider the present system to be
15 archaic and should be abolished. The present complaint
16 system is a complete farce. You'll make a complaint to
17 the Police department, they'll indicate they reviewed the
18 whole situation and what will they do? They'll say the
19 matter is closed. It's absolutely disgusting in this day
20 and age that complaints are handled by the Police and
21 that an independent body hasn't been set up years ago to
22 deal with complaints by citizens.

23 I consider this to be a -- a huge
24 injustice to the public and the system surely must be
25 changed in this day and age. Surely we can set up an

1 independent civilian review board with adjudicators,
2 investigators. The Police certainly should not be
3 allowed in investigating any of their particular
4 complaints.

5 And, a website should be established where
6 if someone complains they don't particularly have to give
7 their name -- they could go as John Joe versus the
8 Toronto Police Department against John Doe, Police
9 Officer.

10 Surely in this day and age we can receive
11 some justice from -- from the Police department. I mean,
12 their attitude and their investigation into matters is --
13 is absolutely ridiculous in this day and age and they
14 must be removed from the scene. Thank you.

15 DEAN NATHALIE DES ROSIERS: Thank you
16 very much.

17 Ms. Finlay from the Office of the Child
18 and Family Service Advocacy?

19
20 (BRIEF PAUSE)

21
22 MS. JUDY FINLAY: Hello. I'm here to
23 speak from the perspective of young people who have
24 attempted to lodge Police complaints under the current
25 system.

1 I'm the Chief Advocate for the Province of
2 Ontario. The Office of Child and Family Service Advocacy
3 commonly known as the Child Advocates Office is
4 authorized under the Child and Family Services Act to
5 protect the rights and interests of Ontario's children
6 and their families.

7 Our office empowers children and their
8 families to make complaints about inappropriate treatment
9 and intercedes on behalf of those who might not be able
10 to get the needed services or resolutions without some
11 help or assistance.

12 The complaint protocol for young persons
13 in custody in court holding cells and during
14 transportation allows the Child Advocates Office to act
15 as the Complainant on behalf of young people with regard
16 to holding cells and transportation complaints.

17 Apart from that protocol, however, the
18 Child Advocates Office has no authority in matters
19 generally covered under the Police Services Act, but has,
20 historically attempted to provide support to youth who
21 wish to make complaints about their treatment while in
22 the care or the custody of the Police.

23 The Child Advocates Office has obtained
24 information, or obtains information, about the
25 interaction between young people and the Police in a

1 variety of ways.

2 We often get direct complaints to us from
3 young people, we receive information provided by custody
4 facilities, we get information when we're doing reviews
5 of custody facilities across the Province, we do site

6 visits and hear complaints from young people, we do focus
 7 groups with kids who volunteer information, and we
 8 monitor the outcomes of selected complaints filed under
 9 the Police Services Act.

10 Serious concerns about Police conduct have
 11 come to our attention, for example, during the time
 12 period of 2001 to 2003, there was fifty-five (55)
 13 complaints made by young people under the age of sixteen
 14 (16) from one urban facility alone. And these serious
 15 allegations included punching, kicking, slapping and
 16 being choked by the Police. The institution asked the
 17 Police to investigate these concerns.

18 In cases where our Office have been
 19 monitoring complaints, families have reported to us that
 20 they've had difficulty getting their calls returned about
 21 who was doing the investigation, and if and when there
 22 will be an investigation, and what the time frame might
 23 be for that investigation as well.

24 There's also -- they complain that there's
 25 a lack of clarity as to what is being looked into during

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1 the course of the investigation and what evidence is
 2 being used to support the conclusions of the
 3 investigation, and in fact, some families report to us
 4 that they haven't been informed whether there has been an
 5 investigator completed at all.

6 In one example, a youth complainant was --
 7 a youth complaint was investigated and was initially
 8 deemed unfounded by the Police, however, when the
 9 complainant was dissatisfied with the outcome of -- or
 10 with the Police response, this young person and his
 11 family hired a lawyer to launch a civil suit against the
 12 Police service. At the point the Police reinvestigated
 13 the matter and validated the complaint of the young
 14 person.

