

Civilian Oversight: Balancing Risks, Rights and Responsibilities

Speech Delivered by

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Good afternoon.

I am pleased to be here today to discuss our Commission and the role we play in providing civilian oversight of the RCMP.

Changes, issues and challenges are exactly what our Commission has been dealing with over the past year.

There have been so many changes to the kind of work we do and, like everyone else up here today, we have plenty of challenges.

I would like to briefly discuss how we operate and then discuss the changes and challenges that we face.

The Commission is an active partner in the federal government's commitment to foster safe and strong Canadian communities by promoting excellence in policing through accountability.

Our ultimate goal and what is of real value to society as a whole, is improving policing conduct here in Canada.

The Commission is an independent body. We are not part of the RCMP.

In 1988, Parliament authorized the Commission to receive and review allegations of inappropriate conduct by RCMP members.

We make findings and recommendations to correct and prevent recurring problems involving the conduct of specific RCMP members.

At times, the recommendations are broader and involve changes to RCMP policies and practices.

Our findings and recommendations are made to the RCMP Commissioner and the Solicitor General of Canada.

Our recommendations are non-binding and the Commission cannot directly discipline members or award compensation.

The Commission has jurisdiction over complaints about the conduct of RCMP members while performing a policing duty.

In some circumstances it may extend to the personal conduct of RCMP members, if the alleged conduct is likely to adversely affect the member's performance as an RCMP member or the RCMP's reputation.

Complaints are forwarded to the RCMP, which conducts an investigation, unless I deem it necessary in the public interest to do our own investigation.

The RCMP reports the results of its investigation to the complainant and the RCMP members involved.

If the complainant is not satisfied, he or she may send the complaint to the Commission for review.

A review examines all evidence associated with the complaint.

When the analysis is complete, we determine whether the RCMP's handling of the complaint was satisfactory or not.

We base that decision on applicable standards of conduct outlined in the *Criminal Code*, the *Canadian Charter of Rights and Freedoms*, and RCMP administrative or operational policy.

If we are satisfied with the RCMP's handling of the complaint, we send out a satisfied report to everyone involved, including the RCMP Commissioner and the Solicitor General of Canada.

In cases where we are not satisfied, an interim report is sent to the RCMP Commissioner and the Solicitor General containing findings and recommendations.

The RCMP Commissioner must prepare a response that deals with our findings and recommendations.

If the Commissioner rejects any findings or recommendations, he must report the reasons for the rejection.

We then prepare a final report that includes the Commissioner's response, as well as our final findings and recommendations, and send it to everyone involved.

We can also initiate public interest investigations and public hearings. Both these processes generate interim reports, Commissioner's responses and final reports.

The difference is that findings, recommendations and the RCMP reaction are publicly disclosed through press releases.

Last year we processed approximately 900 complaints.

We handled over 1,100 inquiries and we signed 133 reports.

All this was done with a staff of 44 people and a budget of \$4.8 millions.

We have instituted some changes in the way we do business over the last year or so.

For example, the Commission has had success with its alternative dispute resolution (ADR) initiative.

When ADR is deemed appropriate, Commission analysts act as impartial facilitators to bring the complainant and the RCMP member or members into contact with each other as soon as possible.

Using ADR, the complaint may be resolved without going through the formal public complaint process.

ADR can provide greater satisfaction to complainants and RCMP members because it usually resolves the matter very quickly.

It is also cost-efficient because there is no RCMP investigation, nor any Commission review.

We have resolved over 1,400 complaints in less than four years using ADR.

Last year, we used ADR in 295 cases, successfully resolving 280 of them. Only 15 resulted in formal complaints.

That represents a 95% success rate.

In May, Brooke McNabb joined the Commission as Vice-Chair.

He has extensive experience in alternate dispute resolution techniques.

In fact, he used to teach conflict resolution at the University of Winnipeg and he has worked as a consultant in this area.

