



Psychiatric Patient Advocate Office

Bureau de l'intervention en faveur des patients des établissements psychiatriques

August 16, 2004

The Honourable Patrick LeSage
Police Complaints Review
The Wicket
777 Bay Street
Toronto, ON M5G 2P6

Dear Sir:

Re: Review of the System for Complaints by the Public Regarding the Police

Thank you for the opportunity to participate in the process relating to the "Review of the System for Complaints by the Public Regarding the Police." Attached is our submission, which we have made on behalf of our clients, vulnerable persons with mental illness. Our submission highlights our concerns and offers recommendations to redress them.

The Psychiatric Patient Advocate Office (PPAO) is an arm's length program of the Ontario Ministry of Health and Long-Term Care. It was established in 1983 to promote the civil and legal rights of persons with mental illness in provincial psychiatric hospitals through individual and systemic advocacy and education. The PPAO as well responds to any systemic concerns of a provincial nature affecting these individuals as citizens. The PPAO works to empower these individuals to have a quality of life, to uphold their rights as citizens and to make informed decisions about their care and treatment.

Many consumers of mental health services complain to our office of alleged police misconduct, but fail to complain formally out of fear of the police, and out of frustration with the current complaints process. Others feel their complaints are not taken seriously because of their illness and "mental health history." Still, others express concern that they are discouraged from filing complaints, or that their complaints are not investigated fully and fairly.

Failure to respond adequately to legitimate complaints of police misconduct fails the public, the police, and the government. The police complaints process, as it exists, does not have the confidence of mental health consumers, their families and those who advocate for them. We urge you to consider our recommendations as a first step in bringing accountability, fairness, and transparency to the police complaints process.

Thank you for considering our submission.

Sincerely,

Vahe Kehyayan (Mr.)
Director, Psychiatric Patient Advocate Office



Psychiatric Patient Advocate Office

*Submission Regarding
"Review of the System for Complaints by the
Public Regarding the Police"*

August 16, 2004

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PROMOTING PATIENTS' RIGHTS

Summary of Recommendations

- The PPAO recommends that a truly independent body be established to bring credibility to the police complaints process. Police are ultimately accountable to civilian authority, and an independent body will ensure that the complaints process will be seen by all stakeholders as fair, effective, and transparent.
- The PPAO recommends that an advisory committee be formed to assist with the design of the new process, address the unique needs of people with special needs (individuals with a dual diagnosis, mental illness, brain injury etc.) and to remove any barriers that might exist to full access and participation in the police complaints process. The committee should advise the government on all aspects of the need program including the design, implementation, monitoring and evaluation of the new police complaints system.
- The PPAO recommends that the new police complaints system be available, accessible and accountable to the people it serves.
- The PPAO recommends that regional and local offices where complaints can be brought are located across the province.
- The PPAO further recommends that regional and local offices are located outside of police stations.
- The PPAO recommends that family members and witnesses of alleged police misconduct be allowed to file complaints.
- The PPAO recommends that individuals be permitted to have a person of choice support them through the process.
- The PPAO recommends that complaints are allowed either in writing by mail, by fax, by email, or verbally by telephone or in person, and that translators are available to all complainants, as required.
- The PPAO recommends that extensions be granted wherever it can be shown that extenuating circumstances existed that require flexible interpretation of timelines to ensure that consumers of mental health services are not denied access to the police complaints process, and vicariously access to justice because of their mental illness.
- The PPAO recommends regular education of police officers to ensure that they interact appropriately with persons with mental illness, and are sensitive to the stereotypes and stigma that many consumers live with on a daily basis.
- The PPAO recommends that on-going education to consumers, families, service providers, advocates and other stakeholders regarding the police complaints process, how to access it and to make a complaint is essential if the process is to work and hold people accountable for their actions. People can only exercise their rights if they are aware of them.

Submission by the Psychiatric Patient Advocate Office
Relating to the Review of the System
for Complaints by the Public Regarding the Police

Background

The Psychiatric Patient Advocate Office (PPAO) provides independent and confidential advocacy services and rights advice to consumers of and those seeking access to psychiatric services. We work to empower mental health consumers to make informed decisions about their care, treatment and legal rights. We use information, education, negotiation and referral to conduct instructed, non-instructed, and systemic advocacy. We conduct public education on these issues. We promote self-advocacy and self-determination.

Our vision is that persons with mental illness in Ontario are treated with dignity and respect, that their legislated rights and entitlements be upheld at all times, and that they be actively involved in decisions affecting their life, care, and treatment. We believe in the autonomy of all people and in each person's right to make informed choices.

