

POLICE ASSOCIATION PERSPECTIVES ON CIVILIAN OVERSIGHT

Presentation to the CACOLE Conference 2006

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INTRODUCTION

I would like to start my presentation by thanking CACOLE and your conference organizers for the opportunity to participate in this panel today. Your association plays an important role in raising the bar for police oversight and accountability in Canada, and I think it is important that our organizations seek opportunities to openly discuss issues that advance our common goal of quality policing services for all Canadian citizens.

The objective of my presentation this morning is to provide you with a police association perspective on Civilian Oversight in Canada. Despite the fact that there are as many different approaches to Civilian Oversight as there are provinces, police

association perspectives were remarkably similar. I recently surveyed my police association colleagues across Canada, some of whom are here this week. I am sure they will be happy to set the record straight this morning if I don't properly represent their views.

Over the past twenty-five years we have witnessed many changes relative to oversight of police conduct, including:

- Legislative reforms to police discipline and public complaints systems. In some jurisdictions, such as Ontario, there have been several major overhauls.
- Increased use of criminal consequences as a remedy for police conduct
- Increased civil litigation against the police
- Commissions of inquiry, and
- Political influence and interference

While police associations generally recognize the value of police oversight and the positive influence that effective oversight can

contribute to policing quality, these developments and trends have not been without challenge and controversy.

The theme of your conference this week; ***Striking the Right Balance***, captures the essence of the challenge in achieving effective police oversight.

- Role of Police Stakeholders in system design and implementation.

The first message I would like to pass on today, is

1. DON'T LOSE SIGHT OF THE BIGGER PICTURE

- Policing is one of the most highly regulated professions in Canada. Canadian police officers are subject to a variety of oversight mechanisms:
 1. Supervision of Police Services by Ministers of the Crown, Municipal Councils, or Municipal Police Boards.
 2. *The Canadian Charter of Rights and Freedoms.*
 3. The Civil Law Process.
 4. Police Discipline Processes.
 5. Public Complaints Processes.
 6. Human Rights Law Processes.
 7. The Criminal Law Process.
 8. Coroners' Inquests.
 9. Provincial Police Commissions.
 10. Public Inquiries.

11. Ombudsman Legislation.

- Police in Canada respond to tens of thousands of calls for service each and every day
- Nature of police business requires police officers to make arrests, conduct investigations, stop motorists for traffic offences, and lay charges. Interventions are not always welcome by the person who is the subject of these matters, and at times the situations can be volatile.
- Yet only a very small portion of police activities result in any form of complaint
- And only a very small portion of these complaints result in any finding of misconduct
- Only a small number of these are misconduct of a very serious nature
- Generally, police services do a pretty good job of responding to these types of concerns. Police agencies are highly

motivated to demonstrate that incidents of misconduct are properly addressed. (Sometimes too zealous ...)

2. SYSTEMIC ABUSES SHOULD NOT BE TOLERATED

There are various actors in the police oversight constituency

- Those lawyers and special interests who make a handsome living litigating and criticizing police conduct to further their own interests, profile or agendas
- Lawyers who routinely counsel clients to file complaints and civil allegations as a strategy to leverage the defense own criminal allegations
- Organized gang members and chronic offenders who use the police complaints system as a means to thwart investigations, discredit or deter investigators, and seek retribution against officers and their families

As one of my colleagues pointed out, the airlines have a name for these types of customers; frequent fliers.

There are numerous examples of investigations that have consumed incredible resources and expense to the taxpayer, where the complaint is proven to be completely false and malicious, including situations where video-tape records have exonerated the officers involved. In Quebec, for example, EVERY allegation of criminal misconduct must be submitted to the Crown Prosecutor for review, regardless of whether or not there is any substance to the allegation. This is a complete waste of precious resources.

One of the most frustrating concerns for police associations and members is the blatant refusal of governments, chiefs of police, crown prosecutors, and oversight agencies to prosecute those who lay false and malicious complaints against police officers.

There should be meaningful and proportionate consequences for those who choose to abuse the system. It should not be left to police officers and their associations to pursue these individuals in the civil courts.

