

Record Breaking Attendance - 1997 Conference



President's Message

In September the Canadian Association for Civilian Oversight of Law Enforcement (CACOLE) held its third annual conference. The number of attendees exceeded our expectations. I want to take a moment to thank all of the people who played a major role in the success of this event, and to introduce myself as the new President of CACOLE.

(continued page 2)

M. Jean Beeler

98 Conference Committee

Jean Beeler
Frances Gordon
Brian Grainger
Elton Gritzfeld
Susan James
Gale Prestash
Norm Ralph
Celyne Riopel
Kathy Wingate

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Editor's Note

Susan James

I am pleased to have completed this edition of Communique, with the outstanding assistance of Pam Little of the Nova Scotia Police Commission. Her expertise in this area is remarkable and is responsible for making this newsletter look so good. We have provided a table of contents which I hope makes finding what you want easier.

I met with Professor John Epp during the summer, when he was writing his paper on Police Investigative Malpractice. His paper was very interesting, especially in light of the fact that so many of the miscarriages of justice that his paper deals with, are Canadian. I suggested he might prepare a summary paper for the Communique, which is presented here, and I am certain you will find it interesting.

I was asked by the Anishnabek Police Service to speak at their 5th Police Governing Authorities Workshop, which was held in Sault Ste. Marie from November 7-9th. There were approximately 150 delegates from across Canada, most part of First Nations Police

Commissions. I sent up a copy of the Communique, which the co-ordinating committee had photocopied for every delegate. I spent part of my presentation discussing CACOLE and the possibility of their membership in our Association. There was a lot of interest in CACOLE from both the delegates and the Policing Services Directorate of the Federal Solicitor General.

As most of you are aware, the office of the Police Complaints Commissioner closed shortly after December 31, 1997. I will continue to act as Newsletter Editor for CACOLE, with administrative assistance provided by the Nova Scotia Police Commission.

Any comments or submissions to the newsletter should be sent to:

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President's Message

(Continued from page 1)

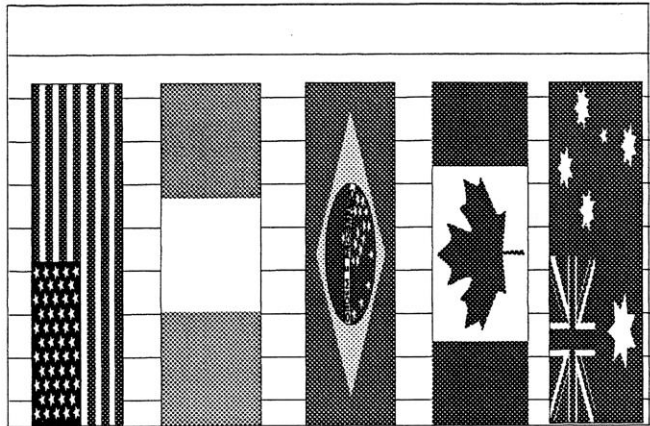
Although CACOLE is a newly formed and evolving organization there is little doubt that the enthusiasm and hard work given by so many individuals has created the foundation for it to be a meaningful and respected entity within Canada.

“How do we measure up
against other oversight bodies
outside of Canada?”

Prior to the CACOLE Conference this September in Ottawa, I was pleased to attend the International Association for Civilian Oversight of Law Enforcement (IACOLE) Conference. How do we measure up against other oversight bodies outside of Canada? The feedback I received from this conference towards Canada's involvement in policing oversight was that all Canadians can be proud of the progressive strides we have made.

That being said, we must be prepared to continue our commitment to preserving and refining the processes which are in place throughout Canada.

I strongly believe that the networking and communication obtained at these conferences is an important method of ensuring policing oversight does not become just a “politically correct” function within our country. We must not lose sight of the importance of real accountability, and must not just give lip service to the righting of wrongs.



The conference committee is already hard at work planning the 1998 conference in Vancouver. We are anticipating this conference will have an even wider range of workshops and guest speakers. I am looking forward to my term as president of CACOLE and know it will be filled with many challenges. May each of you enjoy a prosperous and happy new year.