Many consumers of mental health services complain to our office of alleged police misconduct, but fail to complain formally out of fear of the police, and out of frustration with the complaints process as it exists. Others complain that they feel their complaints are not taken seriously because of their illness. Still, others complain that they are discouraged from filing complaints, or that their complaints are not investigated fully and fairly.

Failure to respond adequately to legitimate complaints of police misconduct fails the public, the police, and the government. The police complaints process, as it exists, does not have the confidence of mental health consumers and their families. We urge you to consider the following recommendations as a first step in bringing accountability, fairness, and transparency to the police complaints process.

Bring an End to the Era of Police Investigating Themselves

Many consumers are reluctant to bring complaints regarding alleged police misconduct because they do not have faith in a process that permits police officers to investigate other police officers. They see a process, as it presently exists, that is designed to protect the police instead of the public. Consumers have said that the current system is not independent, that it is not transparent, that it lacks credibility, is slow to respond to complaints and often is dismissive of complaints that are lodged by individuals with a mental health "history." Many times the power imbalances that exist between the police and the public are replicated as part of the complaints process as are the unequal access to

resources between the complainant and the officer that is the subject of the complaint. For example, awareness of the law, having access to supports during the complaints process, understanding of the complaints process and awareness of the possible resolutions.

Many individuals with a mental illness have either had a less than positive experience with the police or because of their illness may fear both the police and the authority that they represent. It is because of these factors that they may be reluctant to make a formal complaint about police conduct, fearing reprisals or that the police may simply take them to the hospital as the complaint is "part of their illness." Often these same clients are socially isolated, lack the supports and resources necessary to make a complaint or simply don't know what police misconduct entails and so don't know that they have a right of complaint. Lack of awareness by the general public about the entire complaints process is one of the problems that currently exists within the police complaints system.

Any new complaints process must also be accessible, available and accountable to the people that it serves. Ideally, the police complaints system would see local and regional offices where individuals with a complaint could visit an office and talk to someone personally about their complaint and the recourse available to them. Long waiting lists, centralized call centres and other administrative processes should be examined to ensure that they do not become a barrier to complainants or discourage people from filing their complaint. The system must also respond in a timely manner, provide decisions in writing, if requested, and have an appeal mechanism that individuals could access if not satisfied with the outcome of the investigation or review.

The PPAO recommends that a truly independent body be established to bring credibility to the police complaints process. Police are ultimately accountable to civilian authority, and an independent body will ensure that the complaints process will be seen by all stakeholders as fair, effective, and transparent.

The PPAO recommends that an advisory committee be formed to assist with the design of the new process, address the unique needs of people with special needs (individuals with a dual diagnosis, mental illness, brain injury etc.) and to remove any barriers that might exist to full access and participation in the police complaints process. The committee should advise the government on all aspects of the need program including the design, implementation, monitoring and evaluation of the new police complaints system.

The Independent Body Should be Located Outside of Police Stations and Across the Province

As it stands at present, alleged victims of police misconduct are required to mail, fax, or deliver their complaint to the station or detachment where the officer complained of is employed. Such an intimidating process invariably leads to the silencing of many legitimate complaints.

As complaints regarding alleged police misconduct are generated throughout the province, the PPAO recommends that regional and local offices where complaints can be brought are located across the province. Ease of access to the complaints system is crucial if credibility is to be restored. The PPAO further recommends that regional and local offices are located outside of police stations.

Allow Witnesses and/or Family Members to File Complaints

As it exists, only the person directly affected by the alleged police misconduct may lodge a complaint. In some situations, consumers may not recall with any detail exactly what happened during their interaction with police, but family members who were present throughout the interaction might be well acquainted with the details. In other situations, witnesses to alleged police misconduct must also be authorized to file complaints on behalf of alleged victims.

Many consumers may be in contact with the police more than the average citizen and as such are fearful of bringing a complaint given the possibility of future interaction with the officer complained of. In smaller communities across the province, some consumers may be well acquainted with some officers, and all the more are reluctant to file a complaint against an officer with whom they are in regular contact with.

Consumers must be given the opportunity to have a person of choice (family, friend, lawyer etc.) support them through the process and to assist them with their complaint from preparation to resolution. Many consumers would appreciate having this support as the process may prove stressful, intimidating and overwhelming. This additional stress may have an impact on their mental health or their ability to sustain the energy to see their complaint through to resolution.

Some consumers may be transient and don't have a fixed or permanent address thus making it difficult to receive correspondence or be kept informed of the process or outcome of their complaint. A quicker response time and more flexible service delivery options by the system may be required in these circumstances. Allowing a third party to have access to some of the information or allowing them to "designate" a contact person would take care of some of these concerns. All too often complaint resolution processes are abandoned simply because contact with the client is lost resulting in many legitimate complaints not being investigated or resolved.

