

# COMMUNIQUE

(Newsletter of the Canadian Association for Civilian Oversight of Law Enforcement)

(L'Association Canadienne de surveillance civile du maintien de l'ordre)

Vol. 1 Issue 3

May 1997

## *Editor's Message*

I am pleased to have completed the spring edition of *Communique*, with the outstanding assistance of **John Yoannou** and **Jill Martin**. This marks the third issue we at the office of the Ontario Police Complaints Commissioner have produced for CACOLE.

It was a great pleasure meeting our members at the 1996 conference in Halifax and receiving such positive feedback on the newsletter. I am delighted that it has met your expectations in providing timely articles and issues on civilian oversight, while at the same time acting as a means of keeping us in the field informed and connected.

It was decided by CACOLE members at the October conference meeting, that the Board of Directors should be enlarged to include representatives from all provinces and the First Nations.

It is, therefore, with pleasure that I announce the following people have agreed to serve on the Board for the coming year:

Patrick Knoll	Law Enforcement Review Board, Edmonton, Alberta
Elton Gritzfeld	Office of the Complaints Investigator, Regina, Saskatchewan
Kathleen Wingate	New Brunswick Police Commission
Dan Christmas	Membertou First Nations, Sydney, Nova Scotia

I know their presence on the Board will enhance our very strong Association.

I have enclosed a membership form for 1997, and I encourage you to renew your membership immediately. Also, please distribute copies to those who might be interested in joining CACOLE as Associate Members. A strong membership allows us to carry out the work of this organization and ensure that we are in a position to stage meaningful and exciting conferences.

The 1997 conference will take place in Ottawa from September 13-15 at the Minto Place Suites Hotel and follows immediately the IACOLE conference scheduled for September 10-13, also taking place in Ottawa at the Chateau Laurier Hotel. This will give people involved in civilian oversight in Canada an opportunity to meet and discuss issues of mutual concern with colleagues world wide. I know this conference will prove exciting to all participants. It will be the biggest that we have ever held and one that CACOLE will be proud to host.

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### ***Editor's Message***

Organization of the conference is now underway, with Jean Beeler, Bert Giroux, Celyne Riopel, Marlene Jennings, Jennifer Lynch and myself on the planning committee. If you would like to recommend someone to make a presentation either as a formal speaker or in a workshop setting, please submit their names to me as quickly as possible. I want to say how very much we have enjoyed producing this newsletter and to thank you for the tremendous amount of support you have shown through your comments and by contributing excellent articles and features.

As always, I welcome any comments you may have and I can be reached at:

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### ***Worth Repeating***

*The following is an edited version of remarks by The Honourable Jean-Pierre Beaulne, Q.C. - Chairman of the RCMP Public Complaints Commission at the annual staff meeting of Ontario's Police Complaints Commissioner).*

You may wonder why I chose to leave the relative peacefulness - la quietude - of the Bench in October 1992, where I could have continued sitting for a number of years, to embark on this course. In fact, you may wonder why any judge would do so! Well, I had been sitting for 25 years. I was informed that the then Prime Minister was interested in appointing me to the chairmanship - I therefore asked for material relating to the Commission, which was relatively new. I became engrossed in the topic and decided that it was a most important venture for the quality of life of Canadians, perhaps the most important. I therefore accepted the appointment and my experience of the past four years has confirmed the wisdom of my decision.

In 1994, the high echelons of the RCMP were involved in a cost-cutting exercise and invited me to address them - I obviously spoke in favour of retaining their well-organized Internal Affairs Branch which is essential to our mandate since, according to our Act, the initial investigation and informal resolution processes are to be carried out by the RCMP, subject to the Chairman's powers to initiate his own complaint and his own investigation, and I said:

*"...Let me restate the role and underlying rationale for the existence of our Commission, that is to ensure*

- 1. that in examining complaints, the public interest in the fair and proper enforcement of the law is taken into account; and*
- 2. fair treatment for RCMP members against whom allegations are made."*

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### *Worth Repeating*

I was therefore quite pleased to have with us, at the Commission's annual meeting the following year, RCMP Commissioner Phil Murray as our after-luncheon speaker. His presentation has been reproduced in our most recent Annual Report to Parliament. It is Canada's top policeman's views on civilian oversight and our Commission as a civilian oversight body. Here are some of his remarks of great interest, I feel, to all of us.

