

An Examination of Citizen Involvement in Complaints Regarding Police



**The John Howard
Society of Alberta**

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Contents

Background	3
Executive Summary	4
Introduction	4
Citizens and Law Enforcement: Early Foundations 1760-1835	4
Citizens, Law Enforcement and the State 1836-1945	4
Citizens and the Police 1946-2004	9
Changing Public Attitudes	9
Democratic Control of the Police	11
Democratic Control of the Police in Canada	12
Racism	13
Excessive Force	14
Issues in Civilian Oversight	17
The Status of Research	18
Conduct generating complaints	20
Number of complaints	20
Substantiation of complaints	21
Satisfaction with the process	22
Support for Civilian Oversight	23
Civilian Review and its Limitations	24
Civil Governance: The Future	25
Increased Collaboration Between External and Internal Oversight	25
Enhancing Accountability	26
Selected Initiatives	26
Visible Minorities	27
Conclusion – The John Howard Society of Alberta Perspective	28
Works Cited	31

Background

On June 16, 2004, the Edmonton Police Commission held a public hearing on the issue of whether there ought to be some form of civilian oversight of police investigation into citizen complaints of inappropriate police conduct. The John Howard Society of Alberta was invited to present the Society's perspective on this issue and, in the short time available between being so invited and the public hearing date, put together a brief presentation highlighting some of the issues around this contentious topic.

The Society noted that, although this was a public hearing arising out of the situation in the City of Edmonton, it was appropriate for the Society, as a provincial body, to present the Society's views on the matter; for while the vast majority of communities in Alberta have their police services provided by the RCMP, and therefore have recourse to a civilian body to receive and investigate complaints concerning (RCMP) police conduct, the vast majority of the population of the province live in communities with municipal police forces (primarily Calgary and Edmonton) where no such civilian authority exists.

*The Society concluded its presentation with the comment that, **“Although there does not appear to be any convincing evidence to indicate that civilian oversight of complaints against the police is any more (or less) effective than internal police investigations of complaints, it is clear that there is considerable public distrust of the police investigating themselves. In our view, this undermines confidence in, and respect for, the police in general and in turn, we believe that a consequence of this is that our communities are less safe than they would be if there was greater confidence in, and respect for the police.”***

The process of researching this issue to prepare for the presentation to the public hearing however, led to the conclusion that it would be appropriate at this time to prepare a more comprehensive examination of this issue. What follows is that examination.

Executive Summary

This paper is an expanded and revised version of a presentation made by JHSA to a public hearing of the Edmonton Police Commission on June 16, 2004. It is also a sequel to the Society's 1997 paper entitled "Role of the Police." The theme of this paper is civilian review (CR) and civilian oversight (CO) of complaints against the police. These terms are explained and their importance outlined.

The law, law enforcement, and policing are briefly traced from the early Colonial period when First Nations law was unacknowledged (1760-1835), through the 19th and early 20th century when "public policing" was introduced, to the period after World War II when civilian oversight became more prominent.

Social conditions after the War – changing public attitudes, increased immigration, a more cosmopolitan society, and numerous inquiries into police conduct – led to increased interest in and promotion of CR.

Most police jurisdictions in Canada have adopted some form of CR. The debate about police conduct tends to focus on two highly emotional issues: racism and the use of excessive force. Underlying these debates is the fundamental question: are the police engaged in excessive misconduct, or is this simply public perception? Is CR successful and is it relevant?

There is very little objective research evaluating the effectiveness of CR. Most of the research is anecdotal emphasizing the organizational structure of CR and the process for lodging a complaint. Data for research is sadly lacking.

This paper summarizes what type of police conduct generates complaints. It notes the relatively small percentage of complaints, the even smaller percentage of complainants that are substantiated, and the general dissatisfaction with the complaints process.

Despite these limitations, support for CR continues and is increasingly regarded as necessary in a democratic society. The paper concludes with a brief description of what must be done to make CR more viable, the John Howard Society of Alberta perspective on the need for CR/CO, and the Society's view on how such bodies need to be able to function.

Introduction

Interest in the role, function and performance of the police in contemporary Canadian society has increased in recent years, despite steadily falling or relatively stable crime rates (Canadian Centre for Justice Statistics). It would seem logical to expect that public interest in law enforcement would lessen when crime rates are declining, but this has not been the case. Criminologists and others who study crime acknowledge that the interrelationship between public attitudes toward crime and the occurrence of crime in society is far more complex than at first it appears (Roberts, Fear of Crime).

There are other reasons for the public's interest in law enforcement. Scientific discoveries such as the use of DNA have resulted in more sophisticated investigations of crime, sometimes leading to convictions that otherwise would not have occurred, and occasionally freeing the wrongfully convicted. Popular television programs on criminal investigations and extensive news coverage of major crime provide citizens with a greater amount of information about law enforcement even though this information, in strictly legal terms, may not always be accurate (Roberts, Sentencing in the Media).

More important, citizens are increasingly aware of their public responsibility to become actively involved in controlling and preventing crime - in concert with the police and law enforcement officials. The relationship of citizens with the police occurs at many levels and in various forms, one aspect of which is the subject of this paper. Governments too are encouraging citizen involvement in crime prevention and law enforcement, for example, through the National Crime Prevention Strategy and the Safer City Initiative. The United States has for many years promoted the concept of a "war on crime," implying that every American can be "drafted" to play their part in this political and social process.

A previous paper prepared by the John Howard Society of Alberta in 1997, "Role of the Police," traced the evolution of policing in Canada, discussed the renewed emphasis on community-based policing, and briefly described the impact of multiculturalism on policing services. Community-based policing was presented as a partnership between the community and its police to identify and ameliorate local crime and disorder. What was not discussed was the broader relationship between the community and the police, particularly the monitoring of police conduct by the community and the mechanisms through which citizens can lodge a complaint if they believe a police officer is acting inappropriately.

During the last half century, Canada and many other jurisdictions have promoted the idea that the public needs to have a more active role in monitoring the work of the police, especially when their conduct is perceived to be violating community standards. This process of involving citizens in police work, directly or indirectly, is encompassed within the terms *civilian review* (CR) and *civilian oversight* (CO) - terms that are frequently used interchangeably.

Generally, CR/CO is a method of *involving citizens*, structurally external to a police service, to hold police accountable to the public for their actions, policies, and organizational response to the community at large. It also describes a *structure* and a *process* for citizens to oversee and

review complaints made against the police (Miller and Merrick 1) and to remedy problems regarding police misconduct and the use of excessive force. The objectives of CR/CO also include: changing the perception that police discriminate against racial minorities, improving the relationship between the police and the community, and increasing accountability in the criminal justice system.

The terms *civilian oversight* and *civilian review* in the criminal justice literature have different interpretations and meanings. A literal interpretation of civilian oversight would suggest that it has a broad, umbrella-like function while civilian review implies that its function is more practical and specific, namely, to monitor activities that result in complaints against the police (Colleen Lewis, “The politics”). But further examination of the term indicates there are many types of oversight: oversight of complaints against the police and oversight of police policy (Miller and Merrick 3-8). Moreover, oversight functions in Australia are often performed by an Ombudsman rather than by civilians and do not focus exclusively on the police (Lewis and Prenzler, “Civilian Oversight”). CR/CO, in other words, may differ in theory and in practice according to geographic area, jurisdiction and culture.

Why is this issue important for the John Howard Society of Alberta and for Albertans and Canadians? There are several reasons:

- There are federal, provincial, municipal as well as various specialized police services operating in Canada with minimal consistency in how each of them deal with complaints from citizens; there are also no models describing the essential components of CR, and no standards or guidelines recommending how complaints can be effectively managed (Wortley, Civilian Governance 11);
- There are many instances of police forces in Canada, acting on behalf of governments or particular interest groups, that failed to treat all citizens as *equal* before the law, a fundamental principle of Canadian justice;
- The quality of crime investigations is critical in an era when wrongful convictions still occur;
- Power can be abused by any group in society including the police; mechanisms need to be in place to ensure that any power granted is not exceeded, and above all does not supersede Canadian law;
- Research on CR is sadly lacking in Canada; the evidence is not clear whether the small number of substantiated complaints against the police is the result of effective police work, a faulty complaints process, or citizen apathy and indifference towards this issue;
- Incidents of police misconduct at the time of arrest can severely complicate reintegrating offenders after their release.

