

THE REGIONAL MUNICIPALITY OF YORK POLICE SERVICES BOARD

BY-LAW NO. 01-11

A By-law respecting the Administration of the Complaints System
under Part V of the *Police Services Act*

WHEREAS the Regional Municipality of York Police Services Board ("Board") is responsible for the provision of adequate and effective police services in York Region and is required to establish policies for the effective management of the York Regional Police;

AND WHEREAS Section 31(1)(i) of the *Police Services Act* ("Act") requires that the Board establish guidelines for dealing with complaints made under Part V of the *Act*;

AND WHEREAS Section 31(1)(j) requires the 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.

AND WHEREAS Ontario Regulation 263/09 made under the *Act*, sets out procedures for handling public complaints as "local complaints" under the complaints system established by Bill 103.

AND WHEREAS the Board has considered the provisions of Part V in the context of its responsibilities under the *Act* and recognizes and adheres to the principle that fair, open, prompt, thorough and efficient response to complaints is a cornerstone to establishing and maintaining a positive community-police relationship;

NOW THEREFORE the Board deems it expedient to amend the Complaints By-law to ensure that the response to complaints by the Board, the Chief of Police and members of York Regional Police adheres to the requirements of the *Act* and Regulation 263/09 and hereby enacts as follows:

1. DEFINITIONS In this By-law, the following words shall have the meanings ascribed thereto:

"Act" means the *Police Services Act, R.S.O. 1990, c. 15*, and as amended by S.O. 1997 c. 8 and Bill 103

"Commission" means the Ontario Civilian Police Commission

"Complaints Procedure" means the process established by the York Regional Police for the handling of complaints

"Conduct Complaint" means a complaint made by a member of the public which is determined by the OIPRD to relate to the conduct of a police officer

“Local Complaint or Local Resolution” means a complaint that qualifies to be handled in accordance with Regulation 263/09 and is not part of the public complaints system

“Policy” includes police procedures, protocols and regulations

"Policy Complaint" means a complaint made by a member of the public which is determined by the OIPRD to relate to the policies of the York Regional Police

“OIPRD” means the Office of the Independent Police Review Director

“Service Complaint” means a complaint made by a member of the public which is determined by the OIPRD to relate to the services provided by York Regional Police.

2. GENERAL APPLICATION

1. The Chief of Police shall ensure that if a public complaint is received in the prescribed form, the complaint shall be sent to the OIPRD within three business days of receipt in accordance with the OIPRD Rules of Procedure.
2. The Chief of Police shall develop and maintain a Complaints Procedure to ensure that complaints are processed in accordance with the provisions of this By-law, the *Act* and associated regulations and that all mandated timeframes are adhered to, and shall provide a copy of the said procedure to the Board.
3. The Chief of Police shall ensure that the Complaints Procedure includes the following provisions (in accordance with the OIPRD Rules of Procedure):
 - (a) The ability to incorporate opportunities to apply for informal resolution of complaints where appropriate and in compliance with the *Act*;
 - (b) The complainant is made aware of the OIPRD and is provided with information on the public complaints process;
 - (c) The availability of the OIPRD complaint forms and OIPRD information at all police facilities that serve the public;
 - (d) The complainant is requested to sign the completed OIPRD form and witness statement;
 - (e) The names and addresses of all witnesses are recorded on the OIPRD complaint form;
 - (f) An informal resolution procedure in respect of Conduct Complaints against police officers, other than the Chief of Police or the Deputy Chief of Police; and
 - (g) Assistance is provided to complainants who request or require it;
 - (h) Members of the service receive adequate training in the Complaints Procedure and Part V of the *Act*, and the skills necessary to resolve complaints are available at every police district and facility.

3. POLICY AND SERVICE COMPLAINTS

The OIPRD determines if a complaint is a policy or service complaint and will refer the complaint directly to the Chief of Police in accordance with Section 63 of the *Act*. The Chief of Police:

1. Shall ensure that within 60 days of the OIPRD referral, the complainant is notified in writing with reasons for the disposition and of the complainant's right to request that the Board review the complaint if they are not satisfied with the disposition.
2. May extend the 60-day period by notifying the complainant in writing of the extension before the expiry of the period being extended.
3. Shall ensure that upon disposition of a service or policy complaint, that a written report is submitted to the Board and to the OIPRD respecting the disposition with reasons.