*"Civilian oversight is often regarded as a yoke around the police manager's neck - an unnecessary burden, without which a police force would have a much easier time getting on with the job of fulfilling its mandate...*

*Members of the Public Complaints Commission know that the RCMP do not share this view. In fact, I perceive civilian oversight as a way of helping RCMP managers to improve service delivery by identifying weaknesses in their programs...In this context, public commissions offer extra tools to evaluate the success of our work..."*

*I am firmly convinced that civilian oversight can only be successful in an atmosphere of mutual respect, cooperation and understanding of each other's viewpoint and role. In a very short period of time, the RCMP and the Commission have moved successfully in that direction."*

Now, a number of different approaches have been taken in Canada and abroad in overseeing complaints against the police. The approach taken by the Parliament of Canada

with respect to external review of the RCMP is one such approach and, as indicated by Commissioner Murray, has served and continues to serve both the public and the RCMP well.

Civilian oversight of law enforcement in Canada took a great step forward in Victoria in September 1995, with the setting up of CACOLE, the Canadian Association for Civilian Oversight of Law Enforcement. The new body brings together many of the federal, provincial and municipal agencies active in the field.

Civilian oversight is raising interest in many countries. A recent publication of the Australian Law Reform Commission states:

*"Calls for greater external review of police conduct, including the complaints system, have increased over the last 20 years. In Australia and comparable overseas countries there has been a discernible and continuing trend for greater civilian oversight of complaints against the police."*

IACOLE, the International Association for Civilian Oversight of Law Enforcement, held its 1995 World Conference in Vancouver just prior to the Victoria meeting; its theme: A Global Commitment to Civilian Oversight.

The timeliness of this conference theme was clear from a visit I made in May 1995, as part of a Canadian International Development Agency (CIDA) -sponsored mission to Brazil, led by Professor Errol Mendes of the

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### ***Worth Repeating***

University of Ottawa's Human Rights Research and Education Centre. The mission examined, among other issues, institutional violence and the accountability of law enforcement agencies. I was invited to return to Sao Paulo, under a well-defined joint project of the Universities of Sao Paulo and Ottawa under the sponsorship of CIDA to support Brazilian initiatives to reduce institutional violence by promoting police accountability and encouraging dialogue. More recent meetings with Foreign Affairs and CIDA officials have taken place as a follow-up to the mission, I have also been invited by the Canadian Human Rights Commission to attend meetings with Mexican and Indonesian delegations interested in this topic. Ontario's Police Complaints Commissioner has also been very active in this field. This is one area in which our Canadian experience could be of invaluable assistance to other countries, and we could play a most useful role in the international field.

I also believe that it is important to refer to British Columbia's Oppal Commission. In its letter of transmittal, we find the following:

*"The public complaints procedure and the police discipline system have created much concern and discussion. Few areas of policing have provoked as much discussion as the subject of civilian oversight of police conduct. Public accountability has been a recurring theme during the commission's deliberations...*

*There is a compelling need in this province for strong, independent civilian oversight of the police. Therefore, we have recommended the establishment of an office of a complaint commissioner operating at the level of an ombudsperson who would have the complete authority to oversee all investigations, which would be conducted by the police. In the event that the complaint commissioner found the investigation of an officer to be inadequate or flawed, he or she would have the authority to conduct a further investigation, either by the same investigators or investigators chosen by the commissioner."*

In a well-researched paper by Ontario's Police Complaints Commissioner, I fell upon these particular lines which, to me, spell out an essential element of civilian oversight:

*"a fundamental position of this paper is that civilian oversight of police conduct should be independent of police and police governance, and focus specifically on issues of police conduct in particular situations..."*

Bravo, and I totally agree. For you have very well defined the concept in drawing the distinction between civilian governance of the police, which makes police officers accountable to civilian authorities for administrative and operational matters, and civilian oversight, which deals strictly with matters of accountability related to police conduct. Both are essential aspects of civilian control of police to ensure their accountability to the public.

