

OTTAWA POLICE SERVICES BOARD – November 2013

Policy Number:	Policy Subject:
GA-9	COMPLAINTS
LEGISLATIVE AUTHORITY	REFERENCE / Ontario <i>Police Services Act</i> , sections 31(1)(i), 31(1)(j) and Part V Ontario Regulation 263/09 – Local Complaints
DATE APPROVED	23 February 1998
DATE REVIEWED	2010/2013
DATE AMENDED	01 November 2010
DATE TO BE REVIEWED	2016
REPORTING REQUIREMENT	Quarterly reports to the Board

LEGISLATIVE REFERENCE / AUTHORITY

1. Section 31(1)(i) of the *Police Services Act* requires the Police Services Board to establish guidelines for dealing with complaints made under Part V of the *Act*.
2. Section 31(1)(j) requires the Police Services Board to review the Chief of Police's administration of the complaints system under Part V and receive regular reports from the Chief of Police on his or her administration of the complaints system.
3. Part V of the *Act* sets out procedures for the handling of complaints about policies or services of the Police Service, or about the conduct of sworn members of the Police Service including the Chief or a Deputy Chief of Police.
4. Bill 103 received Royal Assent in 2007; the Bill established the Office of the Independent Police Review Director (OIPRD) and amended the *Police Services Act* to create a new public complaints process. More specifically, Bill 103 added a new Part II.1 setting out the duties of the OIPRD, and repealed and replaced Part V of the *Act*.
5. Ontario Regulation 263/09 made under the *Police Services Act*, sets out procedures for handling public complaints as "local complaints" under the complaints system established by Bill 103.

GENERAL

1. If the Board receives a complaint in the prescribed form, the Board shall send it to the OIPRD for screening within three business days.
2. The OIPRD will determine the type of complaint and whether to exercise discretion to deal with the complaint.

3. Complaints filed by the public may be in relation to conduct, policy or service issues. Conduct issues regarding the Chief or Deputy Chief will be referred to the Board by the OIPRD, all others will be referred to the Chief of Police.

DEFINITIONS

For the purposes of this policy, the following definitions apply:

- a) “the *Act*” means the *Police Services Act, R.S.O. 1990, c. 15*, as amended by S.O. 1997 c. 8 and Bill 103
- b) “Board” means the Ottawa Police Services Board
- c) “OIPRD” means the Office of the Independent Police Review Director
- d) “Commission” means the Ontario Civilian Police Commission
- e) “Complaints Procedure” means the internal procedures adopted by the Ottawa Police Service for the handling of complaints.
- f) “Chief” means the Chief of Police of the Ottawa Police Service.
- g) “Deputy Chief” means a Deputy Chief of Police of the Ottawa Police Service.
- h) “Investigating Chief” means the Chief of Police of another police service assigned by the Commission to investigate a complaint against the Chief or Deputy Chief.
- i) “Local Complaint” means a complaint that qualifies to be handled in accordance with Regulation 263/09 and without the filing of a formal complaint under Part V of the *Act*.
- j) “Misconduct” means an act or omission on the part of an officer, including the Chief or Deputy Chief, that constitutes an offence under the *Act*.
- k) “Offence” refers to a violation of a law of Canada or of a province of territory.
- l) “Officer-in-Charge” means a member of the Ottawa Police Service assigned by the Chief of Police to oversee the handling of complaints.

BOARD POLICY

This policy provides direction to the Board and to the Chief of Police regarding the obligations of both parties under the *Police Services Act* and associated Regulations.

1. GENERAL APPLICATION

It is the direction of the Ottawa Police Services Board that the Chief of Police shall:

1. Develop and maintain an Ottawa Police Service Complaints Procedure to ensure that complaints are processed in accordance with the provisions of the *Act*, associated regulations and this policy.
2. Ensure that the Complaints Procedure incorporates a fair and transparent

process for both the public and members of the Ottawa Police Service including a requirement that, where notice or information is to be provided to a person affected by a complaint (either a complainant or police officer), that notice is prompt, professional, complete and delivered in accordance with the *Act*.

