

SPEAKING NOTES

CACOLE CONFERENCE – JUNE 8 – 10, 2009

Ottawa

(SLIDE 1) Thank-you for the opportunity to share with you some of our experience in Prince Edward Island related to our establishing a civilian oversight mechanism for police complaints.

My comments will include **(slide 2)**:

- ▶ Overview of PEI and the policing community
- ▶ Evolution of the PEI Police Act
- ▶ Factors contributing to the passing of the new Police Act
- ▶ Structure of the Police Commissioner's Office
- ▶ State of development of Police Commission
- ▶ Challenges during implementation
- ▶ Five year plan

First to make sure we are all oriented geographically **(SLIDE 3)**. Here is PEI. **(SLIDE 4)** It is a land area of 5,686 Km² of which municipalities constitute 30%, not incorporated 70% and 1st Nations reserves 0.1%. It is generally a rural landscape with a total population of 135,851 of which 1st Nations number 1,117. Approximately 74% of the population receives police services from the RCMP, our contracted Provincial Police Force, and consequently have access to their complaints process.

(SLIDE 5) Our municipal police services include the provincial capital Charlottetown (pop: 32,174), Summerside (pop: 14,500), Kensington (pop: 1,485) and Borden-Carleton (pop: 786). Borden-Carleton is the access point to PEI via the bridge from New Brunswick. Until 1997 it was home to the ferry service to the mainland. There is a Security Police Service at the University of PEI located in Charlottetown. The campus has approximately 4400 full and part time students. The Atlantic Police Academy is located in Slemon Park near Summerside, PEI. Therein are a director, instructing officers, civilian instructors and cadets. **(SLIDE 6)** Charlottetown has 65 officers, Summerside has 30, Kensington has 5 and Borden-Carleton has 3 officers and a chief shared with Kensington. The University of Prince Edward Island has 7 Security Police Officers and the Atlantic Police Academy has 9 sworn officers on staff. **(SLIDE 7)** You will note the municipalities are relatively central in the province.

(SLIDE 8) What were some of the factors which motivated PEI to modify its Police Act and include provision for a Police Commission? Historically, complaints related to police officers were handled within the police departments. They requested assistance in investigations from other police services when warranted. On occasion, complaints would be received by the Attorney General's office which presented some process challenges. There are cross border policing considerations which require

having a commissioner office to address complaints. PEI was the only province without a Police Commission to engage complaints. Provisions in the Criminal Code requiring oversight were addressed by appointing a retired jurist to act the required capacity. **(SLIDE 9)** The Atlantic Police Academy and its staff were unrecognized for the unique nature of their service. The immunities and powers of police officers, auxiliary officers, security police officers, and instructional officers all required greater clarity. **(SLIDE 10)** The powers, of the Minister for policing in the province required restating, modernization and consistency with other Police Acts throughout Canada. For example, the power of the Minister to order a municipality to provide policing services to another municipality or to order investigations was unclear. Establishing foundations for a provincial police service and clarifying authority with regard to municipal police services was required. **(SLIDE 11)** The process for appointments of Police Officers and the like required restructuring and accountabilities. Generally, the existing legislation was dated, confusing and required modernization.

(SLIDE 12) So how did our new Police Act come about? A quick bit of history for context and all will become apparent. The first Police Act in PEI was in 1930. The RCMP became our provincial police force in 1932. Municipal police forces existed in Charlottetown since 1855 and in Summerside since 1877. Our current Police Act was proclaimed in 1951. Since that time, there have been approximately 8 amendments the last of which was in 2000. Regulations related to appointments of police officers and the like were made in 1993. **(SLIDE 13)** Developing a new Police Act was examined by a committee of legislature in 1990 and the establishment of a Police Commission was contemplated. **(SLIDE 14)** A private members bill in 1998 introduced the Police Commission Act. Therein, there was provision for uniform standards and a code of conduct. Retaining the existing internal complaints process within the police services and the recognition of a need for an independent complaints mechanism was noted. Other parameters included the separation of the police commission from Human Rights Commission and that the Police Commission deal with complaints and not broader policing issues, e.g., crime prevention, policy. **(SLIDE 15)** In 2006, a Police Act, which was generally consistent with other similar legislations nationally and which was apportioned to the needs and resources of PEI, was passed by the legislature. The Act included a complaints process and provided for an office of the Police Commissioner. Issues related to appointments, ministerial powers, provincial police force, and provision for broader regulatory, directive and standards powers were addressed. However, there were problems identified by the police association and unions which the Minister declared would be addressed. **(SLIDE 16)** Amendments to the Act were passed in December 2008. The complaints process was restructured and refined. The Manager (we'll look more closely at this position later) was provided authority to investigate, dismiss, resolve complaints or refer complaints to Commissioner for hearing. Provisions which would allow for Commissioner to investigate were deleted. There was inclusion of a provision for the Commissioner to order a party to the complaint to pay the costs incurred by the other party. The complaint time limit was varied from 12 to 6 months. Regulation-making powers for training, use of force were added. Manager and investigator qualifications were to be defined in regulations.