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### ***Worth Repeating***

This is why it is essential that there be independence and an arm's length relationship between civilian governance, under whatever guise it is established, and civilian oversight. In our case, the Solicitor General of Canada, who under the *RCMP Act* has direction over the RCMP, has civilian governance of the Force, but the civilian oversight is with our Commission. And, I can assure you that there is an arm's length relationship between the Minister and the Chairman of the Commission,

for that matter, between the Department and the Commission.

Ontario is the most populous of Canadian province. Its Office of the Police Complaints Commissioner has accomplished much since its inception 16 years ago and has, with its sister agencies in Canada, firmly established civilian oversight of law enforcement as one of the essential bulwarks of a free and democratic society. It is a beacon on the international scene.

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### ***The Relevancy of Civilian Oversight in the Processing of Complaints Against Police Officers in Nova Scotia***

by

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(Chairman, Nova Scotia Police Commission 1990-94)

A close examination of external or civilian oversight mechanisms in dealing with police accountability reveals that they vary in form and process. Civilian review boards may involve a completely civilianized system from complaint reception to disciplinary recommendation, or simply refer to the option of civilian review of appeals following an investigative outcome and finding by the police. Although there appears to be no universally accepted scheme of dealing with complaints against the police, the history of police accountability mechanisms suggest that there has been a great deal of debate about whether or not a civilian component should constitute, in whole or in part, any arrangements in handling complaints against the police. The civilian oversight mechanism introduced in Nova Scotia is itself a multistage process incorporating within it a civilian review component and as such represents a hybrid system of dealing with complaints against the police. Very little is known about this system or for that matter how such two-branched mechanisms operate in practice. What role does an external or civilian review play as part of a police accountability mechanism? Are there benefits that accrue to the police and the public as a result of incorporating internal and external elements within a single review mechanism?

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### *Relevancy of Civilian Oversight..*

In responding to these questions, a survey of the trends and patterns of complaints made against municipal police between 1988 and 1994 was undertaken. Included in this survey were 26 municipal police departments with a total complement of 762 police officers servicing a population of 342,197. The information for this survey was based on complaints filed with the Nova Scotia Police Commission as mandated by the Nova Scotia Police Act and includes an analysis of civilian or Police Review Board cases.

Insofar as trends are concerned, the number of public complaints rose very sharply between 1988 and 1992 (by 251 percent), dropped slightly in 1993 and continued to spiral upwards in 1994. Over this seven year period, 9 out of 10 public complaints were one of three disciplinary defaults: abuse of authority, discreditable conduct or neglect of duty. Internal disciplinary matters, on the other hand, declined over this 7 year period.

In this survey, the majority of public complaints and internal disciplinary matters were resolved at the initial stage of the complaints process, namely at the level of the police department. Of all the public complaints reported between 1988 and 1994, only 12 percent were appealed beyond the police department to the Nova Scotia Police Commission. However, a larger proportion of cases (20 percent), involving disciplinary action taken by senior police managers against their members arising from internal disciplinary matters, were similarly appealed to the Commission.

The data also indicated that 6 out of every 10 public complaints were either informally resolved or withdrawn following investigation by the Commission. Appeals arising from internal disciplinary matters

automatically were forwarded to the Police Review Board for a hearing. Between 1988 and 1994, the Police Review Board held a total of 53 hearings (30 involving public complaints and 23 internal disciplinary cases). This represented 5 percent of all recorded public complaints and 15 percent of all internal disciplinary matters.

