REMARKS BY

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TO THE

CANADIAN ASSOCIATION

FOR

CIVILIAN OVERSIGHT OF LAW ENFORCEMENT

ANNUAL CONFERENCE

OTTAWA, ONTARIO

8 JUNE 2009

First, I would like to thank Peter Tinsley, the President of CACOLE and Chair of the Military Police Complaints Commission, and Gerry McNeilly, Ontario's new Independent Police Review Director, for inviting me to speak to you today—thank you.

My involvement with civilian oversight of police began more than thirty years ago. That was in the summer of 1979, and I was practising criminal law. The Honourable Roy McMurtry who was then both Attorney General and Solicitor General for Ontario knew that I was in favour of some form of civilian oversight in the police complaints process when he asked me to help the government design a new system for the province. The idea of citizen involvement in the governance of any public bodies was still fairly novel in 1979.

There had been studies, recommendations, and even some civilian involvement in complaints systems in a few American jurisdictions by then. But the issue was getting much more attention in the U.S. than it was in Canada. In Ontario, there had been a lot of study, and many recommendations particularly in Toronto, but not much action.

Arthur Maloney's Report to the Toronto Police Board of Commissioners in 1975 was something of a watershed as he recommended a civilian commission to handle public complaints about the police. I was part of a delegation from the Canadian Civil Liberties Association that made a submission to Mr. Maloney.

In 1977, the Royal Commission into Toronto Police Practices, under Mr. Justice Donald Morand, also focused on the need for an independent civilian complaint commission. I represented one of the individuals at the centre of that inquiry.

At the federal level, the Honourable Rene Marin was writing a report on the subject of oversight of the Royal Canadian Mounted Police. I remember meeting with Justice Marin in my Toronto law office to talk to him about these issues as he was preparing his report. Between 1977 and 1981, the activities of the former RCMP Security Service were also under scrutiny by the MacDonald Commission.

These reports and inquiries were a response to the growing racial tension of the time, including some violent incidents in Toronto. But there had been no action on the recommendations. In 1977, John McBeth, then Ontario's Solicitor General, did attempt to legislate some civilian involvement in the complaints process. But there was very little support for the concept in the legislature and his bill never made it to Third Reading.

Tension between visible minorities and the police continued to escalate in the months that followed. In September 1979, Metro Council asked Cardinal Carter, who was the city's senior Roman Catholic prelate, to examine ways to ease relations between the police and visible minorities. In his report Cardinal Carter once again pointed to the need for some civilian involvement in the complaints process. By that time, I was actively researching the matter for the Attorney General.

Despite the persistent calls for change from activist groups, as well as the report recommendations I have mentioned, there was still very little political support for changing the complaints system when Attorney General McMurtry approached me that summer. Indeed, there were members of his own caucus who didn't understand why the government would want to wade into this very controversial issue.

Nevertheless, I was retained as a consultant and my assignment was to study police complaints processes in other jurisdictions and propose a model for Ontario.

In those pre-internet days, doing research and gathering information meant calling people on the telephone, spending time in a law library and writing letters and waiting for a response by mail. I reviewed the complaints systems in North America, the United Kingdom, Australia, and other Commonwealth countries. Eventually I travelled throughout Canada and to several American jurisdictions and to Great Britain to see how their complaints systems operated. My research led me to the same general conclusion as all of the other Reports, namely that a civilian component needed to be injected into the process. But then, just as now, the difficult questions were – how much civilian involvement, how should it be organized and how should it interact with the existing internal systems. My thinking at the time was that a system which combined the benefits of both internal and external components had the best chance of success. There was no doubt that a purely internal system would never satisfy the public concern that it wasn't biased in favour of law enforcement, whereas a purely external system could become polarizing, expensive and in many ways, impractical. I felt that the police needed to be involved in the process. because they are and always must be accountable, and with accountability comes responsibility. Obviously, the police need to be as concerned about the so-called 'bad apples 'as anyone and they also need to be concerned about the larger systemic issues that give rise to complaints in the first place. I believe that it is in the police's own interest to view complainants as their customers who are in effect, talking to them, providing them with valuable feedback that they should know about and take seriously. Of course individual police officers who are the subject of complaints have to be treated fairly and their rights must be protected at every stage.

The real challenge was to find the right balance between civilian and police involvement and to persuade law enforcement that it was in their interest to have a transparent system that would enable them to win and keep the trust of the people they are obliged to serve. In my view, complaint systems are not anti- police; on the contrary they are or can be an important ally of a police service in building and retaining the respect and confidence of the community.