15 The point I'm trying to make here is that
 16 there is a lack of transparency and accountability and
 17 families are not satisfied or confident in the current
 18 process when Police are asked to investigate
 19 inappropriate treatment that their children have
 20 experienced.

21 The idea of making a complaint against an
 22 individual in a position of authority, can intimidate all
 23 people of all ages. Youth are particularly vulnerable,
 24 due to their lack of maturity and experience.

25 It's, therefore, important that youth and

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1 their families have confidence in the Police complaint
 2 process, and see it as one that is fair, effective and
 3 transparent. The Child Advocate's Office has found
 4 varying degrees of cooperation by Police services, in
 5 cases -- in cases we have attempted to assist families or
 6 young people in making a complaint.

7 Some Police services have responded
 8 immediately to youth complaints in a prompt and thorough
 9 manner. Other young people and their families have faced
 10 unexplained and unnecessary obstacles in attempting to
 11 resolve their complaints.

12 As the Child Advocate for the Province of
 13 Ontario, I strongly believe that allegations of excessive
 14 force and complaints of misconduct or mistreatment, when

15 youth are in the care and control of the Police, should
16 be thoroughly investigated in a transparent manner that
17 is sensitive to the needs of these young people.

18 Our Office have presented a Written
19 Submission to yourself, Justice LeSage, which contains
20 eight (8) recommendations.

21 Some of those recommendations include:
22 The right to make third party complaints, a presumption
23 that complainants are entitled to a full report -- a full
24 written report, an account of the investigation, the
25 creation of an independent body with extensive powers of

1 investigation, and the right of a young person to obtain
2 assistance from an adult support person when they're
3 making a complaint. Thank you for the opportunity to
4 speak to you today.

5 HONOURABLE PATRICK LESAGE: I have a
6 question about the protocol of which you speak. And
7 although it might have been in your submission, I have
8 forgotten it.

9 MS. JUDY FINLAY: Okay.

10 HONOURABLE PATRICK LESAGE: What is that
11 protocol and with whom do you have it?

12 MS. JUDY FINLAY: It's an inter-
13 ministerial protocol, so it's with Solicitor General,
14 Correctional Services with the Ministry of Children and
15 Family Services, with -- with all organizations that have
16 to do with holding cells and transportation.

17 But it -- it only includes that; holding
18 cells, in Courts, or Police holding cells, and the
19 transportation of kids to Court from facilities -- back
20 and forth to Court from facilities. So, it's an inter-
21 ministerial agreement that we have, and the Attorney
22 General -- I'm sorry, and the Attorney General.

23 HONOURABLE PATRICK LESAGE: Right. Is it
24 felt by the municipal forces to be binding on them?

25 MS. JUDY FINLAY: We've actually been

1 touring the -- the various facilities and holding cells
2 to sort of enlighten them about the fact that there is a
3 protocol in place, and in those sites we've reinforced
4 that there be signage, and that kids are given the
5 opportunity to -- to see the signs and the numbers to
6 call.

7 Thank you.

8 DEAN NATHALIE DES ROSIERS: Ms.

9 Riettie...?

10

11 (BRIEF PAUSE)

12

13 MS. JOYCE RIETTIE: Good evening and
14 thank you for giving us the opportunity to speak to the
15 issues of reviewing the existing public complaints
16 system.

17 Your Honour, I'm here as a representative
18 from the York Region, where I serve on the Human Services
19 and Justice Committee, and as a Board member of the
20 Community Legal Clinic of York Region.