Aside from the majority of public complaints and internal disciplinary matters being resolved at the level of the police department, the decisions reached by the Police Review Board in cases of conflict are significant in determining the validity of public complaints and disciplinary actions taken by senior managers. Upon further examination of public complaints before the Police Review Board between 1988 and 1994, it was discovered that 97 percent of complainants' appeals were dismissed. In only one case before the Police Review Board was the original disciplinary officer's decision overturned and discipline imposed upon a police officer. Despite the small number of cases, the findings of the civilian or Police Review Board overwhelmingly support the investigative findings and decisions of police managers carried out during the first stage of the complaints process.

Despite the lack of confidence the public may have in police investigating and adjudicating public complaints, there appears to be no justification for believing that such internal reviews are flawed or lack credibility. Moreover, police officers themselves have often been sceptical and critical of independent forms of outside scrutiny. The results of this study demonstrate in a rather limited manner that such police attitudes may not be warranted.

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### ***Relevancy of Civilian Oversight***

The findings of the civilian or Police Review Board in respect to appeals of disciplinary decisions by police officers are interesting as well. In 39 percent of the disciplinary appeals, the Board upheld the disciplinary decisions of police managers and the sanctions originally imposed remained the same. However, in 56 percent of the appeals, the Board found in favour of the appellants and either eliminated the sanctions all together or imposed lesser penalties. Once again, despite the few disciplinary appeals before the Board, the results suggest that police officers may not be disadvantaged as a result of appealing their cases and that criticisms of civilian overseers being biased against the police may be unwarranted. With the majority (83 percent) of appellants being constables, this data suggests that such criticism may be more a function of one's position within the organizational hierarchy of policing. Since senior management is the legitimate authority for imposing discipline on its members, it may be this group that feels most threatened by external review.

The legitimacy with which any review system is viewed by either the police or the public is critical to the effectiveness of that system. Generally the involvement of civilians in police review processes can be viewed as a check upon the "police perspective", since police officers themselves consider the inclusion of a police officer's perspective as critical. The problem with civilian review from the police perspective is that civilians will not understand the police officer's job and perspective. The consequences of this may be that civilians perceived situations involving public complaints differently and adjudicated them accordingly. Since the initial investigation of public complaints is carried out by their own members, the involvement of civilians during the later stages is important in ensuring that the "police perspective" is not totally controlling the disciplinary outcome. In this study, there appeared to be a great deal of congruence between the decisions reached by the police and civilian overseers dealing with public complaints. Where differences in disciplinary outcome did occur, it was with respect to internal disciplinary matters, and in these cases, civilian review either tempered disciplinary action or eliminated it altogether.

One of the problems with police or internal review mechanisms is not "can" police carry out an effective, fair, and impartial investigation of public complaints and appropriately discipline one another, rather, it is "do they?" In light of these limited findings, the answer to this question may be "they can" and "they do." With regard to the issue of internal discipline, the results suggest that police organizations may be much more punitive and less tolerant of misconduct than the public believes. That being the case, one has to consider whether police administrators are more prone to worry about civilian review knowing their disciplinary decisions may be appealed and possibly overturned. In any event, by injecting a civilian perspective into a system of police accountability it should have a positive effect upon the legitimacy of that system, both in the eyes of the police and the public.

### *Radical Reforms to Civilian Oversight*

Civilian oversight is under severe scrutiny in three Canadian provinces and, in one case, a 16-year accountability process is facing total elimination. The most serious impact is on the Police Complaints Commissioner's (PCC) office in Ontario where, ironically, the civilian oversight model has been consistently recognized internationally for its strengths since 1981. The government has introduced legislation to eliminate the PCC as well as the Board of Inquiry which adjudicates cases referred to it by the Complaints Commissioner and local police chiefs.