3. Ensure that the Complaints Procedure refers to and incorporates opportunities to apply informal resolution of complaints where appropriate and in compliance with the *Act*, in recognition of the Board's endorsement of the concept of informal resolution and the importance of the role of all members of the Service in the resolution of complaints.
4. Ensure that information about the complaints process and complaint forms are available on the Ottawa Police Service website and in public areas of every Ottawa Police Service office and police centre, in the format provided by the OIPRD.
5. Ensure that the complainant is made aware of the OIPRD, is provided with information on the Public Complaint process, and is provided with assistance in filling out the OIPRD form.
6. Ensure that all forms, pamphlets and written material concerning the Complaints Procedure are available in both official languages and that resources are available to ensure that complaints, investigations and services related to the Complaints Procedure are available in both official languages.
7. Ensure that the Complaints Procedure is accessible for persons with a disability, persons who may not be literate, and persons who do not speak either official language.
8. Ensure that the Complaints Procedure includes provisions for the involvement of Human Resources staff in respect of complaints of unsatisfactory work performance, in recognition of the relationship between Part V of the *Act* and the Human Resources function.
9. Maintain a working relationship with the OIPRD and ensure that all directions from the OIPRD are complied with.
10. Ensure that all members of the Police Service receive adequate training in the Complaints Procedure and Part V of the *Act*, and the skills necessary to resolve complaints.
11. Ensure that appropriate staffing designations are made under the *Act*.

2. COMPLAINT WITHDRAWALS

1. If a complaint is withdrawn by a complainant and the OIPRD has given notice of the withdrawal to the Chief or Board, depending on the type of complaint, the Chief or Board (as the case may be) may continue to deal with the complaint if they determine within 30 days of receiving the notice of withdrawal that it is appropriate to do so.
2. In making a decision concerning whether to proceed with a complaint that has been withdrawn, the Board or Chief, as the case may be, shall be guided by the public interest.
3. In the case of a public complaint about the conduct of a police officer, a complaint continued under paragraph 3.1 above shall be dealt with as if it had been made by the Chief or by the Board, as the case may be, in accordance with the *Act*.
4. If the Chief or Board continues to deal with a complaint about the conduct of a police officer after it is withdrawn, the Chief or Board, as the case may be, shall within 30 days after receiving the notice of withdrawal, notify the complainant and the police officer who is the subject of the complaint of the withdrawal and the continuance of the complaint unless, in the Chief's or Board's opinion, notifying the police officer might prejudice an investigation into the matter.

3. PUBLICATION OF DECISIONS

The Chief shall ensure that every decision made as a result of a hearing is made available to the public in the manner that he or she considers appropriate in the circumstances, and shall provide a copy of each such decision to the OIPRD.

4. LOCAL COMPLAINTS

Complaints may be treated as "local complaints" if the complainant has not filed a public complaint. In dealing with local complaints the Chief of Police shall:

1. Develop a Local Resolution/Local Complaint Procedure in compliance with Ontario Regulation 263/09.
2. The Local Complaint Procedure shall state that the Officer-In-Charge must refuse to process a complaint as a Local Complaint if:
 - a) the involved officer has committed or been charged with a criminal offence;
 - b) the complaint is against a Chief or Deputy Chief; or

- c) the Officer-In-Charge believes it is in the public interest for the matter to be dealt with as a public complaint.
3. Ensure that, if the Local Complaint is not a qualifying matter in accordance with section 4.2 above, the complainant is asked to make a public complaint. If the complainant refuses to make a public complaint, the Chief shall direct that an internal complaint be forwarded to the Professional Standards Section for review.
4. Ensure that, if the Local Complaint is a qualifying matter, the Officer-In-Charge must accept it and attempt to resolve it by discussing the matter with the officer involved; facilitating discussion between the complainant and the officer; facilitating an apology by the officer if appropriate; or, contacting the Professional Standards Section if a formal mediation or alternative dispute resolution process is required.
5. Refuse to accept or deal with a Local Complaint if the complainant has already made a Part V complaint about the same matter.