(Jean Beeler is Chair of the Nova Scotia Police Commission)

Police Investigative Malpractice

John Arnold Epp

Mr. Epp is a Lecturer, Cayman Islands Law School, an affiliated institution of the University of Liverpool, member of the Bar of Saskatchewan.

Miscarriages of justice continue to be exposed, and police practice surface as causal factors, again. The *cause celebres* of this decade make an

unsettling list. They include the Guildford Four, the Birmingham Six, the Maguire Seven, and Judith Ward of England, Donald Marshall Jr., David Milgaard, William Nepoose and Guy Paul Morin of Canada, Ernest Barrie and George Beattie of Scotland.

Each miscarriage brings new evidence of investigative malpractice by certain police squads. The disturbing police conduct exposed in the recent testimony given at the inquiry into the wrongful conviction of Mr. Morin included perjury, the fabrication of evidence, the destruction of evidence, negligent or intentional inaccuracy in

the recording or gathering of evidence, failure to fully investigate other logical suspects and the failure to disclose to the Crown attorney such acts and omissions or independent exculpatory evidence. This is a familiar inventory.

It is interesting to speculate as to whether the recommendations of the inquiry will lead to significant change. Any recommendation is without merit unless it is likely to assist in the positive reformation of the “cop culture” and within that, those who share the win at all cost “working personality”.

The "cop culture" has been well documented over the years.

“Since traditional modes of external supervision cannot penetrate the “blue wall”, it would appear that change must come from within.”

However, only recently has the full power of the “working personality” been fully understood (see Policy Studies Institute (Smith and Grey) *Police and People in London*, 1985). The “working personality”, when found in specialist investigative squads, renders the squad accountable to no one.

In the article “Penetrating Police Investigative Practice Post Morin” ([1997]31(1)UBC Law Review) I argue that the solutions which have been put forward in the past to cure police investigative malpractice are unlikely to facilitate the desired reform due to “cop culture” and “working personalities”.

Therefore, it can be predicted that if the traditional solutions are put forward by Justice Kaufman as the primary focus of reform, no significant change will occur.

The traditional solutions include:

- (i) exclusion of illegally obtained or non-disclosed evidence,
- (ii) increased use of criminal prosecutions,
- (iii) civil action,
- (iv) revamped traditional complaint and disciplinary procedures
- (v) judicial or prosecutorial supervision of investigations, and

- (vi) improved recruitment, training and management.

However, the foregoing are not without some merit when they are used in a supportive role, reinforcing a new scheme.

Since traditional modes of external supervision cannot penetrate the “blue wall”, it would appear that change must come from within. However, the police will not change themselves. Consequently, the focus of reform must be a mechanism which encourages change from within, reinforced by atypical external supervision.

It is submitted that the enactment of an investigation code with a unique enforcement scheme is the method by which the process of displacing current cultural norms regarding investigation can begin. The code, following the English model under the Criminal Procedure and Investigation Act 1996, s23, would define a complete investigation and reporting scheme, ensuring that expectations are set by external experts.

The enforcement method, unlike the simple disciplinary offence system selected in England, would include the enactment of a provision requiring the prosecution to prove, as part of its case on indictment, police compliance with a code of investigation. Failure to demonstrate compliance, using the civil standard, would result in a directed verdict.

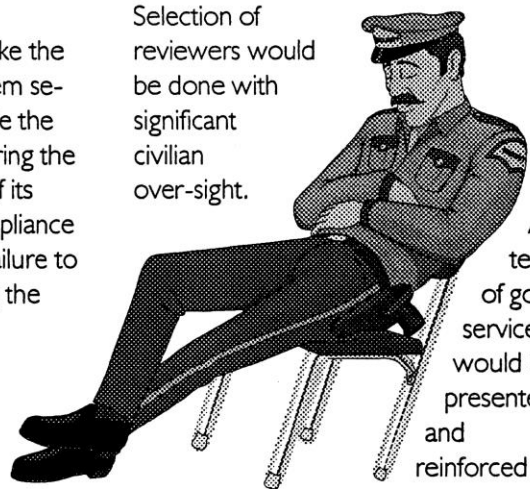
Alternatively, enforcement might be achieved by drawing an adverse inference against the Crown, thereby making the weight of its evidence much more crucial.