This paper has five basic objectives:

1. Briefly trace the relationship between citizens and the police during the early social development of Canada;
2. Describe the changes that occurred in the 1970s and the period following;
3. Outline methods of instituting democratic control over the police;
4. Summarize the process of civilian review/civilian oversight, and their benefits and limitations; and

5. Discuss some steps that can be taken to strengthen the relationship between citizens and the police.

Citizens and Law Enforcement: Early Foundations 1760-1835

During the early stages of Canada's development, when First Nations people and European explorers and settlers were establishing their respective territorial claims, the concept of "police," in its modern sense, was foreign to each group. The First Nations people as well as the English and the French had laws that were deeply rooted in their respective religious and spiritual codes and beliefs. These laws were reinforced by various types of group coercion and, if necessary, "military" authority. While many Europeans viewed First Nation societies as being devoid of any concept of law, evidence from the writings of missionaries indicate there were in fact numerous laws governing their lives, particularly criminal law (Brown).

French and English laws were similar in one respect. The principal objective of their judicial systems was retribution and deterrence. Individuals alone were responsible for their actions and received punishment accordingly. Control of crime and the issuance of punishment were primarily seen as the responsibility of government. This approach was based on the legal principle that criminal acts are offences against the state. The criminal justice aspects of the common law system, well established at the time of the British Conquest of North American in 1760, were transplanted a few decades later and adapted to local conditions throughout both English and French settlements as well as superseding criminal laws of First Nations people. Local justices of the peace, sheriffs and constables apprehended suspected criminals and punishment was harsh: in 1800 more than fifty offenses in Nova Scotia carried the death penalty (Jim Phillips 71, 73).

The principal objective of criminal justice among First Nations people was, and continues to be, healing and reintegrating offenders into the community (Warry 164). Underlying their ideas of law are principles of social well-being and the restoration of positive relationships. Values instead of rules are emphasized (Warry 174, 176). Thus, First Nations defendants in Canadian courts are often not conscious of committing an "offence," as prescribed in common law. "Guilt" – in a criminal sense – is also foreign to their traditional beliefs (Warry 182). The First Nations view of justice includes involving the victim and the community in the adjudication process and treating the crime as a "social injury" rather than relying on justice experts (Warry 191). First Nations people often use avoidance, non-interference, and indirect action to resolve conflicts - a radical departure from the Western notion of confrontation and open discussion of personal, family, and community problems (Warry 192).

This dichotomy between European colonial law and the laws and customs followed by First Nations groups created significant legal, political, and social divisions in the early history of Canada. These divisions continue two and a half centuries later. The idea that there is only "one law" in Canada has consistently been a barrier in resolving political and legal issues between First Nations people and the cultural majority in this country. It is only recently that the First Nations legal principle stating that offenders must be accountable to their own communities has been acknowledged in Canada's criminal justice system (Canada. Royal

Commission...Aboriginal Peoples). The Law Commission of Canada has also recognized the importance of “Indigenous legal traditions” and the need to “give them parity in our legal system” (Law Commission Annual Report 4).

Citizens, Law Enforcement and the State 1836-1945

The concept of *public policing* on which the current system of law enforcement in Canada is based was imported from England and introduced into Upper Canada in the 1830s. The theory underlying public policing is that the police act and carry out their duties on behalf of citizens in the community. As democratic practices and universal suffrage became more widespread, this assumption grew into the principle that enforcement of Canada’s laws is ultimately the *responsibility* of every citizen. It follows that citizens and the police have the same fundamental goal – prevention of crime and the maintenance of public order.

The practice of public policing during this period had little resemblance to the theory. In the Niagara district of Ontario, for example, the key officials of the justice system (judges, sheriffs, and magistrates), appointed directly by the lieutenant governor, were in every sense royal officials accountable only to the Crown’s representative and not directly responsible to the people (Murray 23). Indeed, it was impossible to distinguish between judicial functions and the regulation of municipal affairs: justices were in fact “Rulers of the District”! (Murray 27). Constables in turn functioned entirely at the discretion of the local magistrate (Murray 64-65).

This experiment to have the police accountable to the citizens was introduced at a time of great political uncertainty in early Canada. The colonies were moving towards responsible government - the process of ensuring that the elected government is responsible to the representatives of the people - while authorities were simultaneously trying to deal with political unrest and suppress rebellions in both Upper and Lower Canada. The Rebellions of Lower and Upper Canada were, respectively, expressions of French Canadian nationalism and economic dissatisfaction. They were opposed by special interest groups, members of which had the power to vote since they owned property. And since the concept of public policing was not yet well developed, responsibility for public order fell on the shoulders of the military or militia. As a result, policing and the maintenance of public order for the next century became closely allied with the operation of the state and with special interest groups such as property owners (Canadian Encyclopedia 1979-1980).

This close association of the police and the state was paramount as Canada moved toward greater independence – internally, in managing its domestic affairs, and externally, in terms of its independence from Britain. The police played an active part in maintaining law and order during the incorporation of other provinces beginning with Manitoba and British Columbia. They fought during the North-West Rebellion (Knapfla) and arrested “dangerous aliens” during World War I. Implementing government policy, the police led the “war on drugs” in the 1920s and 1930s that was inspired by racist discourses against Asian-Canadians (Hewitt), dispersed unemployed demonstrators in the Thirties, and tracked down threats to national security during the Second World War. From a police perspective, they were doing their duty - preserving the peace, enforcing the new criminal code and other rules authorized by Parliament, and

establishing a sense of harmony in a relatively new society. From the perspective of many citizens, police were shirking their responsibilities to their communities, namely, to ensure that all citizens were guaranteed equality before the law.

The Winnipeg General Strike of 1919 was a clear indication that the fundamental principle of public policing – that law enforcement personnel would act in the interests of citizens - was rather tenuous. Precipitated by a breakdown in labour negotiations in the building and metal trades, 30,000 Winnipeg citizens went on strike, including members of the Winnipeg City Police. Encouraged by the social elite of Winnipeg, the Federal Government intervened, using the Royal North-West Mounted Police (RCMP) and the military, and savagely ended the strike (Mitchell). The Criminal Code was subsequently amended by Parliament as a result of this strike. Section 98 declared that any organization advocating the use of violence to bring about “governmental, industrial or economic change” was illegal. Worse was the provision that suspects were presumed to be guilty “in the absence of proof to the contrary” (Christopher MacLennan 14).

The aftermath of the Strike precipitated a dialectical politico-social process during the next three decades that was both disturbing and liberating. The most disturbing was the practice of both federal and provincial governments to use the power of the state through various police forces to silence criticism and curtail and suppress basic democratic and human rights by incarceration, deportation, and other extreme measures. What was liberating was that the harsh responses from various governments towards their own citizens exposed the fragile foundations of democratic freedom in Canada and legitimized the birth of civil liberties and eventually fundamental human rights legislation (Christopher MacLennan 12-32).

Even though the police were compelled to act on behalf of their political masters, there were ramifications and social consequences for being party to the suppression of many civil liberties. Many of their actions between 1919 and 1945 set them further and further apart from ordinary Canadians. During the next several decades, police personnel no longer represented the ethnic mix and composition of their communities. Police forces were slow to change their recruitment practices, even during the latter part of the twentieth century, when there were few police officers who were members of visible minorities. As recently as 1986, visible minorities composed 6% of the population but only 1% of police officers in Canada. The figures for First Nations were only slightly higher (Ewins 366). Thus, it is not surprising that the chasm between the police and the community was slowly widening. The ramifications of this division would become clearly evident in the period after World War II.

