

STREET LAW SMARTS #23

POLICE COMPLAINTS

If you experience harassment, discrimination, or violence by police, talk to a lawyer about what happened. The lawyer can give you advice on your options and help you make a complaint, make an application to the Human Rights Tribunal, sue the police for damages (money), or report the incident as a crime.

For information on how to find a lawyer, see **Street Law Smart #1: Where to get legal help?**

If you have suffered serious injury by the police, the Special Investigations Unit will carry out a criminal investigation. The Special Investigations Unit has the power to lay criminal charges against the offending police officer.

Evidence

You should immediately get and keep as much information about the incident as possible. Try to get the officer's badge number and division number, and write down the date, time, and location of the incident. If you are injured, you should get pictures taken of the injuries and get medical attention. Keep going back for medical and counseling appointments if your mental or physical injuries continue.

Even if you are unsure about what options you have or whether you want to take any action, you should record what happened and any ongoing problems related to the incident (e.g., if you had to miss work and/or have continued injuries). Write 'for my lawyer' at the top of any documents related to the incident.

For information on collecting evidence, see **Street Law Smart #2: Evidence Tips.**

Office of the Independent Police Review Director (OIPRD)

If you would like to complain about an incident involving an Ontario police officer that occurred after October 19, 2009, then you can make a complaint directly to the police service where you experienced the incident, or directly to the Office of the Independent Police Review Director (OIPRD).

The purpose of the OIPRD is to provide an oversight mechanism for policing in Ontario. The OIPRD carries out case-by-case investigations, systematic reviews, education, and outreach on police complaints.

What can you complaint about?

Complaints can be made about a police officer's conduct, or about a police department's policies or services.

For complaints about a police officer's conduct, the OIPRD investigates complaints and decides whether disciplinary action should be taken against an officer. The Police Services Act Code of Conduct outlines activities that are considered police misconduct and attract disciplinary action. Examples of conduct contrary to the Code of Conduct include the use of:

- Excessive force
- Unlawful searches
- Profane, abusive, or disrespectful language
- Discriminatory conduct
- Neglect of duty
- Deceit
- Other discreditable conduct

If the OIPRD finds police officer misconduct, they can request that the police officer be reprimanded, suspended, or dismissed.

Who can make a complaint?

You are able to make a complaint if you have experienced it yourself, witnessed it, or know a lot of reliable information about the substance of the complaint.

Timing

Your complaint must be made **within six months** of the incident which led to the complaint. However, the OIPRD sometimes permits a complaint to proceed after the six month time limit expires. If you are beyond the time limit, you should ask the OIPRD for permission and explain why you are late (e.g., you were sick and/or did not know that the OIPRD existed).

Were you arrested or charged criminally?

If the incident resulted in you being arrested and/or charged criminally, be careful about making a complaint. Information written in the complaint that mentions you doing any criminal activity can be used against you in court. If you are at risk of, or have been charged with offences related to the incident, ask the OIPRD if you can file your complaint after your criminal proceedings are complete, even if it is beyond the six month time limit.

How to make a complaint?

Your complaint to the OIPRD must be in writing and be signed. Your complaint can be submitted by mail, fax, or by filling out the online form on the OIPRD's website.

Office of the Independent Police Review Director

655 Bay Street, 10th Floor

Toronto, Ontario, M5G 2K4

Tel: 416-246-7071, Toll-free: 1-877-411-4773, TTY: 1-877-414-4773

Fax: 416-327-8332, Toll-free fax: 1-877-415-4773

www.oiprd.on.ca

You have the right to get somebody's help to make a complaint and represent you as your agent through the complaint process.

Your privacy

The OIPRD and staff administering your complaint are bound by strict confidentiality requirements to not share information relating your complaint to anyone EXCEPT:

- those helping process your complaint;
- legal counsel;
- police for law enforcement purposes; and
- anyone you consent to sharing the information with.

The officer that you are complaining about will usually be given a copy of the complaint and know that you made a complaint about them. They require this information so that they may defend themselves in any disciplinary proceedings.

It is an offence under the *Police Services Act* for any officer to retaliate against an individual that complains about their conduct.

If you are fearful of your identify being shared with the officer you are complaining about, you may request to have your personal information kept private. The OIPRD may or may not be able to grant your request. If they refuse to grant your request, you may want to withdraw your complaint.

What will happen to your complaint?

Depending on the circumstances, complaints made to the OIPRD about a police officer's conduct will either be:

- referred to the local chief of police in the region where the complaint originated;
- referred to the local chief of police outside the region where the complaint originated; or
- kept by the OIPRD for further investigation.

Complaints made to the OIPRD about policies or services will be referred to the local chief of police in the region where the complaint originated. The chief (or their designate) will then investigate the complaint.

Each local chief of police must report in writing their decision for resolution of your complaint and give it to you within 60 days of receiving the complaint from the OIPRD.

If you wish, you may be offered to participate in an informal resolution of your complaint by meeting with the OIPRD and police officer involved. Informal resolution will only be offered for less serious complaints and will likely not be offered as an option to resolve complaints relating to criminal activities or the use of excessive force.

Your complaint may result in the police officer receiving disciplinary action. There may be a disciplinary hearing that you are asked to attend and give evidence at. You may be cross-examined by the police officer's counsel about the accuracy of what happened. After a disciplinary hearing, the officer may receive disciplinary action taken against them, such as a reprimand, suspension, or dismissal.

A complaint that is unsubstantiated means that there was not enough evidence to prove that misconduct occurred. After investigation, if the local police service finds that your complaint is unsubstantiated, you may appeal the decision to the OIPRD. There is a 30 day time limit to file for review. If the OIPRD finds that your complaint is unsubstantiated, there is no review of the decision. If you are unsatisfied with the complaints process, or for advice on any further legal steps, contact a lawyer.

For information on how to find a lawyer, see **Street Law Smart #1: Where to get legal help?**

Pros and Cons about making a complaint

Pros

- Your complaint is on file and builds on the number of complaints already made.
- Steps may be taken. For example, the police officer may be reprimanded, suspended, or dismissed.
- You have spoken out about a harm suffered by you.

Cons

- You may not want to take further time and energy to deal with the harm you have suffered.
- You and/or your friends and family may be fearful of having your identities known to the police officer that you are complaining about.
- You may be requested to face the police officer in an adversarial-type of proceeding (a disciplinary hearing). You may feel re-victimized when being questioned on the truthfulness of the accounts of the incident you are complaining about.