Evidence regarding the nature, scope and appropriateness of an investigation would be given by a police officer who is a member of a select group. This group, the “Investigation Review Department”, would exist as a separate department within the police force, and be responsible for determining whether the code had been complied with.

They would be in the unique position of being able to move within the confines of the “blue wall” while being subjected to external scrutiny by the prosecutor in the pre-trial phase, and by the court at trial. The Review Department would be bolstered by civilian trained investigators. Their presence and participation would enhance the credibility of the new scheme. They would be available to conduct investigations which required a greater measure of independence.

Their participation in the development and implementation of department standards, strategies, and systems, as well as individual case reviews would be most advantageous.

Selection of reviewers would be done with significant civilian over-sight.



A term of good service would be presented and reinforced as an important

career step, and a prestigious appointment. Junior review officers would provide initial screening and

investigate unanswered queries. Senior review officers would present the evidence in court.

The Review Department would have no direct supervisory role over investigations in progress. Only when the investigator has laid a charge, and a "not guilty" plea has been entered, would the Review begin. To ensure a proper balance, and the appropriate use of resources, the accused would be required to disclose the nature of his defence. Knowledge that an investigation would be thoroughly considered would motivate the original investigator. Disclosure and charge screening would be facilitated by the review.

Not only would justice be better served, the quality of individual investigators would be noted, leading to a much needed objective promotion criteria. Additionally, communication between the police and the Crown attorney would be enhanced. (Further arguments are raised in the full article.)

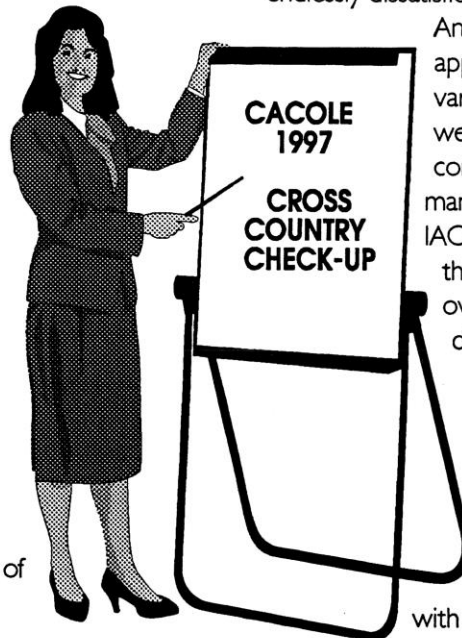
Transparency is the paramount priority in any reform of the police culture. Scrutiny is daunting, but it is the only path to successful reform, and renewed public confidence, and participation, in policing. It is submitted that this can be achieved only through a reformation of the "cop culture" and the "working personality". It is believed that the needed change can be facilitated by the foregoing scheme as a primary point of emphasis, supported by training, discipline, and good management.

CROSS COUNTRY CHECK UP

Presentation to Delegates of the 1997 CACOLE Conference
Gail Prestash

The theme chosen by the conference committee for this presentation reminds me of a segment from a radio show hosted by a well known commentator, Peter Gzowsky. Mr. Gzowsky would check up on what was happening by talking to people in the different regions of Canada. We would hear over the radio about peoples' issues and thoughts right across this rather large country. We heard how we were alike and how we were different. It was a popular show.

Now Mr. Gzowsky has retired from doing that radio show - and that change caused considerable commotion among his listening audience. That change makes the Cross Country Checkup theme for this presentation even more appropriate, because change really is the outstanding feature of our situation in Canada today.