Currently, we are finalizing our regulations with a view to proclaiming the Act once we have completed some further preparations.

(SLIDE 17) Let's have a look at how our Commissioner's office is set up. The Police Commissioner, Deputy Commissioner and Manager positions are all required by the Act. The commissioner and deputy are appointed for a period up to five years and can be reappointed. The Manager is hired by the Commissioner. Essentially the Deputy functions when the Commissioner is unable. The Manager is the person responsible for the day-to-day operation of the commission office and is an investigator.

The qualifications for the Commissioner and Deputy are set out in Regulations. A person shall be a lawyer with at least 10 years experience who has knowledge of law enforcement issues, and has experience and expertise conducting hearings; or be a former judge of the Provincial Court, Supreme Court or Court of Appeal.

A single person Commissioner was chosen because it is anticipated that the number of hearings to be conducted under the new *Police Act* will be small in number. A tribunal or board structure would not be cost-effective for PEI and lay commissioners would not have sufficient opportunities to gain adequate experience during their terms of office.

Policing is complex work and the conduct of hearings requires expertise. Lay commissioners would have neither the background to understand the complexities of the police work environment nor the expertise to conduct hearings. It is essential that the Commissioner and the Deputy Commissioner have a thorough understanding of the law and legal procedures.

During consultations leading to the development of the Police Act and amendments, police representatives, especially union and PEI Police Association representatives, emphasized the necessity that the Police Commissioner be an impartial expert with knowledge of law enforcement issues and experience and expertise conducting hearings. These qualifications can best be found in an experienced lawyer or former judge. The highly technical and specialized nature of the Commissioner's work could not effectively be carried out by a lay commissioner.

(SLIDE 18) The process for the appointment of the commissioner and deputy requires a selection committee composed of two representatives of the Attorney General, a municipal administrator or elected official, a representative of Chiefs of Police, and a representative from the Police Association (which reflects police union and non union memberships) to act as a screening committee. Each group has been requested to identify someone from their number to participate in a screening process. Once "the request for expressions of interest" has been advertised, the screening committee will receive, screen and provide names of all qualified candidates to the Minister for consideration of the Lieutenant Governor in Council who will make the appointments. The Office of the Attorney General is responsible to provide resources to the Commissioner to conduct the legislated role and for which the Commissioner has to provide an annual accounting. The Commissioner and Deputy receive an hourly or per diem rate of remuneration and expenses as per guidelines. **(SLIDE 19)** The Police Commissioner is a "corporation sole" (Section 16(1.1)) which is a legal form of incorporation where authority is vested in one person. The Commissioner employs a Manager and establishes duties and a rate of pay. Similarly, the Commissioner is responsible for any other employees required to meet the obligations of the office. The qualification for a manager is in Regulations – base qualifications of a police officer with the

additional requirement of 5 years policing experience. **(SLIDE 20)** The Commissioner and Deputy are paid an hourly or a per diem rate set by Lieutenant Governor in Council for such positions. The manager position is to be filled initially as a 0.5 FTE. Utilization rates will provide more insight into the requirements of the position. Initially, our support services will be contracted. Our contract with Island Regulatory and Appeals Commission (IRAC) resolves our reception and “store front” requirements. It will provide telephone and people touch resources during normal business hours. It will have to be experienced to see if it is a workable process. For example, our Human Rights Commission is a full fledged office operation. For a number of reasons, we elected not to partner with the Human Rights Commission for office space. Our intent is start modestly and provide the Commissioner and staff the necessary supports to evolve a service model which reflects the needs of the community. **(SLIDE 21)** Our Police Act provides powers to the Police Commissioner including power to summon, administer oaths and affirmations, receive evidence or other information as the Police Commissioner considers appropriate whether or not such evidence would be admissible in a court of law. **(SLIDE 22)** The Commissioner may make a finding of contempt for failure to appear, refusal to be sworn as a witness, failure to answer a question without just cause or to provide documents or things in their control or who disrupts or obstructs a hearing. Note, any statement or admission of a party made during an attempt to informally resolve a complaint is inadmissible. An investigator cannot give evidence or provide documents, etc., related to an attempt to informally resolve a complaint. The Commissioner can hold a hearing anywhere in PEI and can make rules for practice and procedures and may prescribe forms for that purpose. **(SLIDE 23)** A complaint must relate to a Breach of the Code of Professional Conduct. The Code is set out in the Regulations and is based primarily on the New Brunswick model with some flavoring from BC. The Commissioner’s office has two procedural roles. It is a venue for appeals of complaint decisions made by Chief Officers and The Director of the Atlantic Police Academy. Also, the Manager is responsible to investigate complaints against Chief Officers, the Director and Security Police Officers. **(SLIDE 24)** In the appeal role, the Manager after investigating a decision on a complaint, the request for review of the decision and the complaint will seek an informal resolution, dismiss the complaint if parties will not accept a reasonable resolution or refer the matter to a hearing before the Police Commissioner. The Commissioner shall render a decision on the complaint which includes dismissing a complaint. The Commissioner can overturn the decision of a Chief Officer to dismiss a complaint and impose a penalty in accordance with the Code. The possible interventions or penalties are defined in the Code. The Commissioner may overturn the decision that a breach of the Code occurred or vary a penalty. Also, the Commissioner may order a party to pay the costs incurred by the other party. **(SLIDE 25)** In the role of addressing complaints against Chief Officers, the Director of the Atlantic Police Academy and Security Police Officers, the manager after investigating will attempt to informally resolve the complaint. Alike the Chiefs and Director, the manager can dismiss a complaint if the complaint is trivial, frivolous, vexatious, unfounded, or made in bad faith; or the complainant and respondent has refused to accept a fair and reasonable resolution of the complaint proposed by the investigator. The manager can refer the complaint to a hearing. The Commissioner shall then dismiss or impose a disciplinary penalty and may order costs.