21 I would like to both comment about the
22 current Police complaints system, and to offer some
23 recommendations for your consideration, in your creating

24 an effective and transparent complaint system.
25 The current complaint filing system

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1 appears to have many shortcomings, which I would like to
2 address.
3 At this time any complaint in Ontario
4 about the conduct of either a particular Police Officer
5 or Officers, or the policies or of services provided by a
6 Police Service, must be made in writing by letter, or by
7 completion of the public complaints form, by only the
8 affected person, other than minors whose parents can act
9 on their behalf. This can be handed in at any Police
10 Station from where it will be sent to the applicable
11 local Police Station, where the alleged incident
12 occurred.

13 I have several major concerns with this
14 process. Firstly, reporting a complaint at the same
15 Police Station where the alleged offending Officer or
16 Officers work, just doesn't make sense. How can the
17 Inspector or Superintendent of that Station be unbiased,
18 when he alone is responsible for all the staff under is
19 jurisdiction?

20 Surely, the number of complaints made
21 against his own staff reflects directly on his
22 professionalism, lack of authority and lack of
23 supervision. This could in turn affect his own personal
24 record, and future promotion.

25 Secondly, a youth who might have been

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1 harassed or physically abused by an Officer, might be
2 fearful to make a local complaint, since he or she would
3 be concerned about further repercussions and targeting to
4 him or herself and family by the same Officer or Officers
5 involved in this incident.

6 Would it not be fairer for a parent or
7 witness to lodge the complaint, since it might otherwise
8 remain unreported. An unreported instant would surely
9 condone this Police Officer's behaviour and might well be
10 repeated without any consequences.

11 I'm thus recommending that third party
12 complaints be legitimized and added to the Police
13 Services Act.

14 Thirdly, under the heading, Time Limits,
15 in the current OCCOPS issue of resolving complaints,
16 quote:

17 "You must usually make a complaint
18 within six (6) months after the incident
19 happened."

20 From personal experience, this recommended
21 six (6) month period is used extensively to deny the
22 complaint process, although it appears to me that this
23 time frame is only a guideline. My recommendation in
24 this case is to clearly extend this time limit to a
25 minimum of one (1) year, in the Police Services Act.

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1 Fourthly, it appears that all decisions
2 are made by both the Police Chief and OCCOPS, based on

3 the written submission alone. Many people who cannot
 4 afford a legal representative to assist them lodge a
 5 complaint, and have English as a second language, might
 6 be unable to express their concerns in writing.

7 I would therefore recommend that all
 8 complaints be heard verbally, with the assistance of a
 9 Government paid interpreter, before an independent panel.
 10 This will then be comparable with the Criminal Injuries
 11 Compensation Board process.

12 Fifthly, when Police Officers check or
 13 arrest a community member, they have full access to the
 14 person's CPIC record, and speaking for York Region,
 15 records in their own computers of any charges laid
 16 against this person, even if these charges were disposed
 17 with, and they were found not guilty.

18 In fairness and transparency in any
 19 complaint against an Officer or Officers, I would insist
 20 that these Officers personal records and notebooks be
 21 made available to all investigators to peruse and review
 22 any pattern in improper behaviour.

23 I would recommend that such records be
 24 made available through the whole Court system, from
 25 criminal

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1 charges, coroner's inquests, malicious prosecution
 2 charges against the SIU and civil trials where Police
 3 Officers are the defendants.

4 Sixthly, a further concern is that:
 5 "Any entry into Police Officers'
 6 employment record, paragraph 2 of
 7 Subsection 15 shall be purged from his
 8 or her record two (2) years after being
 9 made. If during that time no other
 10 entries concerning misconduct or
 11 unsatisfactory work performance have
 12 been made."

13 This ruling comes under Part 1997 of the
 14 Police Service Act, C8, S35. However, any Ontario
 15 citizen seeking a pardon must wait five (5) years to
 16 apply for the same. This difference appears totally
 17 biased unfavourable towards Police Officers.

18 I recommend that Officers' employment
 19 records require the same five (5) years before being
 20 purged during which they would not be eligible for
 21 promotion.