3. JUSTICE DELAYED IS JUSTICE DENIED,

- This is equally true for the complainant and officer
- Effective and efficient oversight can play a role in ensuring that an officer's good name, as is the case in most situations. But we should not have to wait months, even years, to have these matters resolved
- This is an issue at all levels of the process – investigation, disclosure, hearing, and decision of a tribunal.
- The stigma, cloud, and suspicion that can accompany an allegation of misconduct can have a chilling effect on an officer's career and opportunities for advancement.
- An officer's professional, personal and family relationships can be strained or damaged while he or she waits for the matter to be concluded.
- Delay serves to exacerbate mistrust and suspicion, for both the officers, and complainants.

- Police officers and associations frustrated by the abuse, or complete disregard for statutory requirements, such as timelines and disclosure.
- Exceptions should be rare, not the norm
- Processes should allow officer to respond to any request for an extension
- SIU in Ontario is a positive example of how investigations can be completed in a timely and effective manner – generally 30 days. Obviously this requires a tremendous commitment of resources and support.

4. ONE SIZE DOES NOT FIT ALL

- Blanket policy statements or legislative edicts concerning the consequences for certain types misconduct are inappropriate, and arguably violate the fundamental principles of basic human rights and Charter protections
- A potent example is the pronouncement by some governments or chiefs of police that any officer found guilty

of a criminal offence will be automatically dismissed, regardless of the officer's employment record or the circumstances of the conduct

- This totally ignores all accepted sentencing, discipline and labour relations principles, and displays a complete disregard for the principles of reasonableness, proportionality, fairness, due process, natural justice and progressive discipline
- Police associations will challenge such measures vigorously
- Not because we don't agree that in many situations, a criminal conviction may warrant consideration of dismissal, but rather that it is not the absolute remedy in every situation.

(Mitigating factors include:

- *Employment record*
- *Years of service*
- *Personal problems*

- *Training, supervision and guidance*
- *Performance appraisals*
- *Private life)*

5. THOSE AT THE BOTTOM OF THE FOOD CHAIN FACE THE GREATIST RISK

- The nature of duties for front-line personnel places them in situations of conflict.
 - “It” rolls downhill, as they say, and usually the entire mess lands at the feet of the officer on the street.
 - What about those responsible for training, supervision, and management? Have they done their jobs adequately?
 - Police accountability shouldn’t stop on the ground floor ... should also apply to everyone in the food chain, including police board members and funding authorities.
- Unfortunately the appetite for accountability appears to diminish at those altitudes

6. WHY RUSH TO DISCIPLINE?

- The primary goal is to improve the quality of police services, and address conduct issues.
- Discipline can be a very blunt instrument
- We need to focus more on the causes as opposed to symptoms. As previously stated, what about training, supervision, and management?
- Informal resolution and mediation are key components . Often the complainant is only looking for an explanation or apology, and is overwhelmed by the bureaucracy and intensity of the response
- The focus should be remedial, as opposed to punitive. Discipline is an employer responsibility and otherwise falls within a labour relations framework. Matters of internal discipline, such as absenteeism or tardiness, do not need to be vetted in open public forums

- We have to strike the right balance This will only happen when there is trust and mutual respect between the police and oversight officials

7. TRAINING IS CRITICAL

- Not just better training for police officers, but also proper training for those charges with overseeing police conduct. Police associations contend that Police Oversight officials need to be properly versed in police procedures, Policing standards and training
- Understanding Use Of Force models and investigative realities such as search and seizure
- Investigative or review personnel must be properly qualified and trained to fulfill their role
- This requires adequate resources and support

8. IT STARTS WITH LEADERSHIP

- Conflicts with police associations and police oversight agencies generally start at the top.
- Those in charge of overseeing police must be, and must be perceived to be, fair and impartial
- Those who appear more concerned with getting their picture in the paper and making a name for themselves are generally not well received by the police
- Trust and confidence are key. This starts with communication and effective relationship building

9. THIRD PARTY COMPLAINTS

- We don't like them
- Suggest that they should be handled with an abundance of caution and skepticism
- Need to demonstrate a compelling public interest to warrant investigation