Citizens and the Police 1946-2004

Changing Public Attitudes

The citizens of Canada have traditionally held a favorable and positive view towards their local police. The majority believe the police perform their duties reasonably well. They are approachable, respond to calls appropriately and provide information on crime prevention. Victims of violent crimes, young people, and citizens in some regions of Canada are sometimes less positive, and members of visible minorities are particularly critical of the police. However,

the majority of Canadians generally maintain a fundamental respect for the police as law enforcement authorities. Furthermore, surveys tend to give police forces consistently high ratings (Grant 399; Johnson and Sacco; “People love the police.” Edmonton Sun October 4, 2004, 5; Ramsey)

But attitudes towards the police slowly began to change in some segments of society following World War II. One factor was that Canadians had developed an increased *sense of pride*, independence and confidence as a result of the country’s contribution to the War (Canadian Encyclopedia 2551-2553). A stronger economy following the disastrous Depression of the 1930s meant promises of increased prosperity that could create a “brave new world” (Finkel 3-39). Being able to question the actions and conduct of the police was a natural consequence of this new sense of confidence.

A second factor was greater public consciousness and a new perspective regarding any *acts of violence*. Canadians had been listening to reports from the battlefield on their radios for six years, the first generation that could hear and imagine what was happening to Canadian troops abroad. Revelations about the gas chambers and the Holocaust emphasized further the sense of futility with respect to violence and war. Canada, often portrayed as the “Peaceable Kingdom,” had a history of lethal violence and the country, many citizens believed, did not need any more (Torrance Public Violence). Public condemnation of any inappropriate use of violence became more pronounced.

Definitions of what constitutes violence were also changing. As Canadian society became more open, expressions of dissent and opposition were becoming more acceptable - in families, on the streets and in society - as long as certain boundaries were not crossed. Opposition to capital punishment grew after the last execution in 1962, followed by its full abolition in 1976. In the minds of citizens, physical and sexual abuse constituted a new form of violence. The old definition of violence emphasizing acts “inflicting physical harm on another person” was supplanted by a more inclusive and broader definition of public violence: **acts having a significant impact on parts or all of society** (Ian Jeffrey Ross).

Active participation in the War meant too, that Canadians were traveling a great deal and interacting with people from many other cultures. In doing so, they were developing a sense of *ethnic tolerance*, a third factor - tolerance that was much deeper and more profound than that which existed prior to the War (Dreiszier). Greater ethnic tolerance was necessary and essential since more than 1.7 million immigrants arrived in Canada between 1946 and 1962 (Finkel 47-56). But it was also accompanied by a naïve belief that profound racism did not really exist in Canada (Backhouse). This point will be briefly explored later.

Concerns about the need to safeguard the *individual rights* of Canadian citizens, a fourth factor, deepened after the War as the concept of human rights was presented to the international community by the newly created United Nations. Canada had maintained a long tradition of common law respect for civil liberties. This tradition was tarnished before and during the War, however, with the introduction of the War Measures Act, the internment of “enemy aliens,” the removal of the Japanese from the West Coast, the restrictions placed on Jehovah Witnesses, and the Padlock Law restricting freedom of speech in Quebec. What began as simply the desire to

preserve basic civil liberties grew and became transformed after the War into a human rights movement that soon had international appeal and support (Christopher MacLennan 12-32, 109-125).

A fifth and final factor was that citizens, living in an increasingly liberal democracy, expected a more sophisticated approach to policing than the authoritarian approach that characterized many periods in Canada's past. As the powers of the state increased in Canada, incorporating ever widening responsibilities, citizens expected their police to assume an even broader and more public role. Its historical function would remain - to "preserve the peace" and promote harmony in society through enforcement of rules of conduct authorized by Parliament and legislatures. For citizens in a democratic society, however, the police had a new and additional responsibility: to act not only as the guarantors of order but the *guarantors of equality* before the law. The importance of greater citizen participation in criminal justice has recently been reaffirmed by the Law Commission of Canada in its publication, Transforming Relationships Through Participatory Justice.

Changing attitudes were not exclusively in the domain of ordinary citizens. Police forces too were changing and adopting more innovative approaches to law enforcement. They were not only continuing to apply newer scientific technologies such as finger-printing and breathalyzer testing but also incorporating knowledge about human behaviour from the field of criminology and from the social and behavioural sciences in general. These new insights into human behaviour not only increased police officers' understanding of the lives of criminals but were used to justify and solidify their own defense when they were publicly criticized for acting too aggressively. These issues are explored in more detail in a special issue of The Canadian Journal of Police & Security Services (Richard MacLennan, ed.) and in a recent essay on problems in training security personnel to kill (Baum "A Reporter").

Contrary to popular belief, democracies typically have levels of collective violence (as opposed to individual acts of violence) not commonly found in non-democratic countries. This occurs primarily because dissent is permitted and citizens can legally challenge public authorities (Torrance "The responses" 313). Those who choose to dissent and oppose the policies and practices of governmental authorities or the corporate world can, in a democracy, expect "fair treatment" despite the contrariness of their views and actions. Achieving a balance between freedom of expression and the need for various forms of social control is an essential component of a healthy democracy (Christopher MacLennan).

Democratic Control of the Police

Control of the police in a democracy occurs at three fundamental levels (Stone and Ward):

- through the management and administrative operations of police departments (internal control);
- through the state and its laws and legislation (external control); and
- through various institutions of civil society (external control).

Until the middle of the twentieth century, the public had very little interest in the internal operation of police departments. Neither were they greatly concerned with the type of limits placed on the power of the police as outlined in the Criminal Code and various Police Acts and regulations. These limits, defining the parameters within which the police could operate in order to enforce the law, were accepted as sufficient at the time (Canadian Encyclopedia 1851-1852). In the years following World War II, however, traditional sanctions to control police powers were found to be inadequate and a number of new external mechanisms were proposed.

The increasing popular idea of civilian review of police operations was an extension of the nineteenth century concept of public policing but with an added dimension. The major difference was that the work of the police, rather than the public presuming they were acting in the interest of citizens, would be scrutinized more carefully and monitored by agencies led by citizens. The police would be held accountable based on the expectations and standards of the community. This issue of accountability of the police to the public is actually one aspect of a larger issue, namely, the accountability of elected representatives to their constituents. It is about whether citizens in their community can exercise power and influence public policy (Ian Jeffrey Ross 235).

Citizens can potentially influence the internal operations of police forces by advocating for change in a number of areas that in the past were left to the exclusive discretion of the police. They can demand improvement in effective screening and recruitment of new personnel, types and levels of training and ongoing education, clearer policy and procedural directives, more appropriate disciplinary codes, and the maintenance of a healthy police sub-culture (Ian Jeffrey Ross 237-238).

Citizens can also advocate for changes in the regulatory law governing the use of force by police. These are outlined for all of Canada in *sections 25 to 28* of the Criminal Code. *Sub-section 1* of section 25 allows officers to use as much force as necessary to effect an arrest. *Sub-sections 3* and *4* permit an officer to use lethal force to apprehend a fleeing suspect when other procedures have failed. *Sections 26* to *28* describe police liability when excessive force is used, as well as several other matters. Provincial police legislation and their regulations often elaborate further on the use of force.

Other structures in society can contribute to the process of ensuring that the police comply with standards established by the community (Stone and Ward; Ian Jeffrey Ross 235-241; Grant):

- The media can publicize incidents of police misconduct – as was done in Los Angeles in the 1991 Rodney King case, creating pressure to introduce change and reform;
- Community-based organizations with interests in public safety, civil and human rights, and legal representation can conduct research on policing and law enforcement as well as adopting a strong advocacy role;
- Organizations which have independent experts and scholars can collect, analyze and disseminate crime statistics, and highlight problems and issues that need the attention of senior police officers; and
- The courts have the ability to comment on police behaviour through their decisions.