Over the next year, Brooke will be working on a project to apply alternate dispute resolution at the review stage of our process.

We feel that there are certain review cases where getting the complainant together with the RCMP member or members involved might result in a timely resolution of the matter.

We also introduced a case screening procedure to determine if all the relevant material has been obtained from the RCMP, and ensure the allegations made in the complaint are clear.

This new screening procedure allows us to better determine timeliness for concluding the case and to ensure the file is assigned to a Reviewer Analyst who has experience with that specific type of complaint.

The Commission developed a checklist to ensure all documentation has been reviewed and all legal issues identified and addressed prior to drafting the report.

This speeds up approval of the report.

The nature of the issues we face has also changed.

For example, policing people who suffer from mental illness is a growing problem in Canada.

All Canadians are stakeholders in the issues that affect people with mental illness.

Health Canada estimates that 20 per cent of Canadians will experience mental illness during their lifetime.

The remaining 80 per cent of us are likely to be affected through a mental illness in a family member, friend or colleague.

With emergency response calls going up and budgets going down, it is increasingly difficult to secure proper treatment.

Interventions with the mentally ill are usually too simplified: a prescription and a rushed return home.

This is a change from the days when patients had more support and services to ensure their well-being.

Now, some of these people have nowhere to go and end up living on the streets.

It is the police who bear the brunt of this societal shift.

In Calgary for example, police used to deal with four calls a day involving people with mental illness.

Now they handle more than thirteen calls a day.

It is a similar story around the entire country.

Estimates indicate that between 7 and 15 per cent of police contacts are with people with mental illness and the frequency of interaction between the police and people with mental illness is increasing.

Alarming, research studies also indicate that a disproportionate number of fatal police shootings involved people with mental illness.

When dealing with the mentally ill, the tactics that police use often have an adverse impact on behaviour, making a mentally ill person more frantic.

Clearly police officers need to gain a better understanding of the people and problems they are dealing with.

This means providing officers with training and giving them tools to deal with the problems they face when dealing with mentally ill people.

One of the most difficult issues for police officers to deal with is identifying a person at risk.

Mental illnesses come in all shapes and sizes.

Sometimes, the use of drugs or alcohol can exacerbate or mask the signs that a person suffers from mental illness.

The Commission has recommended clear guidelines and training for officers who must make these important decisions.

Another area of concern is the limited number of complaints originating from Aboriginal Canadians.

Despite media reports of a troubled relationship between Aboriginal Canadians and the RCMP, few formal complaints about RCMP members have originated from Aboriginal communities since the Commission was created in 1988.

Since the Commission's investigative powers are generally triggered by a public complaint, it is more difficult for the Commission to contribute to solutions for better policing unless we get complaints.

Last year, we made a concerted effort to reach out to Aboriginal communities and have made complaints from Aboriginal people a priority.

I met with the Commission on First Nations and Métis Peoples and Justice Reform to discuss problems Aboriginal communities face when dealing with police.

I participated in a discussion exploring potential solutions to chronic problems of police interaction with native communities.

I learned that the problem is real and that there are no simple solutions.

The Commission is trying to be more accessible to Aboriginal persons.

We are exploring ways to encourage Aboriginal people to trust, and feel more comfortable with, the complaint process, including using ADR.

The nature of the work we do also changed after September 11th.

Canadians have accepted the need for increased security, even at the price of reduced individual freedom.

Parliament has given our police forces vast new powers to better equip them not just to catch terrorists, but to prevent acts of terrorism.

The RCMP faces a critical challenge as it uses these new powers to combat terrorism. Canadians must continue to have confidence in the RCMP: confidence that it has the tools and resources to get a tough job done, and also confidence that the rights of all will be respected as the RCMP does its job.

There are great challenges for civilian oversight agencies as well.

When the Anti-terrorism Act was being debated, both the Minister of Justice and the Solicitor General of the day pointed to the Commission as playing a large role in ensuring that the new police powers are exercised appropriately.