Last year, I was appointed Ontario's Conflict of Interest Commissioner and as such I am responsible for administering the conflict of interest and political activity provisions of the *Public Service of Ontario Act*. In many ways, I see my current role as providing a form of external oversight for Ontario's public service, and our office applies the same principles I have just talked about. A crucial part of the role of our office is education. The more public servants know about conflict issues, the more likely they are

to make the right decision when confronted with a potential conflict situation. Our objective is to raise the ethical standards and prevent infractions wherever possible, which, by the way, is not a bad objective for a civilian oversight agency.

When talking about civilian complaint systems, clearly 'one size does not fit all.' Each jurisdiction must develop its own system that takes into account its unique history, traditions and existing culture. That was as true in 1979 as it is today. In 1979, there was certainly no existing consensus among the police, the government and opposition, and citizens' groups on whether there should be civilian oversight or how it should operate.

I believed then, and still do, that police forces in Canada generally take allegations of misconduct seriously, and they investigate these allegations appropriately. But, like everyone else, they are not perfect. In recent years, transparency and accountability have become much more important in both public and private institutions, and the police are no exception. Indeed, because they carry firearms and can use force in appropriate circumstances, police are likely more in need of independent civilian oversight than most other groups in society.

The model I proposed for Ontario, after much consultation and consideration, provided for initial investigations by the police, but with extensive oversight by a new civilian agency. In some defined situations, the system allowed for the civilian body to conduct initial investigations, but in all cases, the civilian agency reviewed the police handling and disposition of civilian complaints.

There was a feature of the model that I considered vitally important. The system prescribed a standardized investigation format and regular written reports, which were mandated in the Regulations, and routinely provided to the subject officer, the complainant, and the complaints commissioner. That element made the system completely open and transparent.

The police were given an initial thirty-day period to conduct an investigation, after which, the Complaints Commissioner could intervene. However the complaints commissioner could intervene earlier if the police investigation was not proceeding according to the investigation format.

I also proposed a civilian adjudicative body, which could impose discipline directly. At the time, that concept was quite unusual.

The AG introduced legislation based on my recommendations in 1980. By then, all three parties in the legislature supported some form of civilian oversight, but there was still disagreement regarding the extent of it. The opposition parties were now calling for an even greater civilian role. With the Conservative government in a minority, the Bill was narrowly defeated.

The province and the City of Toronto continued without a civilian complaints system, while outside pressure continued to build. Municipal governments were urging the province to legislate in this area. In February 1981, when police raided gay bath-houses, many people in Toronto were saying that the police were unfairly targeting minority groups.

A slightly revised bill called The *Metropolitan Police Force Complaints Project Act* was finally introduced in the spring of 1981. With the government now in a majority, the bill passed into law in December of that year.

For the record, I was a much younger man then, and much better looking than I am now!

The Public Complaints Commission (PCC) was established as three-year pilot project for metro Toronto. The Commissioner's mandate also provided for making policy recommendations on policing issues. There is no doubt that the legislation tried to achieve balance, but as with many controversial issues that are legislated, some compromises were necessary.

There were community groups that didn't think the legislation went far enough in terms of civilian involvement, and there were law enforcement officials who felt the new system went too far, and would hinder their ability to perform their policing function.

There had been a long delay in getting the Bill back before the Legislature. During the interval, some highly publicized shootings heightened the tension, and the need to act was pressing. The Attorney General decided to appoint me as Commissioner even before the legislation was passed. I was appointed in July of 1981, and the legislation wasn't finally approved until December of that year. This highly unusual situation was not lost on the media, and there was considerable public criticism of the arrangement.

I was appointed in the morning, and by that same afternoon, people were literally lined up outside my office to register their complaints. I say "my office" because I was actually working out of my own law office. I had no budget, no staff, no forms or procedures, and most of all, no legal authority. I did have the support of Attorney General McMurtry, which was very important, but the only real power I had was "moral suasion." Unfortunately, the situation on the streets of downtown Toronto didn't wait for the law to catch up. And it didn't give me time to ponder the kind of administrative structure I should put in place. Not content to wait for the government to act, a citizen's group was formed for the express purpose of reforming the complaints process from the outside. The Citizens' Independent Review of Police Activities (CIRPA), was not satisfied with the proposed legislation, or with the fact that the Commissioner was appointed before the bill could be debated in the legislature. They encouraged the public to use the small claims court, or bring complaints directly to police services commissions, or lay criminal charges against police officers, or anything else they could think of that would bypass the new process and highlight what they saw as its shortcomings.