Democratic Control of the Police in Canada

Civilian review and oversight has evolved slowly and gradually in Canada, beginning about twenty years after its initial development in Britain and the United States at the end of World War II (Goldsmith “External Review”, Goldsmith and Lewis Civilian Oversight, Susan Watt). What brought this issue to the attention of the Canadian public was a series of commissions and inquiries investigating police conduct - in Saskatchewan (1965), Ontario (1970, 1972, 1975 and 1976), and Quebec (1977) (Ian Jeffrey Ross 240). The first legislation to more strictly regulate police practices was introduced in Ontario in 1977 but it did not advance beyond third reading in the Ontario Legislature. Three years later the first article on police complaints was published in a Canadian police college journal (Rene).

Civilian review in a formal sense commenced in 1981 when the Office of Public Complaints was established in Ontario. In the decade following Manitoba, the R.C.M.P, the city of Toronto, British Columbia, and Quebec introduced some form of civilian review and eventually other jurisdictions have followed suit (Susan Watt).

Two issues dominated discussions on civilian review from the beginning - race relations and the use of excessive force – and they continue to persist as fundamental problems.

Racism

Allegations of police racial bias are commonly traced to the 1970s (Wortley Civilian Governance 1), coinciding with, if not resulting from, increased rates of immigration and public concern about police conduct regarding visible minorities. Racial issues in Canada, however, are deeper, larger, more complex, and extend far beyond confrontations between police officers and citizens during the last quarter of the twentieth century.

The term “race” has been interpreted many different ways during the last five centuries. Around 1900, “race” was redefined once again as it became the integral part of various contemporary pseudo-scientific theories such as Social Darwinism, phrenology, and eugenics. The Social Darwinists promoted the idea that “races,” represented by white Protestant Europeans, evolved much further and faster and were able to adapt better than other races. Phrenologists performed “head readings” and character analyses of people from different “races.” The eugenicists championed sterilization programs for those of “inferior races.” Each of these perspectives became aspects of public policy and popular belief in Canada during the first half of the twentieth century.

Despite European attitudes toward First Nations people and the presence of slavery during the colonial years, Canadians have tended to see themselves as “raceless.” Race for the most part has never been a recognized *legal* category of classification in this country. Although there were numerous statutes on the books drawing all sorts of racial distinctions, none used the words “race” or “racial” in their titles. Canadian law, in most respects, has basically been silent with respect to race. Thus, many Canadians may find it difficult to accept that their legal system has established and enforced racial inequality for many years (Backhouse 13-15). Those who are not

convinced will want to read Constance Backhouse's book, Colour-Codes; A Legal History of Racism in Canada 1900-1950. She describes in some detail six cases involving blatant racism: the legal prohibition of First Nations dance (1903), the denial of fishing rights of First Nations people in Lake Ontario (1921), a Saskatchewan law prohibiting Asians from employing white women in restaurants (1924), Ku Klux Klan interference in an "inter-racial" relationship in Ontario (1930), Eskimos being legally defined as Indians (1939), and a Halifax woman prohibited from sitting on the main floor of a movie theatre (1946).

In a number of these cases, the racist attitude of the police is clearly evident. The major difference between this earlier period and the 1970s is that racism on the part of the police became a public issue. People were becoming more critical of the police and public interest groups were strongly vocalizing their dissatisfactions.

Public complaints resulted in a series of studies on racism in Toronto (1977, 1979), Ontario (1989), Halifax (1991), Manitoba and Alberta (1991). The Royal Commission on the Donald Marshall Jr. Prosecution and similar investigations have also addressed this issue (McIntyre 648-652; Wortley Civilian Governance 5-6). **The Ontario Human Rights Commission in its examination of racial profiling lists nineteen (19) reports between 1975 and 2003 pertaining to racial profiling and relations with First Nations People.** Nine of these reports concerned racial issues in Toronto, six reports focused on Ontario, and four reports were national in scope (Ontario Human Rights Commission).

The proliferation of studies on racism simply confirms what some scholars contend: "'race' is a complex and variable historical construct" (Backhouse ix). Canadians have a tendency to view racism in simplistic terms - "First Nations or Aboriginal People," "visible minorities," "Asians" and "blacks." Culture is by no means a uniform concept. There are many differences among the various groups of First Nations people. Asian Canadians may face a different type of discrimination than people from First Nations groups (Chen, Palmer). Members of black communities may exhibit even further differences.

While differences exist among the many cultural groups residing in Canada, there are several common themes in the complaints directed at police forces. The perception exists that law enforcement is dominated by white male police officers who are culturally insensitive and have no understanding of the needs and circumstances of people from visible minorities who come into conflict with the law. As a result, members of racial minorities often believe they are mistreated in numerous ways. For example, they are inappropriately singled out for questioning if they are in close proximity to a crime scene. They are arrested as suspects more frequently than are white people. If they are convicted of a crime, their sentence is more severe than others who commit a comparable crime. A prison sentence confirms their views about discrimination when they see a disproportionate number of visible minorities represented in the prison population (Makin "Guard wins fight")

Excessive Force

The "use of excessive force" can also be a complex, variable and somewhat elusive term. The most likely image fixed in the minds of the Canadian public is a group of police officers beating

Rodney King in Los Angeles in 1991. But excessive force might also include verbal abuse, racist remarks, threats and intimidation and other abuses of power. Phillip Stenning includes inappropriate high speed police chases and strip searches as types of excessive force (Stenning, ed. Police...and Human Rights). **John Howard Societies in Alberta consider the use of Tasers by police forces and guards in penal institutions as “officially sanctioned excessive use of force”.**

Laws and policies regarding the use of force are shared by various levels of government in a federal democracy like Canada. Most police forces, with the exception of the RCMP, are established under provincial police legislation. The Criminal Code, on the other hand, is federal law that applies to all police forces in Canada. Because the Criminal Code contains sections governing the use of force by police, a substantial amount of case law has evolved from substantial judicial interpretation. Provincial policing statutes usually include detailed regulations that provide further elaboration on the use of force. The Charter of Rights and Freedoms establishes parameters regarding the use of force in two ways. It guarantees the right of everyone to not be deprived of “life, liberty or security of the person” (section 7) as well as permitting the courts to refuse evidence obtained when the rights of the accused are violated. From an international perspective, Canada is a signatory to the United Nations’ Code of Conduct for Law Enforcement Officials. All of these components constitute the legal framework within which police operate with regard to using force (Stenning Police...and Human Rights).

Although most Canadians were likely unaware of the existing legal parameters placed on the police, public criticism of their actions regarding the use of force escalated in the 1970s and 1980s. In social and cultural terms, the Canadian public was broadening and raising its expectations and standards for police performance – seeking new and less violent ways of enforcing the law. Individual citizens were similarly becoming more cognizant of their rights and less hesitant to lodge a complaint when they were being confronted by the police. Finally, media outlets in Canada were developing a more cosmopolitan approach to social issues and thus more willing to report on incidents such as citizen conflicts with the police.

Debate about police use of excessive force, like allegations of racial bias, has continued for the last three decades. Many investigations, studies, and reports have been conducted at the behest of citizen concerns. Numerous initiatives have been taken by police forces throughout Canada to temper criticisms that police officers are prone to using excessive force on numerous occasions.

The debate tends to focus on the following:

- Supporters of strong law enforcement argue that force is necessary because the police are constantly challenged by criminals who use whatever means is available to them to achieve their ends. The police also have to deal with the violent and unpredictable behaviour of people in an altered state of mind resulting from drugs or mental illness.
- Defenders argue that Police Acts, police service conduct regulations, internal police force scrutiny, and human rights legislation provide adequate checks on police power (Gregoire 44).

Critics counter that the wording of the Criminal Code places too much emphasis on violent strategies to resolve conflicts instead of emphasizing methods and approaches leading to non-violent solutions (Stansfield 110-111). They also argue that provincial governments have the legislative power to place further restrictions on the use of force by the police through provincial Police Acts but most jurisdictions are reluctant to exercise such forms of increased control (Ian Jeffrey Ross 240).