5. POLICY AND SERVICE COMPLAINTS

The OIPRD determines if a complaint is about a policy or service of the Police Service and will refer the complaint to the Chief of Police. The Chief of Police:

1. Shall ensure that within 60 days of the OIPRD referral, the complainant is notified in writing of the disposition of the complaint, with reasons for the decision, and of their right to request the Police Services Board to review the complaint if they are not satisfied with the disposition. The complainant must request a review, in writing, within 30 days of receiving the disposition.
2. May extend the 60-day period by notifying the complainant in writing of the extension before the expiry date of the period being extended.
3. Shall ensure that upon disposition of every complaint about a policy or service, a brief written synopsis, including the disposition of the complaint, is submitted to the Police Services Board as part of the Quarterly Complaints Report.

Requests for Review:

4. As permitted under section 63(7) of the Act, the Board shall establish a "Complaints Committee" made up of three members of the Board (two of whom constitute a quorum), to review policy or service complaints and make recommendations to the Board.
5. Upon receipt of a request for a review, the Board's Executive Director shall

immediately notify the Chief in writing, and shall request the materials set out in paragraph 6 below.

6. When a review of a policy or service complaint has been requested, the Chief shall submit a written report to the Board's Complaints Committee that includes the following:
 - a) a copy of the complaint;
 - b) a copy of the relevant forms provided to the complainant;
 - c) a copy of the written disposition provided to the complainant;
 - d) any other documentation or information considered in making any findings in respect of the complaint.
7. Within thirty (30) days of receiving the request for review, the Complaints Committee shall:
 - a) review the report of the Chief; and
 - b) make a written report to the Board with recommendations concerning the disposition of the complaint, including a recommendation as to whether or not to hold a public meeting on the matter.
8. The Complaints Committee may extend the time limit in paragraph 7 above, upon giving notice to the complainant, the Chief and the Board.
9. If so requested by the Board, the Complaints Committee shall provide to the Board all documentation and information considered by the Complaints Committee in making its recommendation.
10. In deciding whether to hold a public meeting pursuant to the *Act*, the Board shall consider at least the following:
 - a) whether the complaint raises significant present, past or potential issues concerning public safety, law enforcement, and crime prevention in the City of Ottawa;
 - b) whether public input could reasonably be required to effectively deal with the complaint, and
 - c) whether it is in the public interest to hold such a public meeting.
11.
 - a) Notice of a public meeting to be held pursuant to section 63(8) of the *Act* shall be given by publication in English and French language newspapers that, in the opinion of the Board, are of sufficiently general circulation in the City so as to give the public reasonable notice of such meeting.
 - b) The notice shall include at least the following:
 - (i) a summary of the nature of the complaint;
 - (ii) the time and place of the meeting;
 - (iii) the address for filing of written submissions;
 - (iv) the deadline for filing of such written submissions;

- (v) any other relevant information.
- 12. The Board shall make a decision with respect to the complaint, including a decision to hold a public meeting, and notify the complainant, the Chief and the OIPRD of its decision, in writing, within sixty (60) days of receipt of the request for review.
- 13. The Board may extend the time described in paragraph 12 above by giving written notice to the Chief and the complainant.
- 14. Wherever feasible, the Board shall deal with all issues relating to the complaint in a public meeting of the Board.
- 15. In accordance with section 35(4) of the *Act*, the Board may decide to deal with all or part of a complaint *in camera*.
- 16. The Board shall ensure compliance with the *Municipal Freedom of Information and Protection of Privacy Act* and shall not disclose any personal information of the complainant or other parties without their consent.