22 Seventhly --
 23 DEAN NATHALIE DES ROSIERES: Sorry. How
 24 many points have -- do you have them in writing?
 25 MS. JOYCE RIETTIE: I've got everything

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1 here. Yeah, this is the last one.
 2 DEAN NATHALIE DES ROSIERES: Okay, so --
 3 MS. JOYCE RIETTIE: It's the last point.
 4 DEAN NATHALIE DES ROSIERES: Okay, great.
 5 MS. JOYCE RIETTIE: The public is
 6 concerned that the legal system is Police driven, surely
 7 it is in the public interest for Police Officers to be
 8 tried by a totally alternate process than through the
 9 normal Court system. This would have to be well thought
 10 out and implemented to make the process unbiased.
 11 The number of complaints against the

12 Police in York Region is on the rise. There has been a
 13 44 percent increase this year over last, seventy-eight
 14 (78) public complaints were made against York Region
 15 Police during the first six (6) months of 2004 compared
 16 to fifty-four (54) recorded in 2003.

17 In 2003, of the public complaints received
 18 in York Region, eighty-three (83) were found to be either
 19 unsubstantiated, frivolous or withdrawn. Only three (3)
 20 out of eighty-three (83) resulted in a disciplinary
 21 action against an Officer. The exact nature of the
 22 disciplinary action is unknown to the public.

23 This year thirty-four (34) of the seventy-
 24 eight (78) complaints filed by September 25th have been
 25 investigated and none have been found to have done wrong

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1 by Chief LaBarge (phonetic). There needs to be far
 2 greater transparency by the York Region Police Service
 3 Board to the public, to who they are responsible.

4 DEAN NATHALIE DES ROSIERES: Thank you.
 5 Thank you very much. I have Mr. Wood, Alexi Wood from
 6 the Canadian Civil Liberty's Association. Good.

7 MS. ALEXI WOOD: It's quite all right.
 8 It's quite all right. It's actually technically a man's
 9 name. I get it quite often.

10 Mr. Justice LeSage, Madam Chair, thank you
 11 for this opportunity to make these submissions.

12 My name is Alexi Wood and I appear on
 13 behalf of the Canadian Civil Liberty's Association. The
 14 CCLA has already submitted to this Honourable Commission,
 15 written submissions, additional copies of which I do have
 16 with me this evening.

17 The CCLA recommends that remedial
 18 legislation be undertaken which would ensure that:

19 1) Civilian complaints are handled by
 20 agencies truly independent of the Police, the government
 21 and all interested constituencies. This mandate includes
 22 initial investigations, attempts at informal resolution
 23 and ultimate adjudications;

24 2) That third parties may also be
 25 allowed to file complaints;

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1 3) The complaint machinery applies to
 2 everyone. Police Officers, special Constables and
 3 civilians who wield significant Police powers;

4 4) That such officials are required as a
 5 condition of employment to answer investigative
 6 questions. Their replies are useable for disciplinary
 7 purposes only, not for criminal purposes; and

8 5) That a system is created to conduct
 9 independent self generated audits of Police policies and
 10 practices.

11 Given the limitation on time, I will
 12 confine my points to certain of these recommendations and
 13 leave aside others which do appear on our written
 14 submissions.

15 Several deputantes tonight have discussed
 16 that perception becomes reality. I think that was
 17 actually the quote used by -- on the Toronto Police
 18 Association. The CCLA completely agrees, perception does
 19 become reality and the complaints that we have received
 20 in our office indicate that the perception is that the

21 system is biased. The system just currently isn't
22 working.
23 Police officials vet, investigate and
24 adjudicate civilian complaints. No matter how fair, in
25 fact, any such Police handling may be, there's no way it