4. POLICY AND SERVICE COMPLAINTS – REQUEST FOR REVIEW

1. A complainant may, within 30 days after receiving the notice of disposition from the Chief of Police, request, in writing, that the Board review the complaint.
2. Upon receipt of a request for review, the Board's Executive Director shall immediately notify the Chief of Police, in writing, that it has received a request from a complainant for a review of the disposition.
3. The Chief of Police shall submit, forthwith, a written report to the Board which shall include the following information and documentation:
 - (a) A copy of the complaint and all materials submitted therewith;
 - (b) A copy of the written disposition provided to the complainant;
 - (c) Any other documentation or information considered in making any findings in respect of the complaint.
 - (d) In the event that no response has been provided to the complainant within the time limits provided for in the *Act* the reasons therefor; and
4. Within 60 days of receiving the request for review, the Board shall:
 - (a) Review the report of the Chief of Police
 - (b) Take any action or no action, in response to the complaint, as it considers appropriate
 - (c) Notify the complainant, the Chief of Police and the OIPRD in writing of its disposition of the complaint, with reasons.
5. If the Board chooses, Section 63(7) of the *Act*, permits the Board to establish a "Complaints Committee" made up of three members of the Board (two of whom constitute a quorum) to review a complaint and to make recommendations to the Board.
6. Upon receiving the report of the Chief of Police, the Board shall decide whether to hold a public meeting on the complaint and, prior to making such decision, shall consider the following:

- (a) Whether the policy complaint, if found to be substantiated, raises significant present, past or potential issues concerning law enforcement and crime prevention in York Region;
 - (b) Whether public input could reasonably be required to effectively deal with the policy complaint; and
 - (c) Whether it is in the public interest to hold such a public meeting.
7. Notice of a public meeting to be held shall be given to the complainant, and may also be given by publication in a newspaper or newspapers that, in the opinion of the Board, is of sufficient general circulation in the Municipality so as to give to the public reasonable notice of such meeting. The notice shall include at a minimum the following information:
- (a) A summary of the nature of the policy or service complaint;
 - (b) The time and place of the meeting;
 - (c) The address for filing of written submissions;
 - (d) The deadline for filing of such written submissions; and
 - (e) The procedure to be followed if a member of the public wishes to make oral submissions including a time limit in respect of the oral submissions.
8. The Board shall dispose of the complaint and notify the complainant, the OIPRD and the Chief of Police of such disposition within 60 days of receipt of a request for review.
9. The Board may extend the time described in above paragraph by giving written notice to the Chief of Police and the complainant.
10. The Board shall deal with all issues relating to the complaint in the public portion of the Board meeting, or at a public meeting called for the purpose of considering the complaint. Notwithstanding the foregoing, the Board:
- (a) Shall ensure compliance with the *Municipal Freedom of Information and Protection of Privacy Act* and shall not disclose any personal information of any person affected, including the person's name, without the consent of that person;
 - (b) May decide to deal with all or part of a complaint at the private session if the complainant is under 18 years of age; and
 - (c) Shall give due consideration to the requirements of Section 9 of the *Statutory Powers Procedure Act* with respect to public hearings.

5. CONDUCT COMPLAINTS - OFFICER

This section is applicable to complaints about the conduct of an officer other than the Chief of Police or Deputy Chief of Police. 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 *Police Services Act* and the OIPRD Rules of Procedure.
- (b) The Chief of Police shall provide a report to the Board outlining all conduct complaints which have resulted in a conviction under the *Act*. The report shall contain information as to the nature of the conduct and the disposition of the charge.
- (c) Complainants are given all necessary guidance, support and protection.

- (d) Complainants are advised of the progress of disciplinary proceedings and their right to participate in the disciplinary hearing and their right to be represented by counsel or by a licensed paralegal.
- (e) Every member engaged in the administration of the complaints system maintains confidentiality with respect to all information obtained in the course of their duties under Part V of the *Act* and does not disclose such information except as may be required by law or otherwise in accordance with section 95 of the *Act*.

6. CONDUCT COMPLAINTS - CHIEF OF POLICE OR DEPUTY CHIEF OF POLICE

This section relates to conduct complaints about the Chief of Police or Deputy Chief of Police and provides direction to the Board in reviewing conduct complaints generated by the Board itself, and in reviewing public complaints referred to it by OIPRD under Section 61(8) of the *Act*.

