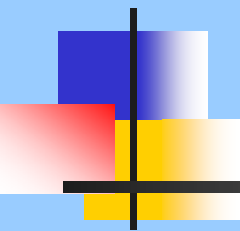


Perspective on Models of Civilian Oversight

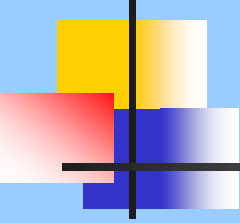


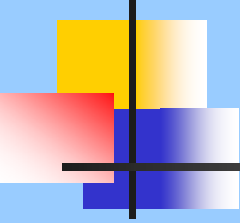
by Paul E. Kennedy
**Chair of the Commission for
Public Complaints Against the
RCMP**



General Context:

- Canada is a democracy.
- Essential feature of a democracy is recognition of and adherence to the “Rule of Law.”
- Public Safety is a key pillar to the creation and maintenance of a democracy.

- 
-
- Complex modern societies have created specialized institutions to maintain public safety.
 - The police services are a principal public safety institution.
 - They are vested with extraordinary powers.

- 
-
- Police must conform to the rule of law.
 - They must account for the use of their extraordinary powers.
 - Failure to provide a means of accountability leads to unfortunate consequences.



Some means of accountability are:

- 1) the criminal courts;
- 2) Crown discretion;
- 3) internal discipline;
- 4) criminal or civil actions;
- 5) general oversight bodies;
- 6) media.

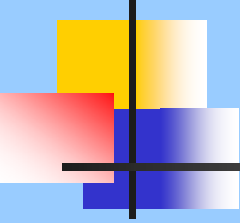


Some accountability mechanisms have a long history.

Most have their origins in 1970-1980 period.

Reflective of Trends:

- evolving public expectations;
- growing distrust;
- calls for greater transparency and accountability.



Drawbacks of traditional vehicles of accountability in area of policing:

Courts:

- Focus is too narrow;
- Scope of inquiry bounded by rules of evidence;
- Remedy provided too specific.

Oversight bodies:

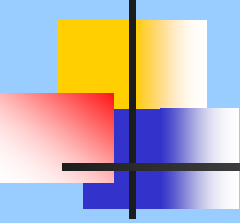
- Mandate tied to specific issue, i.e. disclosure of personal information;
- Focus is on many institutions, i.e. all provincial or federal institutions;
- May not have appropriate knowledge, expertise.



Specialized civilian oversight bodies for police are required.

Found in all 10 provinces and federal government.

Each of the legislative mandates differs significantly in terms of form and context.



The legislative regimes have continued to evolve, on an *ad hoc* basis, since the 1970s.

Recent examples include:

- Quebec;
- Saskatchewan;
- Ontario, Bill 103.

Calls for revised mandates:

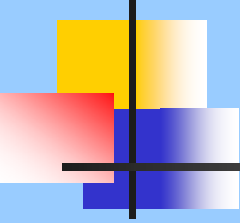
- British Columbia;
- Federally, the CPC.



Ought there to be a common baseline in the key features of the provincial/federal oversight bodies?

Oversight powers should be commensurate with the intrusiveness over the body which it exercises oversight.

Would provide all persons in Canada with a Common level of redress.



Accepting the Constitution and the allocated roles and responsibilities of each level of government.

Steps can be taken to create greater uniformity in regards to the key elements of our respective legislative mandates.



Possible key legislative elements:

- Legislative mandate must be in an enactment separate from the *Police Act*.
- Oversight bodies report to the Legislature/Parliament.
- The Act should contain a statement of principles.
- Oversight is of the entire cycle of complaints from intake to appeals.
- Role played by police would be subject to review, comment and guidance from the oversight body.



Statement of Principles

The statement of principles would provide that:

1. The overarching purpose of the complaint process is to maintain and restore public confidence in the police service.
2. The tribunal recommendations contribute to the sound and effective direction and management of police services.
3. The complainant has the right to file a complaint and to have it impartially investigated and fairly and justly resolved.

Based on principles as articulated by Philip C. Stenning.