In November of 1981, with the enabling legislation still not passed, the Criminal Lawyers Association wrote to the Attorney General asking for a public inquiry into the conduct of the some members of the Toronto Police hold-up squad. The Association alleged 25 instances of police misconduct by some members of the hold-up squad. Amnesty International weighed in on the matter and the Attorney General was confronted with an extremely volatile situation. What was he to do? He referred the entire matter to our new "unofficial office" to deal with. Talk about trial by fire!

With no staff, no procedures, and no authority, we went ahead and met with all parties—police officers, complainants, various public officials, and community groups. We successfully negotiated an agreement on the format of our investigation. It took us some months, but eventually we produced a 150-page report.

We made 18 specific recommendations on police procedures—on officer notes, checks on prisoners, responsibilities of the Officer-in-Charge, and most importantly, on the need to videotape police interrogations. Our report was made public and all of the parties scrutinized it including the media. The consensus was that we had conducted a thorough investigation and produced a fair and balanced report. There was insufficient evidence to recommend laying criminal or Police Act charges, but most of our recommendations were translated into action and the experience gained considerable credibility for our fledgling agency.

Shortly thereafter, while we were still developing procedures, our office was once again called upon to deal with a high-profile matter. That one came to be known as "the Morrish Road Incident." An "ending the lease" party in Scarborough got out of hand. More than 50 police officers were called in to deal with the rowdy party-goers, and a CITY-TV camera crew was on the scene. Their video footage, endlessly rebroadcast on the news, showed party-goers running a gauntlet of police officers apparently striking them with batons as they attempted to leave the premises.

After a brief initial police investigation, our office took over. We conducted an extensive investigation, much of it by way of public hearings, which the Act allowed for now that it was passed. The police officers who were involved in the incident were required to testify under oath. It was clear that misconduct had occurred, but neither the videotape nor the testimony of party-goers or police officers was clear enough to identify any particular police officer. We sent the videotape to a space lab in the U.S. to be analysed, but the science at that time was not up to today's CSI standards.

Once again, we made a number of specific systemic recommendations, including compensation for property damage, mandatory display of ID badges, operational procedures for major incidents, and the requirement of a formal public apology to be made by the Chief. Our performance as an agency had been tested again, in a very public way. The result was that many of our former critics were now much more supportive of our new agency and it's potential.

We were involved in other major initiatives, such as our community outreach to the Jane-Finch and the Regent Park areas of the city, which had always been areas of high police activity. Our newly appointed civilian investigators went out to legal clinics in the community to receive complaints and to help mediate some of the concerns between the community and the police.

Our main objective was intake and processing of individual complaints. In our first two years, we dealt with more than 1600 of them. Concerns lingered about the legislation, but our experience on the ground was that we had the authority we needed to carry out our oversight function effectively. I can illustrate that with one more example. When we received an allegation from a young man that a police officer had put a gun in his mouth and played a kind of Russian roulette, the Chief of Police called upon our office to assist in the investigation. Our civilian investigators were dispatched to the police station within hours. They searched for and located a weapon exactly where the complainant told us it would be. The weapon was forensically tested, and traces of the man's saliva were found on the barrel. As a result of our investigation, criminal charges were laid and the matter went before the courts. The officers were acquitted, but our high-profile involvement, in a very difficult situation, once again demonstrated our independence, our ability to act, and our value to both the police and the community.

In 1984, when our three-year pilot legislation was due to expire, a new bill was introduced to establish our office on a permanent basis.

In the legislature, Attorney General McMurtry said that, in his view, our project had been an outstanding success. He said that it had brought about a great many improvements in the handling of public complaints of police misconduct. I'll read you just a short quote of what he said that day:

> *Members who were present in this House throughout the 1970s will recall the almost constant controversy that surrounded this issue. Royal commissions and special investigations by such individuals as Arthur Maloney, Mr. Justice Morand, Walter Pitman and Cardinal Carter, among others, highlighted the controversial nature of the subject.*
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> *In contrast, the period of time since 1981 has been marked by an unprecedented level of public acceptance of the complaints process. Although improvements remain to be made, the dramatic change since 1981 is a powerful testament to the success of this project.*
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> *The success of the project has led to it being studied by a number of jurisdictions throughout the world, including the United States, Europe, Hong Kong, Bermuda, Jamaica, the Netherlands, Nigeria and Australia.*
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> *Lord Scarman, in his report on the Brixton disorders, stated, "The Toronto proposals appears to me to merit serious consideration as a possible model of reform of our procedure," referring of course, to Britain.*

He went on to say that legislation modelled in part on the Toronto project had been implemented in jurisdictions as close as Manitoba and as far away as Western Australia.