INTERNAL BOARD COMPLAINTS ABOUT THE CHIEF OF POLICE OR DEPUTY CHIEF OF POLICE

1. In initiating a complaint against the Chief of Police or Deputy Chief of Police, 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 of Police or Deputy Chief of Police 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 conduct of the Chief of Police or Deputy Chief of Police 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 in a written report at the Board's expense.
4. At the conclusion of the investigation, the Investigating Chief of Police may form the opinion that the complaint is unsubstantiated and in such a circumstance, the Investigating Chief of Police shall report that opinion in writing to the Board.
5. If the Board receives a written report from the Investigating Chief of Police with the opinion that the complaint is unsubstantiated, the Board shall take no action in response to the complaint and shall notify the Chief of Police or Deputy Chief of Police 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 of Police may form the opinion, on reasonable grounds, that the conduct of the Chief of Police or Deputy Chief of Police under investigation constitutes misconduct or unsatisfactory work performance. In such a circumstance, the Investigating Chief of Police shall refer the matter to the Board together with a written report.
7. If the Board receives a written report from the Investigating Chief of Police with the opinion that there are reasonable grounds to conclude that the conduct of the Chief of Police or Deputy Chief of Police 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 of Police or Deputy Chief of Police consents to the proposed resolution.
10. If the Chief of Police or Deputy Chief of Police 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 of Police or Deputy Chief of Police 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 of Police or Deputy Chief of Police 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 of Police or Deputy Chief of Police 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 reply of the Chief of Police or Deputy Chief of Police be made in his or her employment record.
 - (c) If the Chief of Police or Deputy Chief of Police 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 employment record of the Chief of Police or Deputy Chief 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 the Commission specifies.

7. PUBLIC COMPLAINTS ABOUT THE CHIEF OF POLICE OR DEPUTY CHIEF OF POLICE

1. All public complaints about the Chief of Police or Deputy Chief of Police must be made to the OIPRD. The Board shall forward any complaint received to the OIPRD within three (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 the complaint about the Chief of Police or Deputy Chief of Police 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 of Police or Deputy Chief of Police, 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 of Police or Deputy Chief of Police 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 of Police or Deputy Chief of Police 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 of Police or Deputy Chief of Police 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 of Police or Deputy Chief of Police and the complainant consent to the proposed resolution.
12. The Chief of Police or Deputy Chief of Police 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 of Police or Deputy Chief of Police or the 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 of Police or Deputy Chief of Police 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 of Police or Deputy Chief of Police 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 reply of the Chief of Police or Deputy Chief of Police be made in his or her employment record.
 - (c) If the Chief of Police or Deputy Chief of Police 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 employment record of the Chief of Police or Deputy Chief of Police 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 the Chief of Police or Deputy Chief of Police may enter into an agreement to permit penalties or actions other than those permitted by the *Act* if the Chief of Police or Deputy Chief of Police 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 the OIPRD 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*.

8. RESIGNATION

1. If at any time after a complaint about the conduct of the Chief of Police or Deputy Chief of Police is made by the Board or a public complainant, and the Chief of Police or Deputy Chief of Police 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 of Police or Deputy Chief of Police.

3. If the complaint was initiated by the Board, the Board shall promptly notify the Commission of the resignation of the Chief of Police or Deputy Chief of Police.

9. WITHDRAWAL OF A COMPLAINT

1. A complainant who has made a public complaint against the Chief of Police or Deputy Chief of Police may withdraw his or her complaint on notice to the OIPRD unless a hearing in respect of the complaint has commenced. If the hearing has commenced, the Board and OIPRD have to consent to the withdrawal.
2. If a complaint is withdrawn, the OIPRD will notify the Board.
3. Within 30 days of receiving the OIPRD notification of the withdrawal of the complaint, the Board shall make a determination of whether it is appropriate to continue to deal with the complaint.
4. Within 30 days of receiving the OIPRD notification of the withdrawal of the complaint, the Board shall notify the Chief of Police and Deputy Chief of Police of the withdrawal and whether it seeks to continue to deal with the complaint.
5. If the Board deems it appropriate to continue with the complaint, the complaint shall be processed in accordance with Section 77 of the *Act*, namely, as a Board-initiated complaint.
6. The notification obligations of the Board are subject to the Board's discretion to delay notification, if to do so may prejudice the investigation.
7. The Chief of Police shall ensure that all complaints concerning his or her conduct or the conduct of a Deputy Chief of Police sent to the OIPRD within three days of receipt and to the Board Chair immediately upon receipt, together with all materials submitted therewith.