The proposed bill gives police management greater autonomy in processing public complaints without initial independent civilian oversight. It would return the intake and the monitoring, investigation and initial adjudication responsibilities to local police services, while some appeal functions would be absorbed by the new Ontario Civilian Commission on Police Services (OCCOPS). The current mandate of this quasi-judicial body to enforce policing standards, conduct and performance would be expanded to absorb the remaining PCC and Board of Inquiry functions but limit oversight to essentially an appellate role. OCCOPS is under the jurisdiction of the Ministry of the Solicitor General and Correctional Services. Currently, the PCC and Board of Inquiry report through the Attorney General to the legislature.

Many citizens' groups and media have criticized the government for "turning back the clock" in Ontario in regards to civilian oversight and its positive impact on police-civilian relations. One newspaper columnist wrote: "The bill would put police oversight in

the hands of police chiefs without the checks and balances of independent, civilian investigation and effective review. ... Given that there will be no meaningful civilian oversight, is the public adequately assured that police will be accountable for their conduct, and will the police be sure that they will maintain the confidence of the public in the new system?"

Once passed by the provincial legislature, likely by late spring, the revised public complaints process will be phased in by January 1, 1998.

Meanwhile, changes to the civilian oversight of police are also included in a plan for comprehensive re-structuring of the justice system announced by British Columbia's Attorney General.

Legislation establishing a new, independent public complaints commission for municipal police forces is expected to be tabled during the spring session of the Legislative Assembly.

The reform package includes the elimination of both the current B.C. Police Commission and provincial funding for the Law Reform Commission. With the exception of complaints and appeals functions, other Police Commission responsibilities are gradually being transferred to the Public Safety and Regulatory Branch of the Ministry of the Attorney General. They include: training and support for police boards and Tribal Police Forces, public attitude surveys, and research and policy work.

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### *Radical Reforms to Civilian Oversight*

And in the province of Quebec, a government-sponsored report has called for an overhauling of the province's Police-Ethics Committee, and recommends that complaints against law-enforcement officers be investigated by non-unionized police from outside the department under scrutiny, and the police complaints process be streamlined. The report's author, former university rector Claude Carbo, says the changes, if adopted, will save taxpayers millions of dollars annually and restore the public's faith in a complaints system that, in his view, has become bogged down in delays and bureaucracy.

But Montreal city councillor, Marvin Rotrand along with IACOLE and CACOLE members, do not see it that way. "The system does not require wholesale change," said Rotrand. "It's not broken, it's affordable, it works well. The Quebec model is regarded as one of the most transparent, impartial and civilian-dominated systems in North America."

Nevertheless, Quebec's Public Security Minister said he hopes to have amendments to the police ethics law submitted to the National Assembly by the spring.

Lastly, Dr. Maurice Hayes completed his review of the police complaints system in Northern Ireland.

Dr. Hayes' report made some of the following recommendations:

- 1) Independence - to ensure independence, it was recommended that the Police Ombudsman should be responsible for the complaint process and report to Parliament.
- 2) the Ombudsman, should have complete control of the complaints process deciding how the complaints would be handled and by whom.
- 3) there would be three categories of complaints. The complaint body would be responsible for investigations of the most serious complaints; less serious but substantial complaints at the discretion of the complaint body might be sent for police investigation either supervised or not, and quality of service complaints would be sent to police for informal resolutions.
- 4) Disciplinary cases should be heard by a totally independent tribunal with presentation by the Ombudsman.

You may obtain a copy of the report from Dr. Hayes at the: Independent Reviewer of the Police Complaints System, c/o P.O. Box 335, Belfast, BT4 3RQ.

*Investigative Reporting - An Investigator's Perspective*  
- by Jamie Mask\*

On October 1st 1996, I was one of two presenters at the Investigative Reporting Workshop held at the 1996 CACOLE Conference in Halifax.

Investigating investigators is not an easy task. Reporting on these investigations can be equally difficult. While most of the standard principles of investigative reporting apply, there are some issues that are unique to investigations concerning police conduct.