The first major studies in Canada on the police use of force were published in 1985 by the Centre of Criminology at the University of Toronto (Chappell and Graham) and the Solicitor General of Canada (Savage and Ault). In 1988 a Royal Commission in British Columbia reported on injuries sustained by a prisoner in the cells of the Vancouver City Police (British Columbia. Royal Commission). During the next two years, the B.C. Police Commission circulated a discussion paper on the use of deadly force (Discussion Paper) followed by a series of recommendations (Recommendations of the Committee 1990); the Calgary Police Commission released its report on firearm practices (Calgary Police Commission Firearms Review); and the RCMP Public Complaints Commission completed a literature review on the use of force (Police Use of Less-Than-Lethal). These reports were followed by two studies in 1992 by the Toronto Police Services Board (Enhancing Community Trust) and the Solicitor General Canada (Less Than Lethal Force).

In 1993-1994 the Policing in British Columbia Commission of Inquiry produced five studies that referred to the use of neck restraints and impact weapons as well as the legal and community implications of using force (British Columbia. Closing the Gap). These studies were supplemented by proposed guidelines for municipal police officers (Justice Institute of British Columbia). Phillip Stenning's paper narrowed the subject by focusing on the use of force against visible minorities (Stenning Police... Violence Against Members). Ronald Stansfield summarized developments with respect to the use of force in his book, Issues in Policing; A Canadian Perspective.

Another aspect of the excessive use of force issue arose in the mid-1990s with preliminary research data on what is now termed "police-assisted suicide" or "suicide by cop." Richard Parent, a B.C. police officer completing a master's degree at Simon Fraser University, initially examined fifty-eight shootings between 1980 and 1994 involving B.C. police officers. Of twenty-eight people killed by the police, Parent determined that half were victim-precipitated homicides: that is, victims were consciously and determinedly committing suicide by getting shot by the police. Based on Parent's research and U.S. data, one in ten shootings were believed to be deliberate on the part of the victim (Parent, Beaudin, Mills, "Veteran Officer"). For his doctoral thesis, Parent enlarged his sample to include 400 shootings that occurred in Canada and 400 from the U.S. between 1980 and 2002. He has amended his conclusions, now stating that at least one-third of police shootings in North America are precipitated by the victim (Meadahl). The Suicide Information & Education Centre in Calgary, Alberta, provides a useful short bibliography on this subject (Suicide). What happens to officers who kill someone during their line of duty? This is addressed in Grant Foster's paper presented at the 1996 Canadian Learned Societies Congress. He contends that many of these officers become "stigmatized" as a result of discharging their firearms (Foster).

Large public demonstrations lead to what Phillip Stenning describes as “public order policing” (Stenning, ed.). Between 1997 and 2002 there were at least five highly publicized “public order policing” incidents. These were the Asia-Pacific Economic Co-operation (APEC) meeting held at the University of British Columbia in Vancouver in 1997; demonstrations in 1997 regarding the closure of several schools in New Brunswick; the 16th World Petroleum Congress in Calgary in June, 2000; the Summit of the Americas in Quebec City April, 2001; and the cancellation of the Guns N’ Roses concert in Vancouver on November 7, 2002. In three of these incidents – the 1997 APEC meeting, the 2001 Quebec City Summit, and Guns N’ Roses concert – the actions of some police officers were questioned and public hearings conducted.

By 2000 many police forces in Canada, unlike the U.S. (McEwan), had developed local, internal guidelines to further restrict the use of force by their members (Stansfield, Regional Municipality of York). More studies were also conducted. The Toronto Police Service found that the largest proportion of situations in which firearms were used were robbery and drug investigations. Its report, released in May 1998, was the most comprehensive study of the use of force in policing (Toronto Police Service). Two years later the Board of Directors of the Canadian Association of Police Chiefs endorsed A National Use of Force Framework to develop more uniform policies across the country (Canadian Association; Stenning, ed. 122). No reports could be found regarding progress on this initiative.

In spite of numerous reports, studies and inquiries, the use of force by the police continues to fester in the minds of many Canadians and remains an important public policy issue. The 2002 Annual Report of the Calgary Police Service, for example, indicates that the largest number of complaints received in the previous year was “unnecessary or excessive physical force or threatening the same” (Calgary Police Commission, 2002 Annual Report). The RCMP also continue to cite a number of complaints regarding “excessive use of force” (Commission for Public Complaints, Annual Report). It is likely that this is common to most if not all police forces in this country.

Issues in Civilian Oversight

Because of limited research data on civilian oversight in Canada, it is difficult to resolve the fundamental issue of whether the police are not conducting themselves properly while enforcing the law, or whether this simply reflects public perceptions and changing public expectations.

It is common knowledge that people tend to complain when they do not achieve what they want. In addition, complaints directed toward professional or occupational groups providing a public service are not unusual. Expressing dissatisfaction, in other words, is fundamental to human conduct, especially when it involves people who are expected “to serve.” Should complaints against the police which ordinarily involve a small percentage of officers be considered within this context? Or because of the power they possess, should more be expected of the police than other occupational groups?

There are several factors to be considered in the debates about civilian oversight. Police in most societies are public symbols of authority so conflicts with them are unavoidable and inevitable –

at least for some segments of the population. Police work, moreover, is confrontational by its very nature, and enforcement of the law frequently occurs in situations that are emotionally explosive. Citizens can also exhibit very ambivalent views of the police: officers can be seen as protectors and, simultaneously and conversely, potential aggressors due to their coercive power. Citizen complaints about the police, it can be argued, may simply be an aspect of living in a free and democratic society (Phillips and Trone, 1; Stansfield 109).

The Status of Research

Despite efforts on the part of civilians to monitor police conduct and measures taken by the police to modify their approaches to law enforcement, the issue of complaints against the police continues to persist. A sampling of recent newspaper headlines highlights this issue:

- “Complaints against the police on the rise” (O’Flanagan)
- “Commission, cops too close, hearing told” (Edmonton Sun, June 17, 2004, 22)
- “Police shouldn’t investigate themselves, forum told.” (Thorne)
- “Cop cleared of excessive use of force” (Harnett)
- “RCMP resists oversight” (“RCMP resists”)
- “Police should not be investigating police” (Buffalo)

Several factors limit the relevance of current research on the effectiveness of civilian oversight. These are: the varying definitions of complaints, insufficient and incomplete documentation, and the types of research conducted.

Police misconduct is usually described in police service regulations of provincial Police Acts and other statutes governing police forces, internal policies of a police force, and codes of professional conduct. While there are many similarities between the various regulations and conduct codes, there are also substantial differences in defining what is meant by “discreditable conduct,” “neglect of duty,” “unnecessary exercise of authority,” and other types of misconduct. Some police forces, as discussed below, do not define and categorize conflicts that are informally resolved as “complaints.” This lack of consistency in defining complaints among various police jurisdictions severely limits the use of comparisons as a research tool (Fyfe).

Some authors argue that a broad-based classification system of complaints needs to be established (Holland). There have also been calls for the creation of a comprehensive code of practice detailing the rights of complainants and the rights of police officers, and the development of national guidelines to register complaints beyond the reports traditionally submitted to public officials by police forces. Major advances of this kind, however, have not occurred (United Kingdom Inspectorate).

A second limitation is that documentation on incidents reporting police misconduct within police forces and in civilian review bodies generally tends to be incomplete and insufficient for research purposes (Grant). The Calgary Police Service, for example, follows this practice:

With respect to record keeping, a public complaint is not formally documented as a “complaint” with the CPS until all opportunities for informal resolution have been exhausted or ruled

out...The down side of this approach is that, unless the complaint came to the PSS [Professional Standards Section], no record of the complaint is kept and no statistics generated. When a complaint is reported or referred to the PSS, that office documents it as a “Contact Note”. Contact Notes in the PSS are counted. If a complaint received by a District Office is referred to the PSS, it too will be counted. Otherwise, the District Offices of the CPS *do not keep statistics on their complaints and that information is lost* [JHSA’s italics] (Calgary Police Commission 2002 Annual Report, 8).

