

Submissions to the Standing Committee on Justice Policy

By

The Ontario Council of Agencies Serving Immigrants

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Introduction

The Ontario Council of Agencies Serving Immigrants (OCASI) was formed in 1978 to act as a collective voice for immigrant and refugee-serving organizations and to coordinate responses to shared needs and concerns. OCASI is a registered charity governed by a volunteer board of directors. OCASI's membership is comprised of over 180 community-based organizations in Ontario. The Council's activities include providing professional training to enhance the skills of practitioners, working with communities, government and policy decision makers to enhance the economic, social and cultural contributions of immigrants and refugees and supporting community-based research. OCASI's community-based approach to policy development promotes the principles, policies and practices of anti-racism, equity and access through cooperation with member organizations, other organizations, elected officials, government and the broader public.

OCASI thanks the Standing Committee on Justice Policy for the opportunity to participate at this stage of the consultation process around Bill 103. OCASI commends the Bill's general thrust towards an independent mechanism for police review that is grounded on civilian oversight. The Council sees the current form of the Bill as a significant step in the right direction towards building public trust in the police services in Ontario and offering the public a meaningful and accessible mechanism for complaints and reparation.

That said, there is room for solid improvements to the Bill. Much can be achieved by bringing renewed, close attention to key aspects of Judge LeSage's report. Indeed, significant common understanding about the nature of changes needed in the field of police review has emerged as a result of the public dialogue process that has led us to where we are today. This unique opportunity has to be fully seized. OCASI, like many other governmental and non-governmental actors as well as actors within the police services in Ontario, subscribes to the principles stated in the terms of reference that framed Judge LeSage's work. The Council uses here such principles to make a series of recommendations to the current Bill. Some of these recommendations reflect those made by Judge LeSage, some others are OCASI's own recommendations.

The immigrant and refugee perspective

For many years, OCASI and its member agencies have raised concerns about the way immigrants and refugees, particularly those who belong to racialized communities, have faced unjust treatment at the hands of different governmental institutions (Federal, Provincial, Municipal) including police services in Ontario. Barriers that speak about racial bias and discrimination linked to newcomers' migratory status are a reality in school boards, in the media and in corporations too. It should be thus noted that racism and discrimination of newcomers is a social problem that is not exclusively found within police services. That said, Ontario has a rare opportunity to craft efficient and credible policies and mechanisms that allow to counter unfair policies, services and actions that are currently found in its police services.

Issues like racial profiling have affected a number of different immigrant and refugee communities. Racialized newcomer youth (for instance, Filipino, Black Caribbean, Latin-American, Somali youth, to name but some of them) have been targeted for special, unfair treatment. After September 11th, 2001 the particular acuteness of Islamophobia has played a crucial role in unfair treatment of members of immigrant and refugee communities of Middle-Eastern, South-Asian and North-African background, among others. The case of Maher Arar (at the federal level) is but one of the most visible ones. The stories of numerous newcomer individuals that have met unfair treatment in the context of police services and security forces will have remained unknown to the larger public.

The systemic barriers met by immigrants and refugees in the context of public services (in this case, police services in Ontario) are the result of compounded forms of socially oppressive mechanisms like racism, ageism and illiteracy, amongst others. Such mechanisms shape the prevailing practices, rules and procedures in institutions. Barriers become visible when individuals interact with institutions. Thus differential treatment linked to migratory status may combine with racism, gender injustice, poverty, religious discrimination, ableism, illiteracy, discrimination on grounds of sexual orientation or gender identity or expression, lack of sufficient English language skills. Numerous immigrants and refugees face systemic barriers because of a combination of some these oppressive mechanisms that affect them simultaneously. Any policy review that intends to yield outcomes that are inclusive of, and effective and meaningful for everyone must look closely and in a sustained manner at how to counter these problems.

OCASI's analysis of Bill 103 and recommendations for improvement

OCASI fully endorses the principles of civilian oversight and independent review. These principles have been consistent positions of various communities affected by police services. The full set of principles that framed **Justice LeSage's work**, which is the base of Bill 103, reads as follows:

- “the police are ultimately accountable to civilian authority;
- the public complaints system must be and must be seen to be fair, effective and transparent;

- any model of resolving public complaints about police should have the confidence of the public and the respect of the police; and
- the Province's responsibility for ensuring police accountability in matters of public safety and public trust must be preserved."¹

OCASI stresses that such a set of principles garnered wide support and has generated common understanding in view of legislative reform regarding police accountability. OCASI underscores the importance of the notions of public trust in public services, transparency, and the Province's responsibility regarding policing in Ontario.

OCASI proposes improvements to Bill 103 under the four following aspects:

- a) a sustained, ongoing and systematic approach to addressing systemic issues
- b) meaningful, effective consultation of equity seeking communities whose members may face systemic issues;
- c) launching investigations according to their importance for equity, regardless of who the complainant is
- d) strict arm's-length approach to investigations

a) A systematic approach to systemic issues

In order to be relevant, useful and trust-worthy for a variety of equity seeking communities, policy making processes and legislative processes need to address systemic issues in a systematic, ongoing manner. In the case of the creation of the new Independent Police Review Director (IPRD), this means integrating the systemic concerns that are relevant for the diverse equity seeking communities in the planning of the work to be carried by the IPRD. It means hiring staff that has experience in detecting systemic issues and working to dismantle systemic problems. It means building an approach that's attentive to systemic concerns into all investigative projects.

A systematic approach to tackling and dismantling systemic problems in police services should be a structural goal of the IPRD under the proposed Bill. In its current form, Bill 103 barely states that the IPRD "may" start investigations regarding systemic issues.