10. LOCAL COMPLAINTS

Complaints may be treated as "local complaints" or "local resolutions" if the complainant has not filed a public complaint and if the issue is a "qualifying matter" as defined in Ontario Regulation 263/09.

A qualifying matter is:

1. A complaint about a policy or service;
2. A complaint about the conduct of an officer that does not constitute misconduct, or;
3. A complaint about misconduct by an officer which falls under any of the following:
 - (a) Discreditable Conduct by failing to treat or protect a person equally without discrimination;
 - (b) Discreditable Conduct by using profane, abusive or insulting language or otherwise being uncivil to a member of the public;
 - (c) Discreditable Conduct by using profane, abusive or insulting language to any other member of a police force;

- (d) Discreditable Conduct by acting in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force;
- (e) Neglect of duty in that the officer neglected or omitted to perform a duty as a member of the police force promptly and diligently;
- (f) Neglect of duty in that the officer failed to work in accordance with orders or left an area, detachment, detail or other place of duty, without proper permission or sufficient cause;
- (g) Neglect of duty in that the officer failed to report a matter that it was his or her duty to report;
- (h) Neglect of duty in that the officer failed to make any necessary entry in a record;
- (i) The officer dealt with personal property, other than money or a firearm, in a manner that was not consistent with section 132 of the *Act*.

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. Ensure that even if the issue is a “qualifying matter”, 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 the Chief of Police or Deputy Chief of Police;
 - (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, the complainant is asked to make a public complaint. If the complainant refuses to make a public complaint, the Chief of Police shall direct that an internal complaint be forwarded to the Professional Standards Bureau 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 Bureau 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.
6. If the local complaint is resolved, the Chief of Police shall ensure that the resolution is recorded on the OIPRD form and signed.
7. The Chief of Police shall direct that the resolution be completed and signed within 30 days.

11. REPORTING REQUIREMENTS

1. The Chief of Police shall provide semi-annual reports to the Board that include cumulative and detailed information for the periods covered, and comparative data for the same time period in the preceding calendar year.
2. The reports shall include the following information in respect of policy or service complaints:
 - (a) Total number of complaints referred to York Regional Police from the OIPRD;
 - (b) The number of policy and service complaints where no action was taken;
 - (c) The number of policy and service complaints where action was taken, and a summary of the action taken;
 - (d) The number of requests for review made to the Board concerning which the Board took action, a summary of any action taken, and details of the Service's response to the Board action;
 - (e) The date the complaint was received and the date it was disposed of;
 - (f) The number of time extensions made in respect of the complaints.
3. The reports shall include the following information in respect of conduct complaints made by members of the public, except for those complaints against the Chief of Police or a Deputy Chief of Police:
 - (a) The number of complaints referred to York Regional Police from the OIPRD;
 - (b) The number of complaints determined to be unsubstantiated;
 - (c) The number of complaints about other police services referred to the York Regional Police by the OIPRD and an estimate of the cost of such referrals;
 - (d) The number of OIPRD reviews requested and the results of those reviews;
 - (e) The number of hearings held and the findings thereof;
 - (f) The number of complaints dealt with as local complaints, the number that was successfully concluded, and the number that became public complaints;
 - (g) The number of public complaints resolved;
 - (h) A summary of the penalties imposed for complaints;
 - (i) The number of outstanding complaints at the end of the reporting period.
4. The first report each year shall summarize the yearly complaints total of the preceding year and shall include an analysis of the frequency, nature and substance of policy, service and conduct complaints (excluding complaints against the Chief of Police and a Deputy Chief of Police), and the opinion of the Chief of Police as to whether the frequency, nature and substance of such complaints require some form of remedial or other training, or additional resources in order to address or to process the complaints, with particulars and estimated costings of the training or additional resources required.
5. The Chief of Police shall ensure that the Board has a current copy of the Complaints Procedure.

12. REPEAL

By-law No. 06-04, is hereby repealed.

ENACTED AND PASSED this 26th day of January, 2011.

Danny Wheeler
Chairman

Mafalda Avellino
Executive Director