From 1999 – 2002, according to the Calgary Police Commission, 95% of public complaints were resolved without the need for a formal investigation (Annual Report 2002, 7). From a practical point of view this approach is commendable but it drastically limits opportunities for formal research and program evaluation. Thorough research cannot be conducted without a sound statistical base.

The lack of documentation is the reason why very little data is available describing the effectiveness of civilian oversight bodies and their achievements. It also explains the absence of rigorous evaluations examining the frequency, processing and consequences of police misconduct (Wortley Civilian Governance 12). The greatest amount of published research data available is in Ontario where The Office of Public Complaints has received the most intense scrutiny, evaluation and criticism in the literature on civilian oversight in Canada (Clare E. Lewis, McMahon; Landau “Back to the Future”).

The existing literature primarily consists of the three types of studies (Wortley Civilian Governance 11-12):

- Studies advocating or opposing civilian oversight based on anecdotal information;
- Case studies describing political controversies surrounding the development of civilian oversight; and
- Studies documenting the administrative structures and operational practices of different public accountability systems.

Most studies either describe the *structure* of the review body within a police service or outline the *process* or *procedure* through which complaints are handled (Smith 15).

There are two major *structural issues* in the literature on civilian review: the amount of independence of the civilian body from the police and the extent of its power and authority. Within this context, five basic types of civilian oversight have been identified (Wortley Civilian Governance 7-8):

- The in-house model whereby police officers receive the complaint, investigate it, determine if the complaint will be substantiated, and take any necessary follow-up action;
- The externally supervised in-house model in which there is some involvement of citizens but their involvement is very limited;
- A model exists in which the investigation is completed by the police but the adjudication (Grant 419-420) and final disposition of the complaint is determined by an independent body;

- Another model is a reverse of the one above: the investigation is independent but the police perform the adjudication role; and
- In the fully independent model, civilians both investigate and adjudicate the complaint.

There are several well known programs in Canada representing the fully independent model. One is the Special Investigations Unit (SIU) in Ontario established in 1990. Its mandate is to investigate police actions that result in the serious injury or death of a citizen. The second is the Manitoba Law Enforcement Review Agency (LERA). It has the power to refer a complaint to a provincial judge who can order a public hearing (Wortley *Civilian Governance* 8). The Commission for Public Complaints Against the RCMP also functions independently (Commission for Complaints).

The *process* of lodging a complaint is far more problematic and controversial than the organizational structure of civilian review. Problems precipitating citizen dissatisfaction with the complaint process are summarized below. **The majority of citizens simply do not have confidence in a process in which the police investigate themselves – the in-house model** (Goldsmith “External review”). **Neither do they willingly support a civilian oversight body that utilizes active or former police officers who perform the investigative function. The likelihood of collusion is regarded by most complainants as too great.**

Conduct generating complaints

The police perspective on misconduct, as discussed previously, is primarily governed by police service regulations, the internal policies of police forces, and existing codes of conduct. What type of police behaviours generate complaints - in addition to the issues of race and the excessive use of force mentioned earlier? Several studies address this issue. Holland examines eight categories of citizen complaints: assaults, general behaviour, traffic control incidents, failure of duty, searches, placement in custody, crime involving property, and criminal behaviour (Holland). Cao and Huang focus on abuses of power incurred during unlawful arrest and detention, illegal search or seizure, harassment and intimidation, misuse of authority, and the use of racist and improper language (Cao et.al.). Burgess and his colleagues find that in almost fifty percent of the incidents resulting in a complaint, it was alleged that police officers had punched or kicked a complainant (Burgess et. al.). **Birkbeck and Gabaldon discover that officers were more prone to use force against people with lesser social status** (Birkbeck and Gabaldon).

Tammy Landau’s study of complaints provides a different perspective. She notes in her study that complaints frequently involved citizens who were simply engaged in some form of public activity, and *not* during an arrest. Conflicts with the police, in other words, occurred during routine interactions between citizens and law enforcement officers (Landau “When police investigate”).

Number of complaints

There are significant disparities between the number of citizens who express dissatisfaction with the police and those who formally lodge complaints. An Australian study indicates that about half of the respondents reported dissatisfaction with the police in their area, but only about 10% attempted to make an official complaint (Ede).

Another study indicates that about 30% of those who believe they were dealt with inappropriately go on to file a complaint (Wortley Civilian Governance 12). **These and many other studies clearly indicate that only a minority of people who experience some form of police misconduct actually complain about the event.**

Critics argue that many citizens do not proceed to the next stage in registering a complaint because they believe that a full investigation will not occur and nothing will happen. **Citizens also may fear reprisals from the police.** There are reports of citizens being harassed, intimidated, and threatened with criminal prosecution if their complaint is unsubstantiated and is perceived to be a “false claim” (Wortley Civilian Governance 13). There are other factors as well. Lodging a complaint takes time and energy and many citizens are unable or unwilling to make the phone calls, complete the paper work, and fulfill the other requirements that may be a necessary part of the process. Also, some citizens are simply apathetic: they are willing to complain but they do not want to proceed any further.

Proponents of civilian review believe that citizens are more likely to have more confidence in a process when a complaint is made to a group of civilians rather than by forwarding their concerns to a unit in a police force. The number of complaints would increase, they argue, if the latter process was followed.

Research data indicates that the number of complaints does increase following the introduction of civilian review but this increase is only temporary and then slowly declines to former levels. This decline could mean that civilian review does deter police misconduct. Unfortunately, there are no Canadian studies that confirm this position. Data on the relationship between civilian oversight and the recorded number of complaints is incomplete and needs to be examined and studied much more thoroughly (Wortley Civilian Governance 12-13).

Substantiation of Complaints

The research on the number of complaints that are substantiated is, unfortunately, very limited. There is a small body of research examining the substantiation issue but the results are not very promising and rates of substantiation tend to be very low.

A study in England and Wales examining police liability investigated 8,000 - 10,000 out of 30,000 recorded complaints against the police. Fewer than 10% of these complaints were substantiated and less than one-quarter of these led to liability proceedings. In the vast majority of cases the complaints process concluded with a supervisor speaking to the offending officer and then advising the complainant by letter. The satisfaction of knowing criminal proceedings were initiated against a police officer occurred only 127 times in a four year period – less than 0.1 per cent of recorded complaints (Smith 23-24).

Tammy Landau's studies of the complaints process in Toronto describes in detail how unsuccessful were complainants in having their concerns substantiated. Most of the complainants received little accurate information about how their complaint was being handled. They grew to be very skeptical about the process of the police investigating themselves, and that skepticism even extended to the office of the Police Complaints Commissioner. Landau concluded that the complaints structure and process did little to assure complainants that police accountability was being enhanced (Landau "Back to the Future," Public Complaints, "When police investigate").

There are no studies addressing the issue of whether external civilian reviews are more effective than the internal police process of reviewing complaints. From a research perspective, it would be desirable to randomly assign complaints for both internal and external reviews and then compare the results. Nowhere has this been done (Wortley Civilian Governance).

There are several other limitations to the current research on substantiation of complaints:

1. It is difficult to compare outcomes because jurisdictions define complaints differently and operate in different operational contexts;
2. There are few studies (and none in Canada) comparing substantiation rates before and after civilian review has been introduced into a police service;
3. There are no studies comparing public attitudes in communities with civilian review over a period of time and communities where civilian review has never existed;
4. There are no studies in Canada comparing, for example, regions or provinces that have civilian review and those where it is absent; and
5. There are no studies in Canada or in any other country indicating that civilian review improves the relationship between the police and ethnic minorities.