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1 can appear fair.
2 Police Officers are put in a conflict of
3 interest situation. Those members of the Police service
4 who are called upon to process complaints have
5 departmental interests and collegial relations to
6 maintain as well as having to investigate the complaint,
7 clearly creating a conflict of interest situation.
8 I'm going to use one (1) story that has
9 come to our office as an example. This deals with the
10 October 16th, 2001 OCAP demonstration at Nathan Phillips
11 Square. Fortunately, recently, there has been resolution
12 to this complaint situation and the facts that I'm going
13 to give come from an agreed upon set of facts that were
14 issued by both the Complainants and the Police.
15 My organization represented, or assisted
16 in representing, four (4) different Complainants. They
17 were at the demonstration on October 16th, 2001. They
18 were arrested by the Police for breach of the peace, but
19 were released without charges at the end of the day.
20 They were detained in a Police van,
21 handcuffed for anywhere from four (4) to over eight (8)
22 hours. Two (2) of the Complainants asked to use the
23 washroom; one (1) of them was told that she'd have to
24 urinate on the floor of the van, which she did twice.
25 She complained to the Police.

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1 All four (4) of them complained initially
2 to the Police and this one (1) individual, Sarah Kardash
3 (phonetic), who was forced to urinate on the van floor,
4 was denied completely, especially in relation to the van
5 situation. The Police investigation denied that she'd
6 had -- she'd been told she'd have to urinate on the
7 floor.
8 It took the CCLA getting involved, it took
9 private lawyers and it took almost two-and-a-half (2-1/2)
10 years for this individual to reach satisfaction in her
11 complaint. As I mentioned, there has been a formal
12 apology by the Police for this fact.
13 Some people might say, Well the system
14 works. She got her apology in the end, but the length
15 that this woman had to go to, to receive satisfaction is
16 unacceptable. Most people simply don't have those
17 resources at their disposal -- a national civil liberties
18 organization, private lawyers and two-and-a-half (2-1/2)
19 years of shepherding this through the system is simply
20 unaccept -- unacceptable, hence the need for an
21 independent body.
22 The last point that I'll make deals with
23 audits. There are several reasons why an independent
24 audit system is necessary. Often individuals may be too
25 intimidated to complain. They may be outside the system,

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1 a homeless individual, usually mental health issues,
 2 whatever, outside the system, or the individual may
 3 simply be unaware that the Police are conducting any
 4 investigative tools against them, for example,
 5 surreptitious surveillance.

6 Currently in Canada, there already exists
 7 an independent audit system and that's the Security
 8 Intelligence Review Committee, or SIRC, which oversees
 9 CSIS, so such precedent does exist within Canada.

10 Due to time limitations, I will cut this
 11 off. You have my written submissions, all of which, is
 12 of course respectfully submitted. Thank you.

13 DEAN NATHALIE DES ROSIERS: Thank you
 14 very much. Staff Inspector George Cowley from the
 15 Toronto Police Service.

16 STAFF INSPECTOR GEORGE COWLEY: Thank you
 17 very much, Mr. LeSage. With me today is Ms. Michelle
 18 Farrell (phonetic), who's Counsel with the Toronto Police
 19 as well. I'm a Staff Inspector and also a lawyer and I'm
 20 in charge of the Legal and Prosecutions Unit at the
 21 Toronto Police.

22 Chief Fantino thanks you, Mr. LeSage, for
 23 the opportunity to attend. Unfortunately, he was unable
 24 to be here himself but has asked me to speak on his
 25 behalf.

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1 The issue of public complaints and the
 2 manner in which they are dealt with has been a
 3 contentious issue, not only here in Ontario, but in other
 4 parts of Canada and indeed, throughout the world.
 5 Various different public complaint models exist and there
 6 appears to be no consensus, either in Canada or in other
 7 parts of the world on which is the best.

8 As Mr. Dudley Law (phonetic) stated:

9 "A review of the various studies and
 10 public complaints models that have been
 11 tried and abandoned in Ontario within
 12 the past two (2) decades is a reflection
 13 of this phenomenon."

14 The Chief supports a robust and effective
 15 complaints process. The current procedure in part 5 of
 16 the Police Services Act deals both with public complaints
 17 and also provides the Chief with a mechanism to control
 18 aberrant Police behaviour.