People from agencies across Canada have been generous in providing me information. Many of you are well versed about civilian oversight in general, and of course, your agency in particular. You will forgive me please, if I seem to give short shrift to the wealth of information you have provided. The theme of this conference is "Canada Under the Spotlight". It is hard to see all of Canada under the spotlight at one time. All errors and omissions in this material are mine, and I hope where I make those errors that will only prompt you to get a good dialogue going with your colleagues in the halls and quickly set the record straight.

To our international friends, I hope you will see Canadians as courageous, in never fearing to make changes and seek out better ways, and not just endlessly dissatisfied and tinkering.

And that you will appreciate that the variety of approaches we take is proof of that concept mentioned by many speakers at the IACOLE conference - that in civilian oversight, one size does not fit all.

It is not true that politicians in Canada do little work. As proof, we have 7 of the 10 jurisdictions with oversight agencies facing legislative change.

Quebec, Ontario and B.C. are in the middle of significant changes. Alberta anticipates new legislation in 1998. New Brunswick and Saskatchewan have received some amendments. Manitoba is anticipating some external

I hope this checkup will also give you an idea of what our issues are across the country, how we are the same and different, and how that can assist us in the tasks we undertake in civilian oversight.

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review next year which may result in changes.

It is popular for governments in Canada today to seek fiscal restraint and frugality. They want to provide effective services in financially prudent ways, which is a good concept. In civilian oversight, there is also a growing emphasis on police management responsibility, and a shift from treating complaints as quasi-criminal proceedings to more usual labour relations. The question is, when considering these factors, are the civilian oversight methods that have been constructed going to accomplish that with the budgets they are granted?

“The legislature is entitled to determine the law and decide the funding. We will now get a chance to find out whether the new systems can do the job and make ends meet.”

These civilian oversight agencies are creatures of statute. The legislature is entitled to determine the law and decide the funding. We will now get a chance to find out whether the new systems can do the job and make ends meet.

I will for just a minute give you some specific examples from within Canadian systems, to show you our variety of approaches.

For example in Quebec, conciliation will in most cases be mandatory for the parties and paid for by the employer of the police. In B.C., the Police Complaint Commissioner must provide mediation services, and pay for them: the parties are not

obliged to participate. In Saskatchewan, remedial action with no charge against the member, by consent of the parties, has been put into the legislation.

Example: In New Brunswick, an amendment now requires police to copy all complaints as they are made and the resulting decisions by the Chief, to the Commission, which has a central monitoring function. In Ontario, the Ontario Civilian Commission on Police Services, which will take over public complaints from the Police Complaint Commissioner, will not receive notice of all complaints as they are filed with police, or decisions as they are made by the Chief.

Example: In Manitoba, complaints must be filed within 30 days of the incident, although there is some discretion to extend that. In Quebec, the time is one year.

Example: In B.C. one agency, independent from government, the B.C. Police Commission, is being split. All its oversight functions, other than public complaints, such as standards, monitoring, research, are going into the Attorney General Ministry. The public complaints, both conduct, and now also service and policy, will be the mandate of a new Officer of the Legislature, the Police Complaint Commissioner, with even more independence from government.

In Ontario, public complaints of misconduct are to be joined to the mandate of an agency independent from government, the Ontario Civilian Commission on Police Services, whose existing mandate includes a number of other oversight functions, such as Police Board amalgamation or

disbandment, some police labour issues, and others.

Example: In New Brunswick there is a move, with the support of Police chiefs, to the use of external investigators. In B.C. and Ontario, under the new regimes, investigations will be done by the police. In Quebec, investigators are assigned by the Commissioner and cannot be a present or former member of the police force involved.

“There are other concerns apparent in current Canadian practice. One is information - access to, privacy of, and sharing with the public.”

Example: In Quebec, the adjudicators of a discipline hearing will be civilian lawyers with 10 years at the Bar. In many other jurisdictions the civilian appointees come from a variety of backgrounds.

A review of the various Canadian models shows a great deal of this type of variety in the mechanics and methods of oversight. There are other concerns apparent in current Canadian practice. One is information - access to, privacy of, and sharing with the public.