The only conclusion that can be drawn, based on data currently available, is that complaints are no more likely to be sustained under civilian review than when they are reviewed by the police. The substantiation rate of complaints reviewed by the police, internally, is in the range of five to ten percent. For civilian reviews the range is between two and eight percent (Wortley Civilian Governance 14-15).

The low substantiation rate of civilian reviews may be due to several factors. One factor is insufficient resources. **Well funded agencies report much higher substantiation rates than those agencies with a very limited resource base.** An Australian study, for example, found that the number of substantiated complaints rose by 39% in a well funded civilian review agency. Low substantiation rates in civilian agencies may also result from employing an informal dispute resolution process during the early stages of a complaint. This practice is followed by the Calgary Police Commission, as noted earlier. The results of these diversions are often not calculated in determining rates of substantiated complaints (Wortley Civilian Governance 21-22). Another factor is that there are usually few witnesses to incidents of alleged police misconduct, and there are few other means available to provide more objective evidence. As a result, substantiation rates are likely to continue to remain very low.

Satisfaction With the Process

Studies in Canada indicate that the vast majority of complainants are dissatisfied with the complaint process even when their claims have been substantiated and the review is conducted by civilians. People who complain about the process are unhappy with the time required to process the complaint, question the manner in which the investigation is conducted, find that the information provided in terms of feedback is very limited, and disagree with the type of discipline recommended for the offending officer (Wortley Civilian Governance 17; “City cop’s penalty slammed” Edmonton Sun December 4, 2004, 5).

Other studies have produced more positive results. Jurisdictions utilizing an informal mediation process, consistent with principles of restorative justice and victim/offender mediation, tend to be regarded more favourably by complainants (Walker). This approach has been adopted by a number of Canadian police forces (McIntosh). Early reports appear positive but these anecdotal reports need to be confirmed with hard research data.

One interesting study compared the goals of the complainants – what they wanted to accomplish - with the aims of the formal complaint process. The conclusions are quite interesting:

- Few complainants wanted the offending officer to be punished, suspended, dismissed, or to face criminal charges;
- Most want an explanation, an apology, a face to face encounter with the officer or simply documentation on the officers record;
- Concern about the way the complaint is handled is as important to complainants as who deals with the complaint;
- Complainants felt alienated by the legalistic approach to the investigation; and
- There is dissatisfaction with the amount of information provided by the investigators, the time it takes, the manner in which the investigation is conducted, and the types of discipline recommended (Walker, Wortley Civilian Governance 17).

Support for Civilian Oversight

Civilian oversight is primarily based on these assumptions:

- People will trust citizens more than the police and be more willing to lodge a complaint;
- Citizens will be more objective when examining complaints from other citizens;
- Their objectivity will produce a higher percentage of substantiated complaints that will deter and reduce instances of police misconduct; and
- The public, as a result of these actions, will have greater confidence in the police.

While these are only assumptions and there is no research data indicating this is what actually occurs (Wortley Civilian Governance 6-7), civilian oversight as a concept seems to have become well established in the minds of citizens in the community, complainants, and public officials and affirmed in public opinion surveys. Many police officers accept it as inevitable and express their willingness to work with members of the community (Wortley Civilian Governance 19).

Some research studies suggest that if civilian agencies are given sufficient resources there is a much greater likelihood their work will have an impact on officers' conduct and increase the public's confidence in the police.

Supporters of civilian review must continue to meet the challenges advanced by police unions and associations which often strongly defend their members ("A police union's threat"). *Some police groups claim that civilian review will have a negative impact on police morale. Another claim is that the police, with their experience, can be more effective in investigating and processing complaints.* **Research studies support neither of these arguments:**

- Police representatives have not produced concrete evidence that civilians are less able to distinguish between false accusations and legitimate cases of police misconduct;
- There are no Canadian or international studies that demonstrate the presence of civilian review lowers police morale and job satisfaction and increases occupational stress; and
- No studies have been conducted indicating officers subjected to civilian oversight have lower levels of morale than officers who are required to undergo an internal police-service review.

Civilian Review and its Limitations

While there seems to be a general consensus that civilian review is necessary to establish boundaries for policing in a democratic society, this method of involving citizens in law enforcement needs much further development if it is to be successful. Three of the most important issues are:

- Establishing and clarifying the authority of civilian review bodies and their degree of independence from the police;
- Ensuring they obtain adequate resources to achieve their objectives; and
- Exploring methods of addressing the many dimensions of alleged police racism.

The dilemma for civilian review agencies is that most of them do not have the power and authority or the resources to initiate independent investigations of the police and to adjudicate complaints (Colleen Lewis Complaints). The most they can usually do is review an investigation conducted by the police and make recommendations about discipline. Seldom do they have any final authority over the decisions of police management (Wortley Civilian Governance). The question remains: is it more important that civilian review boards effectively identify, investigate and "discipline" police officers or is their independence from the police more important?

A survey on systematic racism conducted in Ontario in 1994 found that people are more likely to report police maltreatment to civilian rather than to police authorities. But there is a further dilemma: members of visible minorities are generally hesitant about becoming involved in the complaints process regardless of whether the review is external or internal to a police force (Wortley Civilian Governance 18).

The organizational characteristics of a police force, its management policies and functions, ethics education and training, and other factors such as "police culture" can be covariates of complaints

from citizens (Cao et. al, “A test”; Davis and Mateu; Leffler; Queensland Criminal Justice Commission). These factors become the responsibility of police managers and are unlikely to be successfully addressed by any civilian review agency. Developing a means of separating complaints arising from police organizational and management issues from matters specifically related to an officer’s conduct is one reason why a multi-tiered complaints system may be necessary (Smith `28).

Civil Governance: The Future

The primary objective of civilian review/oversight is to achieve greater a balance between citizen participation in law enforcement so police are held accountable to the public, and enhancing the autonomy of the police so they can preserve public order in a democratic and peaceful society. Based on thirty years of experience of civilian review in Canada, this balance has not yet been established. Policy-makers who study complaints now acknowledge that police misconduct is more complex than was previously thought and requires much more careful examination and study.

The social and political context within which civilian review bodies are created is important. The ideal context is a civic and political culture valuing democratic governance in which citizens believe their collective voices are being heard. Social structures within this culture represent the interests of citizens and model sound democratic practices. **Leaders in a community of this kind possess the political will to hold all officials, including their political colleagues, publicly accountable for their actions** (Stone and Ward, Colleen Lewis “The politics”).

What steps must occur in order to achieve this ideal?

Increased Collaboration Between External and Internal Oversight

The “we-they” attitude characterizing many civilian oversight bodies and the police needs to be minimized and ultimately eliminated. It is now generally accepted that both external and internal forms of review and oversight are necessary to ensure that a democratic approach to policing is developed and maintained (Phillips and Trone). Both components of oversight structures need to have sound working relationships with each other. External oversight bodies must find the means of maintaining their independence from the police while, at the same time, collaborating with them. They must also be proficient at communicating this dialectical arrangement to the citizens of their community. External bodies are unlikely to ever receive sufficient resources so they are completely autonomous of the police, even if there are advantages in doing so. The police are unlikely to ever again command the complete trust of citizens unless some form of external control exists.

There are other reasons as well for maintaining a complementary working relationship between external and internal bodies:

- The police are better equipped than most civilian structures o handle investigative functions, despite the perception and possibility that they are biased, and to review

serious incidents involving injuries or fatalities because of their greater resources, expertise and structure;

- It may be more efficient for civilian agencies to handle those complaints that are “non-bureaucratic” (e.g. requiring a simpler solution such as an apology) and incidents in which there is no evidence of violence or the use of excessive force;
- External bodies might use their limited resources more effectively if their time was devoted towards helping the police establish a better monitoring system to control and prevent incidents of misconduct on the part of their officers.