Oversight agencies are left to interpret what Parliament intended when they granted the RCMP these new powers.

The focus of the anti-terrorist legislation is the prevention of terrorist acts as opposed to the prosecution of terrorists.

As a result, many cases in which the RCMP exercise or implement these powers may never get to court.

We have received a complaint where this happened.

A woman complained that the RCMP executed a search warrant at her residence in the middle of the night without justification.

She was told that the search had been conducted in the context of suspected terrorism activities, but she believes that her family was singled out because of their Arabic descent.

When I spoke to a Muslim Canadian group in London Ontario, similar accusations were made, although people told me they were too frightened to file a complaint.

Normally, the courts take the lead in explaining the laws regarding police conduct, but this will not happen if the case never gets to court.

That leaves the civilian oversight mechanisms to ensure that the new powers are used fairly.

We have seen several newspaper articles over the last year about the preventative arrests of 21 men from Pakistan, stories of Mohamed Harkat, Mahmoud Jaballah and Adil Charkaoui.

We have received five complaints involving RCMP activities under the anti-terrorism legislation. This is probably the tip of the iceberg.

We have heard from Raja Khouri, the national president of the Canadian Arab Federation that the Arab Canadian community fears that the expanding security powers are being used disproportionately against its members.

But how do we monitor the way the RCMP uses its new power? Now, this is a real challenge.

I can tell you that the Commission is not being given access to vital information that we need in order to fulfil our mandate in this area.

The RCMP may have greater powers, but the agency with oversight responsibility does not.

We do not have audit powers. We do not have access to judicial warrants or the affidavits upon which the warrants are based.

This year, we were forced to take the RCMP to The Federal Court of Canada to get clarification as to what is considered relevant material.

It is our contention that we should have access to all relevant material, including affidavit information. The Act that governs us clearly states we need all relevant material.

However, the RCMP does not agree and in their court submission, they go as far as saying that they should be the ones deciding what is relevant, not the Commission.

In my view, that is a bit like letting the fox guard the chicken coop.

Without the ability to review the affidavit information filed by RCMP officers in cases where there is a complaint that the affidavit information is wrong, we simply cannot do the job that Parliament assigned to us.

The legislation governing the Commission has not been examined since we were created.

However, The environment we work in certainly has changed since 1988.

I hope that Parliament will take the time to review our situation when they undertake the statutory review of the Anti-terrorism legislation.

Without proper tools, they are asking us to perform oversight with partial vision.

If civilian oversight of police is not a priority, then we expose ourselves to the risk of entrenching a change in police practices that will be ultimately injurious to our democratic way of life.

We need to take care, that in trying to root out one form of tyranny, we do not tolerate another.

Finally, I would like to discuss accountability. We are often asked what impact Commission recommendations have on improving RCMP conduct.

Determining this impact is not easy.

Paramount issues of concern for the Commission include: high-speed police pursuits; treatment of mentally ill persons; deaths in custody; and the anti-terrorism and organized crime legislation.

Other areas of concern that the Commission monitors on a regular basis include: excessive use of force; unlawful entry; inadequate note-taking; improper seizure of property; conflicts of interest and investigative detention.

We often have a different opinion on these issues than the RCMP. We know we will not agree on every issue but incremental progress is being made every year as recommendations become adopted and understanding of our mutual roles increases.

Over 80% of our adverse findings and recommendations were accepted by the RCMP Commissioner last year.

He has also provided much more detailed explanations for his positions regarding Commission findings and recommendations.

Most importantly, the Commissioner has taken the additional step of reporting on the implementation of our recommendations.

This will serve to strengthen the complaint process and provide better service to Canadians. It demonstrates accountability as a tool to increase public confidence in RCMP policing.

Despite our challenges, the Commission will continue to be a leader in identifying trends and problems as they emerge.

We will analyse them and we will play an important role in fostering excellence in policing through accountability.

Thank you for the opportunity to share these thoughts with you today.