The RCMP Public Complaints Commission seeks to ensure all Canadians know of their right to complain about RCMP member conduct - that is a big job in a country as large and diverse as Canada.

Nova Scotia has been through the Freedom of Information and Protection of Privacy process in their province on a case where the complainant asked for the release of an

investigation report. The Commission argued that would hamper future investigations. The report was ordered released, after being extensively severed, and the final document amounted to only information provided by the complainant.

In B.C. the Freedom of Information and Protection of Privacy Act will not apply to the new complaint process. In Saskatchewan the Human Rights Commission can review the Complaint Commissioner's file.

In Newfoundland, a court case determined that in order to have a fair process in the circumstances of the case, in terms of natural justice and administrative fairness, the police member had to have access to the investigator's report.

CACOLE continues to work on a national discipline digest, to collect and share information. Many of the agencies have shared information they have learned from the complaints they see. They have done this through making recommendations. To name a few:

The RCMP

- policy on child witnesses in sexual assaults
- information sharing between the RCMP and provincial social services

“The commitment and cooperation of police departments across Canada deserves acknowledgment.”

- Area Commanders' use of the provisions for summary dismissal of complaints

Manitoba

- the use of pepper spray
- concerns expressed to the public about excessive use of force against persons in custody

Ontario

- the use of pepper spray
- videotaping in police stations
- search of persons
- native policing in northern Ontario

Many agencies and individuals have had some international contact during the last year, through conferences in Canada and in other countries, through projects, universities, CIDA, and direct personal contact.

Much more information is available, through summaries provided to CACOLE, and contacts from the agencies who are here today.

Civilian oversight in Canada is undergoing a great deal of change. In some areas it faces financial challenges along with the challenge of structural change, and very importantly, the change of the people involved. The community is changing.

Finally, the commitment and cooperation of police departments across Canada deserves acknowledgment. Mr. Melville from South Africa, speaking at the IACOLE conference, was asked about the public perception of the police in South Africa, with its emerging democracy and fledgling civilian oversight. He replied that they still don't advertise the country by putting police on post cards.

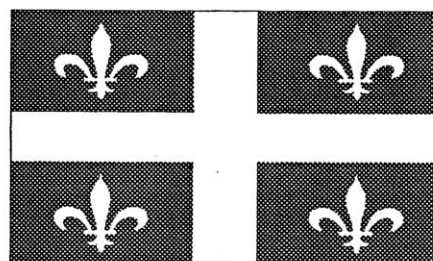
We do advertise our country by showing off our police on post cards. We are proud of them. They do a good job. They are respected.

The methods employed by the agencies are varied. We seem willing to try sizes and shapes to fit each of our situations.

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Quebec to Crack Down on Police

Toronto Star
August, 1997



Old-guard commanders will be pushed out of Quebec's trouble-plagued police force, its interim chief says.

“Sooner or later, we'll meet certain people and incite them to find other orientations... that's a police way of saying we'll ask them to leave,” Guy Coulombe, head of the Surete du Quebec, said in an interview.

“There will be departures that will make room for people who are younger, more dynamic and more willing to change,” Coulombe said.

He made the comments after unveiling the first stage in an overhaul of the 4,100 member force, which he said, was in such bad shape that he couldn't wait for the end of a public inquiry into police wrongdoing before making changes.

Coulombe, a career civil servant and trouble shooter, became the first civilian head of the 127-year old Surete after the provincial government

effectively placed the force under trusteeship by replacing Chief Serge Barbeau late last year.

Barbeau's troubles began in June, 1995, when a Quebec Superior Court judge threw out drug smuggling charges against reputed drug lords in Montreal, ruling that Surete officers, who made the bust, planted incriminating documents.

Officers already in the force will also take the tests and get coaching if necessary.

> Better surveillance of investigations by forcing officers to file daily progress reports.

> The hiring of in-house lawyers to advise investigators on how to prepare cases.

> The hiring of university graduates and sending more officers to upgraded training courses.

Coulombe expects many of the force's commanding officers will be replaced within 18 months. Some will retire, others won't accept the reforms and leave, others will simply be told to go, he said.

