

# Perspectives on Lawsuits and Complaints

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# The Office of the Independent Police Review Director

- The OIPRD is the civilian agency responsible for receiving, managing and overseeing all public complaints against the police in Ontario
- We ensure public complaints against police are dealt with in a manner that is effective, transparent, accountable and fair to both the public and the police
- We are governed by the *Police Services Act*

## Police Services Board Responsibilities in Policy and Service Complaints

- Complaints about policies and services are screened by the OIPRD and sent to the appropriate police chief for investigation
- The chief must provide a written report to the complainant, the OIPRD and the police services board, outlining the decision, and also advise the complainant that they have the right to request a review of the decision from the police services board.
- Police service boards will:
  - Review the complaint
  - Take any action, or no action, in response to the complaint, as considered appropriate
  - Notify the complainant, the Chief and the OIPRD in writing of the response to the complaint, with reasons

# Professionalism in Policing

- Police officers provide a vital service to communities and society
- They are responsible to preserve the peace, prevent crimes, apprehend criminals and lay charges
- Police officers have the authority to make arrests and use lethal and non-lethal force
- The public expects the police to conduct themselves with integrity and professionalism
- Civilian oversight contributes to the legitimacy of policing and helps maintain public confidence in the police

# Risks

- The risks associated with use of force and other professional conduct issues include:
  - Death and Serious Injuries
  - Criminal charges
  - Civil lawsuits
  - Public complaints
  - Loss of public confidence and trust in police

# Risk - Public Complaints

- More than 18,000 complaints – approx. 3,000 per year
  - Incivility
  - Unlawful or unnecessary exercise of authority
  - Neglect of duty

# Discreditable Conduct -Incivility

- O. Reg 268/10, Schedule – Code of Conduct, s.2(1)(a)(v):
  - uses profane, abusive or insulting language or is otherwise uncivil to a member of the public (or any other member of a police force – s.2(1)(a)(iv))

# Unlawful or Unnecessary Exercise of Authority

- O. Reg 268/10, Schedule – Code of Conduct, s.2(1)(g)(i, ii):
  - without good and sufficient cause makes an unlawful or unnecessary arrest, or
  - uses any unnecessary force against a prisoner or other person contacted in the execution of duty

# Neglect of Duty

- O. Reg 268/10, Schedule – Code of Conduct, s.2(1)(c)(i, ii, v, vii):
  - without lawful excuse, neglects or omits promptly and diligently to perform a duty as a member of the police force
  - fails to work in accordance with orders, or leaves an area, detachment, detail or other place of duty, without due permission or sufficient cause
  - fails to report a matter that it is his or her duty to report
  - omits to make any necessary entry in a record

# Risk Management

- Define “reasonable grounds” for use of force
- Standardized use of force reporting
- Body-worn cameras
- Training
  - De-escalation
  - Mental health issues
- Communication
- Organizational culture

# Use of Force

- Reasonable grounds for use of force
  - Look at the balance between what is the intended outcome of use of force and whether the risk of the amount of force used is acceptable
  - Use of force must be in direct proportion to the seriousness of the crime and the amount of resistance given by the subject of the arrest
- Standardized use of force reports
  - Reporting should provide better data on use of force incidents
  - Standardized reporting will aid future research

# In-Car and Body Worn Cameras

- Benefits
  - Provides unbiased evidence
  - Less time and money spent on disciplinary hearings
- Privacy concerns
- Social media and video

# Training

- Training and yearly re-training
- Manage risks through comprehensive service polices and rules, practical examples and engaging role-play scenarios for practice
- Training should also cover:
  - Judgement development
  - The law – with focus on the Charter and case law
  - Citizen engagement – mental health and youth
  - De-escalation
  - CEW use – length of shocks
  - Articulation
  - Ethics

# Risk – Loss of Trust in Police

- The “Thin Blue Line”
- Supervisors, senior police service leaders and police services boards must display ethical leadership
- Inspire officers to have the courage to “do the right thing”
- Accountability

# Ethical Leadership

- Ethics and professionalism are important qualities that leaders must have
- The public looks to police leaders to right any perceived wrongdoing or unfairness on the part of rank and file officers
- The public also looks to civilian oversight agencies to make right wrongdoing by police

# Legal Decisions

# Figueiras v. (York) Police Services Board

[2013] O.J. No. 5911, 2013 ONSC 7419, 317 O.A.C. 179

## Facts

- Complaint out of G20 incident
- Board refused to hear complainant's submissions for s.83(17) application

## Divisional Court

- Court found that applicant/complainant should be permitted to submissions to Board
- Court dealt with role of complainant in police disciplinary matters
- IPRD has authority to direct the board in the process

# Endicott v. Ontario (IPRD)

[2013] O.J. No. 2479, 2013 ONSC 2046, 308 O.A.C. 221, [115 O.R. \(3d\) 328](#),  
[58 Admin. L.R. \(5th\) 263](#), 228 A.C.W.S. (3d) 308, 2013 CarswellOnt 6669

## Facts

- Complainant alleged that TPS and OPP violated her privacy rights and s.7 Charter rights

## Judicial Review of IPRD's Decision

- PSA presumes that complaints proceed unless the Director decides otherwise
- Further litigation continues regarding IPRD's authority to issue better reasons

# Wall v. IPRD

[2014] O.J. No. 5939, 2014 ONCA 884, [123 O.R. \(3d\) 574](#), 378 D.L.R. (4th) 589, 247 A.C.W.S. (3d) 947, 2014 CarswellOnt 17231

## Facts

- Complaint out of G20 incident

## Judicial Review

- Letters must provide sufficient reasons to explain why the complaint was screened out
- If screened out for delay, Director must consider discoverability

# Questions?