Enhancing Accountability

The major difference between policing in a democracy and policing under non-democratic regimes is public accountability. In a non-democratic regime the police are solely accountable to the ruler, the state, the party or interest group in power or those in control of the government. Police in a democracy are accountable to a multiplicity of bodies: their superiors, the police administration, their peer officers; elected councils and legislatures, the courts, citizens of their community, and indeed all of society. They are not accountable to only one structure, e.g. their superiors or a civilian review board (Stone and Merrick). This view of the police promotes flexibility, growth and development in an environment where there are *multiple guarantors* of compliance with community standards and practices.

The Commission of Policing Structures of the United Nations International Police Task Force (1996) has developed a set of principles that act as a guide for training new police officers in countries ravaged by war and civil conflict (Stone and Ward). These principles are fundamental and applicable to democratic policing. They include:

- Police need to protect rather than impede freedoms in a democratic society and provide a safe and orderly environment where these freedoms can be exercised;
- Police are not to be concerned with people’s beliefs, movements or compliance with government policies and regulations unless laws are being broken;
- Police are concerned primarily with the preservation of safe communities and the protection of life;
- Police are governed by a code of conduct that compels them to apply the criminal law equally to all people, and conduct their activities with respect for human dignity and basic rights of all persons; and
- Police are accountable to the public and all structures established for this purpose.

Selected Initiatives

In addition to improved collaboration between external and internal oversight and enhanced accountability, other measures can lead to the enhancement of civil governance:

- **Case processing**

Several preliminary studies suggest that an elaborate, highly structured and legalistic complaints process may be just as damaging to the complainant as the initial cause of the complaint. Systems established to receive complaints need to be simple, accessible,

stream-lined, non-bureaucratic, compassionate and as ethically and socially sensitive as humanly possible. A more elaborate and structured approach can be preserved for a small minority of exceptional cases. Complaints need to be resolved quickly and informally, if possible. The use of mediation and dispute resolution techniques, alternative measures, and restorative justice approaches need further exploration (McLaughlin and Johansen). Complainants deserve simple, practical and full explanations of what happened and resulted in their complaint.

- **Prevention of misconduct**

While reports of police misconduct have not been eliminated (and likely never will be), many steps have been taken by police forces during the last thirty years in attempting to reduce the use of excessive force. Most studies addressing this issue suggest that a relatively small number of officers generate the majority of complaints (Terrill and McCluskey 143). Studies of police forces suggest relatively inexperienced officers who are unable to handle the demands of their work are more prone to using force inappropriately. An “early warning system” for more vulnerable officers needs to be considered.

Visible Minorities

The issue of fair treatment for First Nations people and visible minorities needs to be continually re-examined but in a larger context. While police forces are justifiably criticized for failing to properly deal with people from visible minorities, they are not the only Canadian occupational group that needs to be held publicly accountable in addressing this social issue. Some degree of racism and racial profiling exists in many segments of Canadian society, despite this country’s strong bent towards multiculturalism. A recent newspaper headline reads: “Racism haunts Canada’s first aboriginal judge; ‘You never get rid of that feeling,’ says new member of Ontario Court of Appeal.” (Makin “Racism”).

The interrelationship between contemporary law and the status of First Nations people continues to preoccupy the courts and law reform bodies in Canada. The Supreme Court decision in the Drybones case of 1969, affirming that the *Indian Act* denied First Nations people equality before the law, initiated a review process that continues to this day. This process has indirect if not direct implications for law enforcement personnel throughout Canada. The writings of Rupert Ross and Colin Sampson describe in poignant terms how racism affects the enforcement of the law (Ross Dancing; A Way of Life 316-325).

- **Third party complaints**

Legislation in most jurisdictions makes no provision for third party complaints (Wortley Civilian Governance). If a complaints system is to be accessible, compassionate and ethnically and socially sensitive, then provision needs to be made for those who cannot lodge a complaint in the usual manner – the illiterate, linguistically incapable, and socially disadvantaged.

- **Developing Specialized Structures & Other Mechanisms**

One oversight body may not be adequate to assume all of the functions necessary to create a high degree of civic governance. Other options may need to be explored. Some jurisdictions, for example, have developed specialized permanent structures such as police ombudsmen and complaints directorates. These special agencies are increasingly being created to strengthen the expertise, resources and independence of civilian oversight of police (Stone and Merrick). Stone and Ward also provide a summary of potential entry points for further reforms in civil governance (Democratic Policing).

Complaints about police conduct needs attention for one final reason. The sound reputation that police forces have been able to maintain for the last century and a half may not continue forever. There is some preliminary evidence that the faith of Canadians in their criminal justice system has lessened and is possibly waning. While this dissatisfaction is primarily linked to the courts regarding sentencing and the parole system in Canada, the police may not escape further criticism. There are few controls over the ebbing and waning of cultural beliefs (Roberts Public Confidence).

Conclusion - The John Howard Society of Alberta Perspective

The Mission of the John Howard Society of Alberta is to strive for

Informed, collaborative, effective and humane responses to the causes and consequences of crime.

How does that Mission relate to the issue of responding to citizen complaints about police conduct? The data cited earlier (Roberts et. al.) clearly indicates that the Canadian public is losing respect for the institutions that comprise our criminal justice system – including police services.

Police officers in Canada are granted enormous power and authority by the citizenry including, in some circumstances, the power of *justifiable homicide*. But police officers are human, and subject to the same frailties as all other humans in our society. So when individual officers abuse that power and authority, or are perceived to abuse that power and authority, as has happened throughout our history and will continue to happen, it is a betrayal of the public trust the citizenry holds for the police. As the public perception that the police are not to be trusted grows, it follows that respect for the police and the laws they enforce diminishes. In a very real sense, an “us v. them” dichotomy arises, with “us” being the citizenry (or certainly segments thereof), and “them” being the police – and all the police represent.

The longer the current situation persists, the greater the gulf between the police and the citizenry grows, and the more each views the other with suspicion, distrust, and for significant segments of our society - fear. **Harmony within the community is lessened; respect for the law, and the agents of the law is lessened; and safety within the community is diminished.**

This is already largely the case within those marginalized and readily identifiable (because of race) segments of our society who view the police as “the enemy”. How, for example, is the First

Nations youth who experiences verbal or physical abuse at the hands of the police, likely to respond to the norms and laws of a society that, in his view, is represented by the police? How is the citizen who lodges a complaint about police conduct likely to feel when, months later, he or she receives a letter from the Chief of Police indicating that “the complaint has been investigated and determined to be without merit”? Or even that “the complaint has been investigated, and the offending officer has been disciplined,” without any further explanation.

Such instances promote a society where individuals govern their actions not on the basis of *doing what’s right*, but on the basis of *doing what they can get away with doing* – the clear example of *doing what they can get away with doing* seemingly being demonstrated by the very agents of society who are charged with encouraging and enforcing *doing what’s right*.

To counter this, the John Howard Society of Alberta believes that provision for the establishment of CR/CO bodies for Alberta municipal police services must be made in the **Alberta Police Act Cap. P-17, RSA 2000**. By so doing, an important first step to provide the opportunity to foster and encourage collaboration amongst the police and the citizenry will be given legislative sanction. But in addition, sufficient provincial funding to establish and maintain these bodies must also be made available.

Further, in our view these bodies must be the designated recipients of first contact for all complaints against police conduct; regardless whether these bodies have their own, civilian investigative resources, or utilize existing internal police investigative services, they must be the bodies to which reports on the progress and final outcome of the investigations are made; and finally, these bodies must then have the power, in the appropriate circumstances, to hold hearings, take evidence under oath, adjudicate the matter, and respond to the complainant, and recommend to the police service the appropriate steps to be taken following the conclusion of investigations or adjudication.

Establishment of these “independent” bodies, who are accountable to the Alberta Solicitor General and the Courts, will counter public mistrust of the police services and will, over time, demonstrate to the members of police services that the citizenry can be trusted to act in the best interests of the whole community – citizens and police.

The movement away from “us v. them” toward “we together” will begin.

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