Let me begin by clearly defining the term investigative report. It is a summary of investigative steps and evidence obtained. Preparing a report on an audit or review of a pre-existent investigation is not a true investigative report. In these types of retrospective "investigations", the writers often include conclusions and opinions to assist the decision maker. This is usually a responsibility that the decision maker has delegated to them. In the case of a true investigative report, the writer is generally a fact finder and should prepare the report accordingly. Unless the decision maker has delegated decision authority or participation in the decision process to the investigator, the investigator should refrain from including conclusions and opinions in the report. The investigator is often too close, by virtue of his/her involvement in the investigation, to objectively draw conclusions. In the course of any investigation, the investigator must form theories to assist in pursuing possible leads and obtaining evidence. It is difficult to later dismiss these theories to allow for objective conclusions. Conclusions included in an investigative report by the investigator can also lead to further problems if the person authorized to make the decision does not concur with the investigator's conclusions.

Having said that, the investigator is also the individual who is most familiar with the investigation. Accordingly, the investigator should include an investigative analysis of the evidence. The analysis should highlight all of the evidence that pertains to the conduct being investigated and identify any evidence that supports or does not support misconduct. The analysis should be thorough, factual and objective.

The next issue I would like to address is that of police officer statements. Whether or not police officers are required to provide a statement varies greatly amongst the various jurisdictions across the country. It may depend on whether the police officer is a subject of the complaint or a potential witness; whether the alleged conduct is criminal in nature; whether there is legislation or police service policies compelling officers to provide a statement; and, whether the allegation concerns on duty or off duty conduct.

Suffice it to say that obtaining police officer statements can be difficult at the best of times and when they are obtained they are usually exculpatory in nature. Despite this, they are often key to accurately reporting the results of an investigation. It is therefore very important to include them in the report in their entirety where possible. This allows the reader to assess credibility by examining the consistencies and inconsistencies with other evidence contained in the report, such as other statements, police reports, police notes and so on.

Another area of concern is with respect to public access to the contents of an investigative report. Investigative reports often end up in the public domain due to

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### ***Investigative Reporting***

access to information legislation or a willingness on the part of some recipients to share the reports with the media. Because of this, it is important that investigative reports remain focused on the information that is pertinent to the conduct being investigated. For example, details of a police tactical or intelligence procedure are not necessarily something that should be in the public domain. If there is a relevant portion of a procedure or policy, then the report should only refer to that portion and should not include the entire procedure or policy. Doing so could jeopardize future police actions should the report be shared with the public.

Thoroughness is the hallmark of any good investigation, and this is true with an investigative report. It has been said that there are no poor investigations, only poor reports. A properly prepared report should include all investigative steps taken, regardless of whether the steps were later found to be irrelevant or did not result in evidence. This allows the reader to be aware of not only the evidence collected but also what other leads were ruled out. Omitting these steps from the report can bring the thoroughness and credibility of the investigation into question.

The last area of concern I would like to address is the language used in an investigative report. Many police conduct investigators have backgrounds in policing or in government and have developed writing styles that are influenced by their background. The reader of a report may not be familiar with related jargon or acronyms. This could lead to misunderstandings and misinterpretations of the content of a report. A report should be written on the assumption that the reader knows nothing about the incident, the investigative process or policing. This will ensure that the writer prepares the report in a way that it will be properly and consistently understood by all who read it.

The language should always be kept simple and precise. A clear, concise, chronological and objective report, in plain language, is the best way to ensure that the reader receives the information that the writer intended.

*\*Jamie Mask is a member of the Ontario Police Complaints Commissioner's staff and a regular contributor to **Communique**.*

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### ***Wide-Ranging Recommendations Have Nation-Wide Relevance***

Ontario's Police Complaints Commissioner (PCC) says recent recommendations by his agency have relevance for police services across the country.

The Honourable Gerald Lapkin made the comment to local and national media who responded to his release of two separate sets of community-based recommendations regarding searches of persons and policing of

native communities.