Coulombe stressed that recommendations from the public inquiry - expected to last until November - will be incorporated if necessary.

While testifying at the inquiry, Barbeau said he was the target of an internal "putsch" after trying to get to the bottom of the evidence-planting charges.

The 12 internal inquiries Barbeau set up to investigate the charges all met with widespread resistance from police officers who refused to co-operate.

One who did receive death threats from a colleague. In another incident, two high-ranking officers, including the Surete's second in command, tried to browbeat internal investigators into backing off.

Barbeau then asked for an independent, closed-door inquiry. But the judge appointed to the job had his office broken into and files about the case stolen. During that same period, files on the case were also stolen from two high-ranking Surete officers.

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FORMER POLICE CHIEF JAILED

The Daily News
August, 1997

Kentville's former police chief will find out what life is like behind bars, after bilking the town, the province and several police organizations of almost \$64,500.

In approving the joint sentencing recommendation, Justice Michael MacDonald said if the 43-year-old Annapolis Valley man hadn't pleaded guilty last month, he would have got a much harsher sentence for his "tremendous web of deceit against trusting and well-intentioned organizations."

Crowell volunteered as treasurer for several police organizations so he had access to several special bank accounts, and used them for shuffling money around.

The judge found it particularly troubling Crowell - a married father of two teens - had ripped off the province's Safe Grad fund, which is used for programs urging teens to avoid drinking and driving. Also disturbing among the "litany" of 20



"sophisticated and premeditated" schemes was Crowell's decision in 1991 to file an \$800 travel expense claim on behalf of another police officer who accompanied a crime victim to a Halifax hospital, then pocket the cash.

MacDonald said Crowell shamefully tarnished his profession and anything less than a jail term would send the wrong message to other authority figures, even if Crowell has already suffered by losing his career and his reputation.

Appointed the town's police chief in 1988, Crowell worked as a cop for 19 years before he was suspended in October 1994 when a co-worker complained of mismanagement. He was fired and charged after extensive forensic accounting by RCMP investigators concluded some of the money went

toward Crowell's credit card bills, living expenses and even helped pay for a personal vehicle. Crowell must also pay restitution to his five victims:

> He took \$11,700 in grants from the province's Safe Grad fund in 1993 and 1994

> He took \$17,328 from the Atlantic Association of Chiefs of Police in 1993 and 1994, by skimming money from a conference he organized.

> He took \$5,305 from the Annapolis Valley Chiefs of Police Association in 1993.

> He sold equipment from the group's crime prevention van, and then sold the van.

> He took \$1,287 while planning a 1991 conference for the Nova Scotia Chiefs of Police at CFB Cornwallis.

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POLICE WATCHDOG TOUGHENS STANCE

Written by James O'Conner

"Manitoba should adopt a zero-tolerance policy for serious cases of alleged police brutality -- similar to instant arrests made on domestic-violence complaints," says the provincial police watchdog.

And a senior Justice Department official has several files -- including that of petty thief James (Dutchy) Van Meer -- that suggest Crown attorneys shouldn't decide whether a cop should be charged, Law Enforcement Review Agency (LERA) commissioner Norm Ralph said.

"The vast majority of police officers are decent people -- but you get some of these guys deciding (prisoners) are guilty," Ralph said.

"Somebody has to speak out. The system isn't working the way it is."

"In the 10 years that LERA has been in existence, there has never been a charge laid against a police officer,"

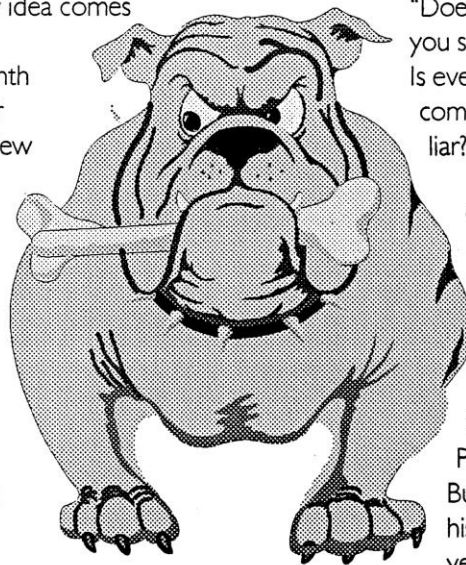
Norm Ralph

The zero-tolerance policy idea comes on the heels of Ralph's suggestion earlier this month that the province consider using an independent review panel instead of potentially biased Crown attorneys.