OCASI recommends:

- Bill 103 should ensure that expertise on systemic issues is brought to the independent directorate by making it a requirement that the IPRD, the IPRD staff and the appointed investigators have demonstrated expertise in addressing systemic issues effectively.
- Bill 103 should further ensure that operational mechanisms to dismantle systemic barriers are integral to the IPRD's description and functioning.
- Bill 103's commitment to tackle systemic issues should inform the work plan of the directorate, by requiring that the IPRD plan ahead its investigation endeavours

¹ The Honorable Patrick J. LeSage, Q.C., *Report on the Police Complaints System in Ontario*, 2005, page 56).

that will be specifically geared towards addressing systemic issues relevant for equity seeking communities.

- The IPRD's yearly reporting procedures should highlight what has been done to counter systemic barriers and list the trends in the field of systemic issues that will need to be addressed in the next year.

b) Consultation with equity seeking communities

The LeSage report recommended the use of an advisory group, composed of members of the public and of the police, as a key device for the workings of the envisioned independent police review mechanism. Indeed, maximizing public trust in the IPRD requires that the equity-seeking communities who are negatively affected by policing be adequately consulted by the IPRD.

The knowledge about the various ways in which policing affects members of equity seeking communities lies within the leadership of the communities themselves. Such knowledge can be very fertile in the following areas of the new IPRD: hiring staff to work under the IPRD; appointing investigators according to the nature of different systemic investigations to be undertaken; developing the IPRD's work plan regarding systemic issues; establishing procedural rules; designing public education strategies.

OCASI recommends:

- Bill 103 should create an advisory group making sure it will be a meaningful, effective consultation process, inclusive of community experts who, as a result of their combined expertise, can cover systemic issues on grounds of race, culture, gender, sexual orientation, gender diversity, ability, literacy, official languages, religion, class – all the issues of concern for communities who are seeking equity.

- The advisory group should be consulted by the IPRD in the context of hiring and appointment processes, the development of the IPRD's work plan (including the parts of the plan regarding investigation of systemic issues), the establishment of procedural rules and the design and delivery of public education strategies.

c) Dealing with complaints on grounds of their importance for equity

There is no doubt that the IPRD should have the power to decide which complaints are to be dealt with and which will not be dealt with. OCASI believes that its recommendations above, if adopted and integrated into Bill 103, will help make sure that systemic concerns are optimally considered and appropriately dealt with. That said, there is particular concern around section 60(4), which states that, when it comes to complaints regarding policies of services, the IPRD may decide not to deal with complaints if the complainant was not directly affected by the policy or service in question.

OCASI thinks that, regardless of who the complainant is, a policy- or service-related problem brought to the attention of the IPRD may have sufficient merit as to be considered a matter of equity. It is this approach that should prevail, given the very vocation of this whole legislative process in regards to the public interest. Bill 103 should be geared in its entirety to improving policing in Ontario according to fairness and inclusion, regardless of who brings matters to the attention of the IPRD. No part

of Bill 103 should constitute an obstacle (even if it is only a potential obstacle) to reviewing aspects of policing that are of public interest in regards of equity.

OCASI recommends: that the current section 60(4) should be removed from the Bill.

d) Strict arm's-length approach to investigations

It is clear from the work of Judge LeSage that all stakeholders take seriously the need to ensure that policing can be improved. All stakeholders are now looking at the ways to maximize future improvement of Bill 103. OCASI commends this common commitment and this common intent. This will not be the first time that OCASI favours a combination of critical analysis of issues and a cooperative approach between the not-for-profit sector and governmental institutions or public services. That is how we contribute in a constructive manner.

OCASI believes that no referrals of complaints should be made in a manner that compromises the independence of investigations. Bill 103 gives the IPRD the power to refer complaints to police chiefs for investigation. While OCASI appreciates that such an aspect of the Bill fosters ownership by police forces of the fairness agenda, the Council considers such a transfer of responsibilities as a loss of independence. Under such referrals, the investigation becomes an internal investigation even if the IPRD requires a police chief to deal with the complaint and carry an investigation according to precise instructions.

This is not a comment on the police forces of Ontario. It is a comment on method – and on methodological guarantees of independence. OCASI commends the engagement of police chiefs and forces in the process that has led to today's discussion around Bill 103 and underscores the fact that some of them asserted before Judge LeSage that they consider themselves responsible for the management of fairness-related matters in their respective services². At the same time, Judge LeSage himself stressed the power wielded by police forces in modern society and the potential for abuse of such power³. Thus the (methodological) call for a robust independent, civilian oversight.

OCASI's stance does not preclude firm ownership and engagement by the police in making the fairness agenda a reality in the context of police management procedures. As a matter of fact, the Council encourages it as part of the police internal mechanisms. But the independence of the new review mechanism should in no way be compromised. In circumstances that require it, the IPRD may seek advice from police chiefs regarding a particular investigation. This can be done through the advisory group recommended above.

OCASI recommends: that all investigations in the context of the IPRD should be carried by investigators that are external to the police services and no referrals should be made that render investigations an internal police investigation.

² Idem, page 63.

³ Page 57.

Conclusion

Great strides have been made in the process leading to a Bill on an independent police review mechanism for Ontario. We have the responsibility of making sure that this newly created mechanism maximizes the way in which it fulfils its purpose.

OCASI calls on the Ontario legislature to introduce improvements to Bill 103 towards an IPRD that counts on the expertise, advice, rigour and strict independence needed to ensure an effective dismantling of systemic barriers and to produce outcomes that are relevant for diverse communities and the public interest in general.