The new bill went through the Legislative Assembly with relative ease and the PCC became a permanent part of the law in Ontario.

I served as Commissioner until October 1985. When I stepped down, my colleague Clare Lewis took over. Clare has served over the years as a Provincial Court Judge, Ontario Ombudsman, and is currently the Law Society of Upper Canada's Complaints Resolution Commissioner.

The PCC system was extended beyond Toronto and became a province-wide Agency with the passage of a new *Police Services Act* in 1990. That same year, the Special Investigations Unit (SIU) was created. It was given the important mandate of investigating civilian deaths and serious injuries resulting from police action. Ontario broke new ground with the SIU, and solidified its role as a leader in this field by also expanding the PCC system. Much of the impetus for those reforms stemmed from the findings of the Task Force on Race Relations and Policing, chaired by Clare Lewis, who was the Complaints Commissioner at the time.

The SIU continued through a variety of reviews, and it has served as a model for oversight bodies in other jurisdictions.

In 1997, the government of the day decided to abolish the PCC and the associated civilian Board of Inquiry. I last spoke on this topic in September 1997, to the annual Conference of the International Association for Civilian Oversight of Policing, right here in Ottawa. I made no secret of the fact that I was disappointed with the government's decision to abolish the system I had helped to design, or of the fact that I never really understood why the government decided to act as it did. . Some critics of the decision tried to explain it at the time in the form of a riddle: "What fails if it succeeds?" The answer was, "a police complaints system."

In any event, I was certainly gratified with this government's decision to reinstate civilian oversight in Ontario with the creation of the Independent Police Review Director. I will leave it to others, particularly Gerry McNeilly, to extol the virtues of the new system. But we should be optimistic about its future potential. I think it is fair to say that, to a large extent, the new system is based on the report of former Chief Justice LeSage, which in turn borrowed considerably from our earlier experience—as Justice LeSage was kind enough to point out to me.

During my years as Commissioner, we were certainly not reluctant to deal with complaints vigorously when the situation warranted it, but we tried to maintain a positive, cooperative attitude whenever possible. We tried to avoid the 'gotcha' mentality that can so easily take over in a regulatory or oversight agency. I firmly believe that the "buy-in"

that comes from a more constructive approach, although sometimes it takes more time and effort at the front end, pays dividends in a more durable and lasting system.

After all these years, I am still of the view that any police complaints system requires a balance between police and civilian involvement. My colleague Justice LeSage touched on the idea of balance, too, in his report on the Ontario complaints system. He wrote that "While independence is critical to foster trust and respect for the system, I am not convinced that a system totally removed from the police is in the interests of the community or the police in Ontario." The legislation implementing his recommendations and establishing the Ontario Independent Police Review Director recognized this. It gave the Director the ability to refer complaints back to police for investigation, and at the same time, broad ability to investigate particular complaints at will. The Director will also be able to intervene in police investigations and issue orders on the conduct of police investigations.

This is a new system for a new day, and I'm confident that Gerry McNeilly will build the support and trust, with both the police and the community, that is so critical to success. The public holds public figures—be they police, politicians, bureaucrats, judges, or others—to a very high level of scrutiny. Over the past decade or so numerous public inquiries —federal, provincial and municipal—have dealt with alleged public misfeasance. It won't be news to this group that many of these public inquiries and unofficial reviews have focused on police conduct. Others at this conference have talked about or will talk about some of these inquiries in more detail.

Public inquiries are a fundamental feature of our political system. They serve important public interests by ensuring transparency and public accountability. But they are also expensive, lengthy, and often adversarial. I believe that effective oversight bodies—adequately resourced and funded—could, in many situations, provide a level of accountability that would negate the perceived need for some of these inquiries.

Complaints systems may also serve to limit the number of forums where police must deal with disputes involving members of the public. For example, an effective complaints system would encourage more individuals to resolve their complaints through the system rather than in court. This is potentially a win-win situation for complainants and police. Many issues could be resolved in a forum that is specifically designed for resolving them.