Ralph said assistant attorney-general Allan Fineblit then "challenged" him to hand over files he thought were wrongly cleared, and he was given three cases.

LERA fields dozens of excessive force complaints annually -- 67 in 1996, up from 24 in 1994 -- with only a handful of those sent to the Crown attorney's office with an eye to charges, Ralph said.

"In the 10 years that LERA has been in existence, there has never been a charge laid against a police officer," Ralph said, noting the usual reasons are a lack of evidence or a likelihood there won't be a conviction.



"Doesn't that cause you some concern? Is everyone who comes in here a liar?"

One of the files Fineblit is reviewing is Van Meer's, who claims he was beaten in the Public Safety Building during his arrest one year ago.

Van Meer, 50, said he has suffered dizzy spells and headaches since he received deep cuts to his forehead and scalp, and he plans to sue the police department for damages.

"They're getting away with too much stuff like this," he said.

Father Ron McCullough, of Holy Trinity Anglican Church, said he has known Van Meer for 30 years and believes his story.

"I know what happened," McCullough said. "I went to see him in (the remand centre after his arrest) and I saw the bald spot on his head, the cut and the stitches.

"He didn't do that to himself."

In a letter to Van Meer last July, police Insp. Roy Smith said a crown attorney recommended charges not be laid against the officer involved.

"The Criminal Code ... affords the peace officer protection from criminal liability for the force he applied to you in the holding cell," Smith wrote.

The "investigation in its entirety" will be sent to LERA for examination, Smith wrote.

Fineblit said he couldn't comment on specific cases, although he hopes to resolve the matter with Ralph when he's finished reviewing the files.

Conference 98 Update

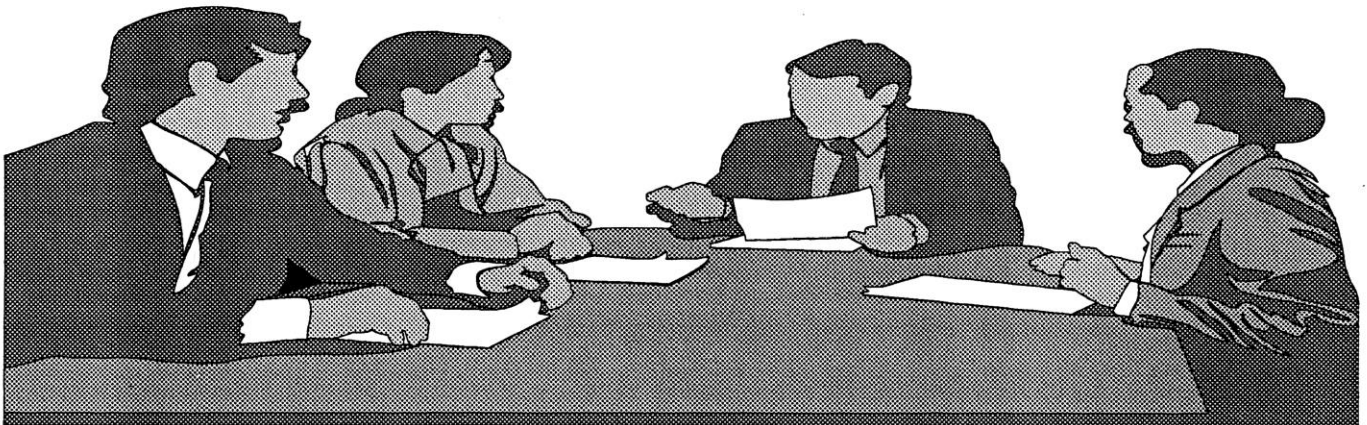
Our Co-ordinating Committee is actively making the preliminary arrangements for the 98 CACOLE conference to be held in Vancouver, B.C. from October 15-17, 1998.