(SLIDE 26) An investigator has the same powers and immunities of a Police Officer when conducting any proceedings under the Act

(SLIDE 27) In summary our complaint process for Police Officers and Instructional Officers of the Atlantic Police Academy looks like this. Informal complaint resolution is encouraged. A formal complaint related to Police or Instructing officers is filed with the Chief or Director. An appeal to the Office of the Commissioner is available wherein the Manager investigates, evaluates and attempts to resolve the complaint. The manager can refer the complaint to the Police Commissioner to conduct a hearing and render a decision. Matters of law can be appealed to the Supreme Court. **(SLIDE 28)** Formal complaints related to Police Chiefs, Director (Police Academy) and Security Police Officers are sent to the Police Commissioner's office where they are investigated and evaluated by the Manager. The complaint may proceed to the Commissioner for a hearing and decision upon referral of the Manager.

(SLIDE 29) The response to the complaints process within the 2006 version of the Act stimulated some beneficial discussion and evolved a consultation group which continues to provide consultation and recommendations during the implementation of our Act. It is our joint wish, i.e., the group and the department, that this group continue to meet regularly, before and after the proclamation of the Act, and provide ongoing guidance and contribute to problem solving. Key issues related to the role of the Commissioner and Manager, the complaints window (6 months) are some examples of the challenges but also the consensus building benefits of the consultation process which resulted in the amendments of 2008. We have no reliable data on which to build a service system. We are estimating 10-15 complaints in the first year based on what the municipalities have experienced and what the RCMP with their process has experienced. Given the scale of our service, establishing an accessible, safe and representative "store front" for our service is a challenge. We have part time staff resources desiring to provide normal business hour service contact. Our relationship with IRAC should prove to be a good first step in assessing our service delivery needs. We have an inclusive process for identifying candidates for the role of Commissioner and Deputy which will contribute to the acceptance and credibility of the function. The consultation group has expressed support for the procedure adopted. As to problems attracting suitable candidates, time will tell. Possibly by the time of making this presentation we will have more details to offer. **(SLIDE 30)** Given the fiscal environment, we were concerned for the availability of start up funding for the Commissioner's office which was a prerequisite for the proclamation of the Police Act. As we have been granted funding for a portion of this fiscal year, we are now in a position to move forward. How we will work together and inform the community and police services as to the complaints process and the Police Act generally is a challenge. Community awareness and trust is vital. We want to have a single paper flow process among all players in the complaints and reporting processes. We are presently drafting and consolidating that approach with the various players.

(SLIDE 31) Where are we going from here?

- ▶ Near term
 - Detail the complaints process

- Appoint Commissioner and Deputy and facilitate start up of the Commissioner's office and resource staffing
 - Locate office and refine contracts/arrangements with resource providers
 - Introduce the complaints process to the community and put a face on the Commission
- ▶ Longer term
- Develop a strategic plan
 - Generate utilization data
 - Establish an evaluation mechanism
 - Develop experience and local expertise
 - Engage with other provincial and federal oversight mechanisms
 - Refine the budget requirements of the office.

Thank-you for the opportunity to share our experience with you. I look forward to the great learning opportunity which this conference presents.