Highlighting 14 suggestions in the area of native policing, Commissioner Lapkin proposes a "mentor" system pairing officers with aboriginal elders to ease friction between natives and authorities. "I believe that such a system would be a first in Canada," said Commissioner Lapkin. The issues and

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### ***Wide Ranging Recommendations Have Nation-Wide Relevance***

complaints that arise from them are not restricted to Ontario. Allegations including harassment, racial prejudice, excessive use of force and abuse of authority have been made to our agency in recent years."

Commissioner Lapkin's recommendations also call for the Ontario Provincial Police to establish a northern recruitment officer who would assist in the development of criteria to improve the manner in which officers are selected for such assignments. The proposed hiring process would feature community feedback on the suitability of candidates and include initiatives aimed at encouraging officers to volunteer for and remain at assignments in remote native communities. First Nations and police have clashed across Canada in recent years, including at a month-long, land claim standoff at B.C.'s Gustafsen Lake in 1995. In Ontario last year, a native protestor was shot and killed during an occupation of Ipperwash Provincial Park. One officer has been charged and found guilty of criminal negligence in the death.

Meanwhile, the most extensive community consultation ever undertaken by Ontario's PCC has resulted in recommendations to standardize police practices and procedures regarding searches of the person.

"A search of the person is a potentially intrusive act which threatens the dignity of an individual," said Commissioner Lapkin. "It is my view that there should be consistent standards and procedures for all police services in the province which take into account the invasion of personal privacy during a search as well as legitimate policing objectives."

A key proposal in the package of almost 40 recommendations calls for police to establish a separate and comprehensive section within their policies and procedures manual providing a single, consistent reference to personal searches. The PCC's research revealed little uniformity within individual police services.

The recommendations proposed by the PCC strike a balance between search of the person as a means of ensuring officer safety and as a tool for securing evidence of a crime or articles which may be used for escape, and the right of individuals to be free from unreasonable search and seizure. Through its recommendations authority, the office of Ontario's Police Complaints Commissioner has made more than 150 recommendations to the province's police services since 1981, with the vast majority accepted.

(Anyone wishing complete sets of the above recommendations are asked to call Susan James at the PCC (416) 325-4681)

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### ***MEDIA CLIPPING***

### ***Reviewing Native Police Centre Stage at Conference***

HALIFAX, Nova Scotia  
September, 1996

The role of civilians in reviewing the conduct of newly-created native police forces highlighted the first day of the Canadian Association for Civilian Oversight of Law Enforcement national conference.

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### *Reviewing Native Police Centre Stage at Conference*

Responding to complaints about officers in the new native agencies such as the Unama'ki tribal police in Cape Breton were tackled in a panel discussion.

The Unama'ki force oversees the Mi'kmaq reserves at Eskasoni, Membertou, Chapel Island and Whycocomagh.

Two judges who presided over major police corruption and racism inquiries also shared their insights at the association's second annual national conference in Halifax.

Newfoundland Chief Justice Alex Hickman, who oversaw the Marshall inquiry, was the keynote speaker. His recommendations into police and judicial racism included the creation of four

commissioners to review the conduct of municipal police forces in the province.

Cape Breton Mi'kmaq Donald Marshall spent 11 years in jail for a murder he didn't commit.

RCMP Insp. Gessie Clement, who served as UN civilian police mission chief of operations after Haiti's overthrown government was restored in 1995, was part of a panel about civilian reviews of police in emerging democracies.

And University of Ottawa professor Errol Mendes discussed his three-year civilian oversight project in Brazil.

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### *MEDIA CLIPPING*

#### *Mounties Sue Watchdog Agency*

CALGARY, Alberta

October, 1996

Three Alberta-based Mounties are suing the RCMP's watchdog agency for \$1.5 million in a case involving the 1992 Yellowknife mine dispute that ended with the deaths of nine men.