In September 1995, Dudley George, a 38-year old aboriginal man, took part in the occupation of Ipperwash Provincial Park on the shores of Lake Huron. The park land was part of the Kettle and Stony Point First Nation which the federal government appropriated during the Second World War with a promise to return it when the war was over. Almost sixty years later, when the land had still not been returned, a group of Aboriginal men and women decided to reclaim the land and occupy it. Within a couple of days of the start of the occupation, there was a confrontation between the occupiers and the Ontario Provincial Police. Mr. George was shot by an Ontario Provincial Police officer, and later died of his wounds.

In November 2003 AG Michael Bryant of the just recently elected Ontario government asked me to conduct a public inquiry into the matter and to make recommendations directed at avoiding violence in similar situations. My 4 volume Report which was made public on May 31st 2007 is still available on the website. (IpperwashInquiry.com) It is generally recognized that Aboriginal people are overrepresented in our justice system. The relationship between Aboriginal people and Canada's justice system has been a difficult issue for successive governments for many years. Among other measures, there are two processes that might go a long way toward improving relations between Aboriginal people and the police. The first is civilian oversight bodies that focus on outreach to Aboriginal people. The second is an appropriate approach to handling complaints made by Aboriginal people, based on mediation, and on education for both the police and Aboriginal people.

During the Ipperwash Inquiry, we learned that many of the police officers involved did not have adequate training in Aboriginal history and traditions. This fact contributed in part to their inability to keep the situation under control Among other things, I recommended that public order policing strategies should address the uniqueness of Aboriginal occupations and protests, with particular emphasis on the historical, legal, and behavioural differences involved. Training should focus on peacekeeping, communications, negotiation, and building trust. Related to this, I recommended that First Nations mediators be involved in the response to Aboriginal occupations and protests. The OPP has already done much in this regard, and in my report, I recognized many of their recent initiatives as best practices.

Properly organized civilian oversight bodies could play an important and ongoing role in examining the relationship between Aboriginal people and the police and in making recommendations.

Most Aboriginal people in Ontario live off-reserve, but most First Nations are policed, at least in part, by dedicated First Nations police services. Inquiries, reports and other police services have expressed support for First Nations police services. Nevertheless, advocates continue to point out that First Nations police forces are hampered by their lack of funding and limited mandates. They have said that First Nations police services should be funded and supported as replacements—not enhancements—for mainstream police forces.

In my Ipperwash Report, I made many recommendations based on my belief in the value of First Nations police services. The recommendations were aimed at helping First Nations police services to provide the same quality of policing as other Ontarians expect.

In some situations, it may be best for First Nations police to be subject to the same general oversight regime as all other officers. First Nations police services could opt in to the general oversight system. In his report, Justice LeSage suggested that "The law should not preclude those First Nations that wish to have their police service fall under the provincial complaints system from being able to do so."

First Nations and the federal and provincial governments will have to work out the details of an oversight system for First Nations police services. Of course it will have to be as rigorous as oversight of other police services, but, like policing itself, it must also be culturally-appropriate, inclusive, and tailored to the specific context of First Nations policing.

The debate regarding the extent and form of civilian oversight will go on, and I believe that is healthy in a democracy. It may be worth keeping in mind that the relationship between the police and the public is not really a 'problem 'that has a 'solution '. It's more like a continuing dynamic that needs tweaking or adjusting every now and then, as circumstances dictate. I believe it would be more productive if a consensus could be built around certain minimum standards or principles for civilian oversight, which would safeguard some of the critical components such as independence, balance, transparency and accountability. I note that International Network for the Independent Oversight of Policing (INIOP) has expressed some interest in developing these types of standards and I encourage you to use your collective energy to move in that general direction.

It has been encouraging for me to see how far civilian oversight has come in the past quarter century. As I prepared for these remarks I was surprised by the amount of activity in recent years, in Canada and worldwide. My internet search of 'civilian oversight 'yielded virtually thousands of results.

A major difference from my time is that there is now considerably more acceptances of the general concept of civilian oversight and the important need for oversight generally in a democratic society. Another difference is the rich body of legal, academic, and more general literature and experience on the subject that now exists. Yet another difference is the large number of practitioners who are actually working in this field, as attendance at this conference shows. None of this was the case in the 1970s. And Gerry McNeilly will have legislation and procedures in place before people start to line up outside his door. That, too, is a positive difference.

You have chosen to work in a sometimes very lonely and often very difficult field. But it is extremely important work and I encourage and salute you all. Keep up the good work.

Thank you