6. CONDUCT COMPLAINTS - OFFICER

- 1. This section is applicable to complaints about the conduct of an officer other than the Chief or a Deputy Chief. The Chief of Police shall ensure that:
 - a) The Complaints Procedure regarding the handling of public complaints about the conduct of an officer is compliant with the *Act*.
 - b) The Board is kept informed of any serious complaint by way of confidential written reports.
 - c) All decisions concerning criminal charges will be made in consultation with the Crown Attorney's Office. The Board shall be notified of these decisions as soon as reasonably possible.
 - e) Complainants are given all necessary guidance, support and protection, including confidentiality of the complainant's identity when requested by the complainant, except for such disclosures as may be required by law.
 - f) Complainants are advised of the progress of disciplinary proceedings and their right to participate and are also informed of their right to request anonymity and a closed hearing.
 - g) No further action is taken with respect to a complaint once the Chief is notified of the resignation of an officer who is the subject of a non-criminal complaint. The Chief shall advise the OIPRD of the resignation

if the complaint was made by a member of the public.

2. No member of the Board or Police Service shall enter into any agreement concerning criminal charges that involves the resignation of a member of the Police Service or Board.

7. CONDUCT COMPLAINTS - CHIEF OR DEPUTY CHIEF

1. General

This section relates to conduct complaints about the Chief or a Deputy Chief and provides direction to the Board in reviewing conduct complaints generated by the Board itself, and public complaints referred to it by the OIPRD.

2. Internal Board Complaints About the Chief or Deputy Chief

1. In initiating a complaint against the Chief or Deputy Chief, the Board is not a complainant for the purposes of Part V of the *Act*.
2. The Board shall promptly give notice of the substance of the complaint to the Chief or Deputy Chief unless, in the Board's opinion, to do so might prejudice an investigation into the matter.
3. If the Board is of the opinion that the Chief or Deputy Chief's conduct may constitute an offence, or misconduct or unsatisfactory work performance, the Board shall ask the Ontario Civilian Police Commission to assign the Chief of Police of another police force to cause the complaint to be investigated promptly, and the investigation to be reported on in a written report at the Board's expense.
4. At the conclusion of the investigation, the Investigating Chief may form the opinion that the complaint is unsubstantiated and in such a circumstance, the Investigating Chief shall report that opinion in writing to the Board.
5. If the Board receives a written report from the Investigating Chief with the opinion that the complaint is unsubstantiated, the Board shall take no action in response to the complaint and shall notify the Chief or Deputy Chief who is the subject of the complaint in writing of the decision, together with a copy of the written report.
6. At the conclusion of the investigation, the Investigating Chief may form the opinion, on reasonable grounds, that the conduct of the Chief or Deputy Chief under investigation constitutes misconduct or unsatisfactory work performance. In such a circumstance, the

Investigating Chief shall refer the matter to the Board together with a written report.

7. If the Board receives a written report from the Investigating Chief with the opinion that there are reasonable grounds to conclude that the conduct of the Chief or Deputy Chief constitutes misconduct or unsatisfactory work performance, the Board must make a decision regarding the seriousness of the misconduct or unsatisfactory work performance.
8. If the Board is of the opinion that the misconduct or unsatisfactory work performance is serious in nature, the Board shall hold a hearing into the matter or may refer the matter to the Commission to hold the hearing.
9. If the Board is of the opinion that the misconduct or unsatisfactory work performance is not of a serious nature, the Board may resolve the matter informally without holding a hearing, if the Chief or Deputy Chief consents to the proposed resolution.
10. If the Chief or Deputy Chief does not consent to an informal resolution, the Board shall hold a hearing in accordance with the *Act*.
11. Informal resolutions must be consented to by the Chief or Deputy Chief and the statutory "cooling off" period would not apply, unless it is a public complaint.
12. If an informal resolution is attempted but not achieved, the following rules will apply:
 - a) The Board shall provide the Chief or Deputy Chief with reasonable information concerning the matter and shall give him, or her, an opportunity to reply, orally or in writing.
 - b) Subject to sub-paragraph (c), the Board may impose on the Chief or Deputy Chief a one of the penalties described in the *Act* or any combination thereof, and may take any other action described in the Hearing section of the *Act*. The Board may cause an entry concerning the matter, the penalty imposed or action taken, and the Chief's or Deputy Chief's reply to be made in his or her employment record.
 - c) If the Chief or Deputy Chief refuses to accept the penalty imposed or action taken, the Board shall not impose a penalty or take any other action or cause any entry to be made in the employment record, but shall hold a hearing, or refer the matter to the Commission to hold a hearing.
13. An entry made in the Chief's or Deputy Chief's employment record