Statement of Principles

4. The police officer has the right to respond fully to such complaint before an impartial tribunal.
5. Priority be given to remedial responses to substantiated complaints.
6. The tribunal in addition to the conduct of individual officers be charged to look at systemic sources of police misconduct and to make recommendations in relation thereto.

Based on principles as articulated by Philip C. Stenning.



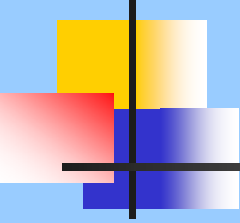
Would apply to:

1. Conduct of individual officers in the discharge of their policing duties.
2. It would include not only active members but also retired members in respect of their actions while police officers.
3. Issue: The RCMP complaints process currently applies to civilian members – Should the regime apply to civilians who work under the direction or supervision of police OR whose duties directly support a police function?



The scope of oversight should include:

- The actual conduct complained of;
- Complaints regarding systemic issues;
- Complaints regarding specific or general policies, procedures and guidelines or Ministerial directives related to policing.



Who may complain (orally or in writing):

1. Individuals directly impacted by police conduct or authorized representative;
2. Third parties – but only in respect of systemic issues, policies, practices, procedures;
3. Oversight body may self-initiate;
4. Anonymous?



Process

Oversight body to be notified of all complaints and their resolution in the first instance by the police.

Phases

- Informals (ADR) for less serious conduct
- Formal – record of disposition
- Appeal

Timelines to file complaint or launch an appeal.



Investigations

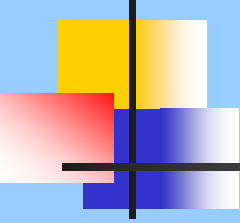
- In the first instance by the police
- Caveat
 - Oversight body may monitor
 - May order further investigations
 - May ask that another police service investigate
- Issue: credibility of police investigations
 - Where police force is small
 - Where allegations are very serious

Req.: Detailed protocol – approved by oversight body to ensure credibility and independence of investigation.



Evidentiary Standard

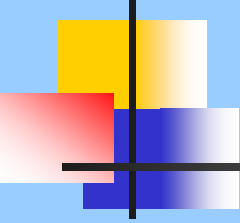
- Balance of probabilities;
- Ability to receive information that would not otherwise be admissible as evidence, i.e. hearsay;
- The credibility afforded such information would be an issue of weight.



Oversight bodies should have the authority to undertake their own investigations.

At the investigative stage, it should have the following powers:

- Summon witnesses and subpoena documents;
- Examine and cross-examine witnesses under oath;
- Conduct *in camera*, *ex parte* proceedings.



The oversight body would enjoy such powers at the investigative, public hearing or appeal levels.

- It would have access to all information but for cabinet confidences;
- Accessed documents would retain their privilege
- There would be a prohibition on using testimony in other proceedings (except for perjury and internal discipline hearings);
- It would be an offence to obstruct the work of the oversight body.



Integrated policing and law enforcement means:

- The oversight bodies should be authorized to share information and reports (possibly tailored reports).
- Potential recipients:
 - Other bodies with police oversight responsibilities
 - General oversight bodies

Should be authority to issue

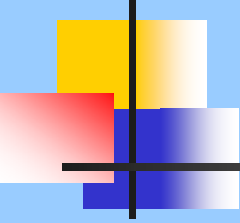
- Classified reports
- Non-classified reports



Findings

Factual findings would be binding on the police.

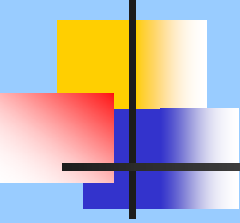
Recommendations – depending upon their nature – would not be binding.



Not all policing activity lends itself to the complaints process.

Oversight body would have the power to conduct random reviews of police activity, training, policies, procedures and guidelines.

Ministers responsible for the police could ask for special reports.



Further in recognition of the increasing integration of policing activities, oversight bodies at the provincial and federal levels would be able to :

- share information;
- conduct joint research;
- conduct joint investigations;
- conduct joint hearings;
- issue recommendations, as appropriate.



On appeal to the Court:

- All the protections afforded to information and individuals during the complaints process would continue.
- In particular – all sensitive information heard *in camera/ex parte* would be protected from public disclosure.