The PPAO recommends that family members and witnesses of alleged police misconduct be allowed to file complaints.

The PPAO recommends that individuals be permitted to have a person of choice support them through the process.

Allow Written or Verbal Complaints

As present, complaints regarding alleged police misconduct must be made in writing. Where alleged victims are functionally illiterate, may not have English as a first language or have a visual impairment, such requirements effectively bar complaints or makes the system inaccessible to those with special needs. Many consumers of mental health services face language barriers which imposes additional burdens on persons who are already burdened by stigma, discrimination and prejudice associated with their illness.

Given that Ontario is a multi-cultural society, service provision in languages other than English must be considered. This would include having the ability to communicate with people in all languages, having complaint forms and all other written materials available in the language of choice and having proceedings conducted in the individuals first language. Education and outreach programs must also take the language needs of individuals into account when interacting with the various communities across the province.

The PPAO recommends that complaints are allowed either in writing by mail, by fax, by email, or verbally by telephone or in person, and that translators are available to all complainants, as required.

Extension of Time Provisions

Many sections under Part V of the *Police Services Act* require adherence to strict timelines; for instance the requirement that complaints be brought within six months of the incident complained of. Many consumers of mental health services are detained in hospitals for extended periods of time and have difficulty accessing information. Other consumers may spend an extended period of time in hospital in an effort to manage their illness. Their legal status in hospital or efforts to manage their illness should not be held against them where a *prima facie* case of police misconduct exists.

The PPAO recommends that extensions be granted wherever it can be shown that extenuating circumstances existed that require flexible interpretation of timelines to ensure that consumers of mental health services are not denied access to the police complaints process, and vicariously access to justice because of their mental illness.

Police role and therapeutic treatment team

In some parts of the province, police officers are part of therapeutic or crisis intervention teams. The PPAO is concerned that complaints involving these officers might be viewed differently than other officers given the role that they play on the mental health crisis team. These officers need to be held to the same standard as other officers and complaints investigated in the same way. However, we also recognize that not all individuals who encounter these teams might be

aware that one member may be a police officer and as such have a right of complaint using the new complaints process.

Some consumers have complained that police officers have visited them at their homes during the investigation of a complaint. For a person who has complained of police misconduct to have police officers visit them at their home could potentially result in further victimization, intimidation or harassment that will invariably discourage other consumers of mental health services from bringing forward complaints in order to preserve their privacy.

Education

We believe that education is a powerful tool to effect social change. What many people fail to see is that consumers of mental health services do not trust the police. While many do not trust the police, still others are suspicious of and even are fearful of the police. This trust must be re-established, and one of the easiest ways to restore trust is to have police officers undergo regular education on issues relating to mental illness, mental health legislation and patients' rights. A culture of understanding and acceptance of mental illness is essential if we are to be an inclusive and caring community, not just for the police, but for all members of the community.

Education to consumers, families, service providers, advocates and other stakeholders regarding the police complaints process, how to access it and to make a complaint is essential if the process is to work and hold people accountable for their actions. People need to know that the process will be fair and transparent, that it will respond in a timely manner, that decisions will be written, if requested, that the process will take place in the language of choice, that appeal processes are in place and that outcomes are fair and reasonable, given the circumstances. People have to know their rights before they can exercise them and know where to go to make a complaint, should they wish. It will take some time before the general public will embrace the mantra that "complaining does make a difference" and the community will be well served by a police complaints process that is transparent and fair.

The public over time will embrace the idea that complaint about the police can lead to the development of a culture of openness, contribute to the development of best practices in policing and contribute to the continuous quality improvement of police forces and complaint processes across the province. For this we will all be better off.

The PPAO recommends regular education of police officers to ensure that they interact appropriately with persons with mental illness, and are sensitive to the stereotypes and stigma that many consumers live with on a daily basis.

Conclusion

The Psychiatric Patient Advocate Office is pleased that the government is committed to finding ways to improve the province's police complaints system so that it has the trust and confidence of mental health consumers, the police, and the community. We advocate for equitable treatment of individuals with mental disorders and individuals with mental impairment, and see this review of the police complaint system to be an important step in ensuring that consumers are granted equal access to justice.

We encourage the Honourable Patrick LeSage to consider our recommendations and implement them to strengthen the police complaints process, and bring justice to those who are most marginalized by the process as it stands. Such measures will bring protection that mental health consumers want and need, and improve the lives of all Ontarians in the process.

The Psychiatric Patient Advocate Office would be pleased to assist in any way possible to educate consumers about the new system and to ensure that individuals with mental illness have the best opportunity possible of making complaints and seeing them through to resolution.