19 Significant oversight -- civilian
 20 oversight, effective review and appeal provisions, and
 21 the ability to direct action to be taken and to have
 22 further investigation conducted, already exists.

23 However, due to a lack of pro-active
 24 communication and promotion, this fact appears to be
 25 unknown to the majority of the members of the public and

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1 even some of the people who have been before you this
 2 evening, and in particular those whose language is not --
 3 first language is not English.

4 I agree with the submission of Ms. Akande,
 5 of the urban alliance on race relations, that the role
 6 and independence of the Ontario Civilian Commission on
 7 Police Services, should be better communicated to the
 8 public. I would add that the use of the acronym, OCCOPS,

9 should be discontinued, as it erroneously shows an
10 allegiance to the Police and creates confusion in the
11 public.

12 It's the position of the Toronto Police,
13 that with some discreet changes, the current complaints
14 process, contained in Part V of the Act, is fundamentally
15 sound. The written submissions that the Chief has made,
16 stand, but I would highlight, for the benefit of the
17 people who are here this evening, Mr. LeSage, some of
18 those recommendations.

19 Number 1: It should be clearly stated
20 that all Police Officers, including those who are on
21 secondment with the Police Association, are still bound
22 by discipline under the Police Services Act.

23 The Code of Conduct should be revised, to
24 repeal the provisions that allow Members of the Police
25 Association, to do acts which for other Police Officers

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1 would constitute misconduct, and in particular, I speak
2 of the ability of Association people to communicate with
3 the media and other unauthorized persons, and also the
4 ability to solicit and receive gratuities.

5 It should also be included in the Police
6 Services Act that a Police Association, as a body, should
7 be prevented from endorsing political candidates. If an
8 individual Police Officer cannot do so, it flies in the
9 face of logic, to allow a Police Association, which is
10 comprised of Members -- individual Members who are Police
11 Officers, to be able to do that.

12 The Police Services Act should include
13 positive duty placed on Police Officers to report the
14 misconduct of another Member of the Police Service, and
15 in line with that, there should be an ability for those
16 Police Officers to confidentially report such misconduct
17 and for them to receive some protection.

18 I speak of whistle-blower protection or
19 confidential reporting mechanism. This would ensure that
20 there is some level of protection from peer pressure
21 being placed on Officers not to report.

22 A Police Chief should be given the
23 ability, also, to suspend a Police Officer without pay.
24 That currently does not exist in the Police Services Act,
25 save and except the one example where a Police Officer is

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1 found guilty in a Criminal Court, and is sentenced to a
2 period of incarceration.

3 This section should provide an ability in
4 certain serious circumstances to suspend without pay.
5 This would be constitutional, I submit, and it is in line
6 with jurisdictions -- other jurisdictions outside
7 Ontario. British Columbia, Alberta, Quebec, Saskatchewan
8 and Federally.

9 Formal hearings should be reserved for
10 serious misconduct. A definition should be given as to
11 what constitutes serious and less serious misconduct. I
12 make these submissions because litigation often results
13 in the removal of reasonable solutions to problems.

14 The Chief wants and needs to have an
15 ability to control Police Officers, but we also need some
16 -- to incorporate in the Act, some ability to prevent
17 abuse of the complaints process and the multiplicity of

18 proceedings, that somebody pick the forum in which they
 19 wish to -- to argue their case, and stick to that.
 20 At the moment we have proceedings in
 21 Criminal Court, Statements of Claim in Civil Court, Human
 22 Rights complaints, Criminal Injuries Compensation Boards,
 23 as well as other procedures.
 24 Other than that, it is the submission of
 25 the Chief of Police, that the existing provisions in the