- As a general rule, all complaints should be in writing and signed by the complainant, including 3rd party complainants

10. RIGHTS HAVE NO EXCEPTION

- Duty to Cooperate or Duty to Report are contentious issues
- Another is, search and seizure, and particularly as it relates to a member's dwelling house.
- The standards that are applied to police officers have to mirror, in every way, the standards that police officers are expected to apply in their dealings with members of the public.
- In order to promote the highest standards within our profession, and foster a culture that is respectful of the rights of our citizens, the CPA has argued that a new equilibrium is required:
- It must be recognized that fundamental rights afforded to all citizens are not negotiable. By treating police officers differently than other Canadians, and placing limits or

exceptions on the rights afforded police officers, we teach them that it is permissible to have limits or exceptions on the rights enjoyed by all citizens.

- Our practices relative to police conduct must be consistent with the fundamental human rights afforded to our citizens, including procedural fairness, natural justice, and access to independent and impartial adjudication.
- We must preserve the fundamental principles which preserve police independence and impartiality from further erosion. Police officers cannot feel threatened that their good faith efforts to uphold the law can result in punitive consequences. They should not believe that they may become scapegoats to a politically expedient resolution.
- Contemporary Canadian policing encourages police officers to be innovators and problem solvers. This is not without risk of failure. Policing needs to shift from a reactive disciplinary culture to a proactive learning environment.

Police officers require the confidence that is fostered by fairness and equality.

- In order for justice to be seen to be done, Police officers must ultimately have access to independent and impartial adjudication of any serious misconduct allegation.

We are promoting a police officers Bill of Rights as a new, national standard for Canadian policing, to eliminate discrepancies and inequalities across all jurisdictions.

11. JURISDICTION

- The final two points I would like to speak to this morning deal with jurisdiction:
- The first deals with the RCMP.
- Huge issue in provinces, such as B.C., where you have RCMP delivering provincial and municipal police services, often in conjunction with neighboring municipal police services

- Police associations at a loss to understand why RCMP members are not governed by the same standards and oversight procedures as other municipal officers.
- This only serves to aggravate situations when the RCMP are called in to investigate police misconduct allegations, under a system to which they are not themselves subject to!
- As one association leader noted, members of the public should not face a different oversight framework based on which side of the street they live on.
- RCMP is not known to have impressive standards when it comes to managing employee relations, human resources, and public complaints
- Recent example of concern, it took a statement from the Attorney General of BC to clear the air regarding an RCMP member who was the subject of intense public scrutiny over a shooting in the Houston BC detachment, nearly a year

after the incident occurred. The member was left hanging the entire time

- RCMP members do not have the right to form an association or union, there is no governance authority for the RCMP, and the oversight processes lack teeth
- The second jurisdiction issue related to the evolution that is occurring in policing relative to lower cost substitutes and alternatives to traditional policing. We have witnessed incredible growth, and at times abuse of para-police, special constables, auxiliary police, and private security.
- Governments have even contracted private agencies to conduct security activities using questionable practices.
- Private security companies actively market their product offering, including search, arrest, detention and the use of dogs to patrol housing projects, downtown business areas, and neighborhoods.

- There are flagrant examples of private security firms using processes and tactics that violate human rights; actions that would never be permitted by public police agencies.
- These companies are exploiting the accountability gaps and lack of appropriate standards and oversight that is applied to this sector.
- My question, and challenge for CACOLE members, is what if anything are you doing to address this trend?

IN CONCLUSION

I would like to close by borrowing a paragraph submitted in 2001 in a joint statement by the BC Federation of Police Officers, the Vancouver Police Union, and the Vancouver Police Officers Association, to a Special Committee of the British Columbia Legislature:

“We all have a vested interest in maintaining and improving the professionalism of our members. The public [has] an expectation that we conduct ourselves professionally at all times and that we are accountable for our actions. Independent oversight is not only crucial in order to maintain the public’s confidence, but also must ensure police officers’ confidence in a fair, effective and objective review of police conduct.”

Thank you.