under the *Act* shall be expunged from the record two years after being made if, during that time, no other entries concerning misconduct or unsatisfactory work performance have been made in the record under Part V of the *Act*.

14. The Commission may at any stage in the complaints process direct the Board to deal with the complaint as it specifies.

3. Public Complaints About the Chief or Deputy Chief

1. All complaints about a Chief or Deputy Chief must be made to the OIPRD. The Board recognizes that it has no authority to initially receive a complaint. The Board shall forward any complaint received to the OIPRD within 3 business days of its receipt.
2. The OIPRD will undertake the preliminary screening of the complaint. The initial screening will consider whether the complaint is made within the statutory six month time frame; whether the complaint is frivolous or vexatious, and whether the complainant was directly affected by the conduct.
3. If a complaint passes the preliminary screening, the OIPRD shall refer all complaints about a Chief or Deputy Chief to the Board for review.
4. When a public complaint is referred to the Board by the OIPRD, the Board shall give notice of the substance of the complaint to the Chief or Deputy Chief, unless in the Board's opinion, to do so might prejudice an investigation into the matter.
5. If at the conclusion of its review the Board decides the conduct is not an offence, misconduct or unsatisfactory work performance, then the Board shall take no action and shall notify the complainant, the Chief or Deputy Chief and the OIPRD in writing of the decision, with reasons.
6. If at the conclusion of its review the Board decides that the conduct is an offence, misconduct or unsatisfactory work performance, then the Board must ask the OIPRD to investigate and provide a written report, at the Board's expense.
7. If at the conclusion of the investigation, the OIPRD is of the opinion that the complaint is unsubstantiated, the OIPRD shall report this conclusion in writing to the Board and the Board shall take no action regarding the complaint. The Board shall notify the complainant and the Chief or Deputy Chief in writing of the decision and provide a copy of the OIPRD report.

8. If at the conclusion of the investigation, the OIPRD is of the opinion, on reasonable grounds, that the conduct constitutes misconduct or unsatisfactory work performance, the substantiated complaint is referred to the Board together with a copy of the OIPRD written report. If the OIPRD is of the opinion that the conduct of the Chief or Deputy is not of a serious nature, the OIPRD can advise the Board when it submits the complaint to the Board.
9. If the Board receives a written report from the OIPRD substantiating the complaint, the Board must assess whether the conduct is of a serious nature.
10. If the Board views the complaint as serious, it shall hold a hearing into the matter or refer it to the Commission for a hearing.
11. If the Board considers the matter not to be of a serious nature, the Board may resolve the matter informally without holding a hearing if the Chief or Deputy Chief and the complainant consent to the proposed resolution.
12. The Chief or Deputy Chief and the complainant who consent to a proposed resolution may revoke the consent by notifying the Board in writing of the revocation no later than 12 business days after the day on which the consent is given.
13. If consent is not revoked by the Chief or Deputy Chief or complainant, the Board shall give notice of the resolution to the OIPRD and shall provide the OIPRD with any other information respecting the resolution that the OIPRD may require.
14. If consent to the informal resolution of a matter is not given or is revoked, the following rules apply:
 - a) The Board shall provide the Chief or Deputy Chief with reasonable information concerning the matter and shall give him, or her, an opportunity to reply, orally or in writing.
 - b) Subject to sub-paragraph (c), the Board may impose on the Chief or Deputy Chief any of the penalties described in the *Act* or any combination thereof, and may take any other action described in the Hearing section of the *Act*. The Board may cause an entry concerning the matter, the penalty imposed or action taken, and the Chief's or Deputy Chief's reply to be made in his or her employment record.
 - c) If the Chief or Deputy Chief refuses to accept the penalty imposed or action taken, the Board shall not impose a penalty or take any other action or cause any entry to be made in the employment

record, but shall hold a hearing, or refer the matter to the Commission to hold a hearing.