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1 Act concerning third party complaints and the time
 2 limitations are adequate. Thank you.
 3 HONOURABLE PATRICK LESAGE: Thank you.
 4 DEAN NATHALIE DES ROSIERS: Mr. Nills
 5 (phonetic)...?
 6
 7 (BRIEF PAUSE)
 8
 9 DEAN NATHALIE DES ROSIERS: Eric
 10 Nills...? Thank you.
 11 MR. ERIC NILLS: Thank you very much. I
 12 have a short story for you that I think is not important
 13 in itself, but it is illustrative.
 14 In 1999, I was among the organizers of a
 15 costumed procession of political theatre in Toronto. We
 16 obtained permits from the Toronto Police Service for a
 17 gathering at City Hall, a parade to the Legislature and
 18 another gathering at Queen's Park.
 19 Two (2) uniformed Police Officers who did
 20 not display their badge numbers, verbally harassed and
 21 jostled three (3) costumed stilt walkers, participants in
 22 our parade.
 23 Near the end of the parade, as it
 24 approached the -- the Legislature, these two (2) Officers
 25 -- sorry, one (1) of the stilt walkers approached these

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1 two (2) Officers and complained that their behaviour was
 2 unsafe. The Officers knocked him off his stilts and
 3 arrested him. This caused quite a commotion among the
 4 participants in the parade, and disrupted the otherwise
 5 peaceful event that we had.
 6 The Officers refused to identify
 7 themselves when requested.
 8 Charges against the stilt walker were
 9 eventually quashed, after the arresting Officers
 10 repeatedly refused -- or sorry, failed to appear in
 11 Court. I understand that he obtained a substantial cash
 12 settlement from the Toronto Police Services, after
 13 initiating a lawsuit.
 14 As organizers of the parade, we complained
 15 to the Toronto Police Traffic Services Department, which
 16 had issued our permits, that the two (2) unidentified
 17 Officers had engaged in inappropriate and dangerous
 18 behaviour, and had disrupted our parade.
 19 Staff Inspector Keith Ford, rejected our
 20 complaint, stating that, quote:
 21 "You were not directly affected by the
 22 circumstances." End of quote.
 23 We appealed this rejection to OCCOPS and
 24 got the same cold shoulder. So, as organizers of the
 25 parade, as what might be termed registered clients of the

1 Toronto Police Service, we were not entitled to any
 2 accountability about the Policing of the parade.
 3 We then wrote to the Toronto Police
 4 Services Board, this time about policy. We asked if the
 5 Board policy was that we were not entitled to a
 6 substantive response to our complaint? And we asked
 7 among other things, if it was Board policy that Toronto
 8 Police Officers do not have to wear badge numbers and do
 9 not have to identify themselves when asked.

10 The, then Chair of the Police Services
 11 Board, Norm Gardner, wrote a replay that ignored almost
 12 all of our policy complaint. His only substantive
 13 comment was regarding the Officer identification, and in
 14 entirety I quote:

15 "With respect to the issue of investig
 16 ative
 17 techniques and
 18 Officer
 19 identifi
 20 cation,
 21 there
 22 are
 23 policies
 24 and
 25

1 procedur
 2 es in
 3 place
 4 with
 5 which
 6 Members
 7 of the
 8 Service
 9 must
 10 comply."
 11

12 End of quote.
 13 He did not say what the policy was.
 14 So, I must conclude that as organizers of
 15 the parade, we were not entitled to any accountability
 16 regarding policy, as well as the actual Policing of it.
 17 Now, you have many recommendations and
 18 much expertise that I don't, on how to address this, but
 19 I hope that with this Commission, with a new Mayor and
 20 Council in Toronto, with a new Provincial Government,
 21 with a new Police Chief and a new Head of the Police
 22 Association, that the citizens of Ontario can expect a
 23 much better process. Thank you very much.
 24 DEAN NATHALIE DES ROSIERS: Thank you
 25 very much.

1 HONOURABLE PATRICK LESAGE: Thank you.
 2 DEAN NATHALIE DES ROSIERS: So, that's
 3 it.
 4
 5 (BRIEF PAUSE)