Vancouver is a beautiful setting and the fact the IACOLE is holding their 98 Conference in Seattle, Washington from October 18 - 21, will allow those delegates interested to include both conferences in one trip.

The Conference Committee is in the process of developing a theme, workshops and plenary sessions that we anticipate will be of interest to the delegates hoping to attend.

In subsequent editions of Communique we will confirm the agenda and report on the speakers we have lined up for the conference.

We are working hard to make this conference exciting, informative and valuable to all delegates.



WHAT'S NEW

Under the new complaint process for B.C.'s 12 municipal police departments:

- Citizens can take complaints to the police department or directly to a new independent police complaint commissioner.

- Every step of the investigation can be reviewed by a civilian staff member from the commission office. The reviewer can attend all interviews and review all internal reports.

- Discipline will still be imposed by the police chief and will focus on corrective measures rather than punishment.

- Citizens unhappy with the outcome will be able to appeal to a provincial court judge who will have the power to hold a hearing, call witnesses and review all documents.

A new police complaint process, coming soon to B.C., will open municipal police forces to public scrutiny and clear up unacceptable backlogs, says its architect.

The new system should be in place by early next year and will govern all 12 municipal police departments in B.C., including Vancouver.

Policing B.C.'s Police Forces

The Province - Staff Reporter Adrienne Tanner

The RCMP, who provide policing for about 70 percent of B.C.'s population, are refusing to sign on.

John Hogarth, a law professor who designed the new process, said there will be "no hiding of anything" under the system, which will allow the public to complain directly to an independent commissioner.

Some Vancouver complaints are four years old, he said.

"People are basically being worn out by the system."

That may explain why so few citizens appealed outcomes of police department's internal investigations.

As far as Hogarth knows, only four disciplinary rulings by police chiefs have been overturned by local police boards upon appeal. Only two were overturned by the B.C. Police Complaint Commission, the second level of appeal.

"That means either that people were rubber stamping or that the system is working very, very well."

Secrecy surrounding the current system has long drawn public criticism.

Concern mounted last week when it was revealed a Vancouver cop who had sex with an emotionally vulnerable battered woman received only a verbal reprimand. The woman said she didn't appeal because she lacked faith in the system.

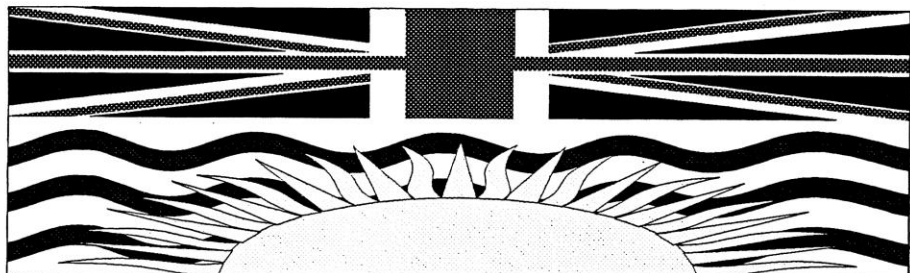
In future, citizens like this woman will receive a full copy of the Investigative report. As well, the commissioner can order a public hearing if he or she believes it's in the public interest, Hogarth said.

While nothing in the new Act specifically bars officers from having sex with victims, there are "catch-all" sections to cover such cases. Officers can be disciplined for unbecoming conduct and abuse of authority, Hogarth said.

Justice Wallace Oppal, who headed a two-year Royal Commission of Inquiry into policing in B.C., slammed the RCMP for refusing to buy into the new program. "The RCMP simply can't go on investigating themselves."

Overall, however, Oppal said he's satisfied with the proposed changes. "in every democracy you have to have civilian oversight."

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