15. Any entry made in the Chief's or Deputy Chief's employment record shall be expunged from the record two years after being made, if during that time no other entries concerning misconduct or unsatisfactory work performance have been made in the record.
16. As permitted by the *Act*, the Board and Chief or Deputy Chief may enter into an agreement to permit penalties or actions other than those permitted by the *Act* if the Chief or Deputy Chief consents, without a hearing.
17. The OIPRD has the power, at any time after a public complaint has been made and before a hearing is commenced, to:
 - a) Direct the Board to deal with the complaint as the OIRPD specifies;
 - b) Assign the conduct of a hearing to the Commission; or
 - c) Take or require to be taken by the Board any other action with respect to the complaint that he or she considers necessary under the circumstances.
18. A hearing held by the Board shall be in accordance with the provisions of the *Statutory Powers and Procedures Act*.

4. Resignation

1. If at any time after a complaint about the conduct of the Chief or Deputy Chief is made by the Board or a public complainant, and the Chief or Deputy Chief resigns before the complaint is finally disposed of, the Board shall take no further action.
2. If the complaint was made by a member of the public, the Board shall promptly notify the OIPRD of the resignation of the Chief or Deputy Chief.
3. If the complaint was initiated by the Board, the Board shall promptly notify the Commission of the resignation of the Chief or Deputy Chief.

8. **MONITORING REQUIREMENTS**

1. On an annual basis, the Chief shall provide the Board with a report outlining analysis of complaints to ensure efficiency and effectiveness of the administration of the complaints process.

2. The Chief shall, from time to time, review the public complaints process with a view to determining the adequacy of resources directed to administer complaints.

9. REPORTING REQUIREMENTS

The Chief of Police shall:

1. Submit quarterly written Complaints Reports to the Board at regularly scheduled Board meetings that include cumulative year-to-date information and the following:

- a) For Policy and Service Complaints

- i) the total number of complaints referred to the Ottawa Police Service from the OIPRD;
- ii) a summary of the action taken, if any, for each complaint;
- iii) the number of requests for review made to the Board concerning which the Board took action, a summary of the action taken, and the Service's response to the Board's action;
- iv) the date the complaint is received and the date it is finally disposed of; and
- v) the number of time extensions made in respect of the complaints.

- b) For Conduct Complaints (except those against the Chief or Deputy Chief)

- i) the number of complaints referred to the Ottawa Police Service from the OIPRD;
- ii) the number of complaints about other police services referred to the Ottawa Police Service from the OIPRD, and an estimate of the cost of such referrals;
- iii) the number of complaints determined to be unsubstantiated;
- iv) the number of OIPRD reviews requested and the results of those reviews;
- v) the number of hearings held and the findings of the hearings;
- vi) the number of complaints dealt with as Local Complaints, the number that were successfully concluded, and the number that became public complaints;
- vii) the number of public complaints dealt with informally;
- viii) the number of public complaints resolved;
- ix) the number of public complaints that resulted in a penalty being applied without a hearing;
- x) a summary of the penalties imposed following a hearing;
- xi) the number of outstanding complaints as at the end of the reporting period;
- xii) the date the complaint is received and the date it is finally disposed of;
- xiii) the number of time extensions made in respect of the complaints; and

- xiv) the number of appeals of a hearing decision and the outcomes.
2. Include relevant complaints information in the Police Service annual report.
 3. Include in the Annual Report an analysis of the frequency, nature and substance of the policy and service and conduct complaints, excluding complaints against the Chief or a Deputy Chief, and the opinion of the Chief as to whether such frequency, nature and substance of the complaints requires some form of remedial or other training, or additional resources to process the complaints.