Calgary Inspector Dennis Massey, Corporal Amrik Virk of Stony Plain and Constable David Joyes of Hobbema are suing the RCMP Public Complaints Commission and its chairman, Jean-Pierre Beaulne. They are claiming defamation and malicious prosecution in the precedent-setting case. It's the first time an RCMP member has sued the commission since it was created in 1988.

The statement of claim alleges the officers' reputations were harmed and they suffered mental anguish because of the inquiry.

Lorne Goddard, a Red Deer lawyer representing the officers, said the commission decided to proceed with a public inquiry despite evidence showing the officers acted properly.

The suit follows the commission's public inquiry in January, 1995, into the conduct of the three officers, who were stationed in or near Red Deer at the time and were members of the RCMP emergency response team. The commission exonerated all three officers following its public inquiry.

The three were sent to Yellowknife to assist police in handling a violent and bitter labour dispute between the Canadian Association of Smelter and Allied Workers Union and the owners of the Giant Gold Mine.

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### *Mounties Sue Watchdog Agency*

The union complained to the commission the officers used excessive force after a firearm was aimed at strikers on a picket line on mine property June 2, 1992.

Pierre Delage, general counsel for the commission, said the lawsuit was a surprise.

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### ***MEDIA CLIPPING*** ***Video May Vindicate Police***

CALGARY, Alberta  
November, 1996

A home video of a skirmish between Calgary police officers and a group of mostly black students shows officers acted properly, the police service says. But black community leaders say they won't draw any conclusions until they've seen the entire 11-minute tape, not just the excerpts shown on television. Nineteen people face a number of charges - ranging from causing a disturbance to assaulting a peace officer - following the October 10th clash at a transit station.

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### ***MEDIA CLIPPING*** ***Policing the Police***

TORONTO, Ontario  
May, 1997

Ontario Provincial Police Sergeant Kenneth Deane was found guilty this week of criminal negligence in the 1995 death of Dudley George, in a shooting that marked the first killing of a native land-claims protester by police in this century. It is one of the rare instances of an officer being found guilty of unlawfully taking a life. The judge said that Sgt Deane, second in command of an elite tactical-response unit deployed against a small group of native squatters at Ipperwash Provincial Park, knowingly shot an unarmed man and then lied about it. Judge Hugh Fraser also said that the testimony given in support of Sgt. Deane by some other members of the force reflected efforts to "concoct a story...in an ill-fated attempt to disguise the fact that an unarmed man had been shot."

The police are not perfect. Sometimes they make mistakes in upholding the law, and

sometimes they even undermine and violate that which they are sworn to preserve. Like all other branches of government, they must be subjected to outside oversight, particularly because they hold a monopoly on the use of force. The police cannot police themselves - not because they are by nature any more suspect than the rest of us, but simply because they are no less human.

Which is why some sections of Ontario's Bill 105, the Ontario Police Services Amendment Act, come as such a surprise. For some time, Ontario has had what is arguably Canada's finest system for handling complaints against police. That is about to be compromised, and replaced with one in which the police are mostly responsible for investigating the police. The blueprints don't look promising.

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### ***Policing the Police***

Under the current law, Ontario has a Public Complaints Commission, which has the power to investigate and adjudicate cases of police wrongdoing. In practice, most complaints are initially handled by the police themselves but police must keep a careful record of their investigation and provide monthly reports on the handling of every complaint to the commission. What's more, the commission can at any time decide to take over and conduct its own investigation, including the holding of a board of inquiry, a trial of police officers under the Police Services Act.

Under Bill 105, however, the commission will be turned into a purely appellate body. It will not conduct its own investigations. There will be no independent boards of inquiry. Chiefs of police will be given entire responsibility for the initial handling of complaints, but, unlike in the current system, they will be under no obligation to inform the commission of the existence of complainants or keep the commission apprised of the progress and outcome of individual cases. The Special Investigations Unit will still deal with all incidents involving the use of deadly force - but in all other cases involving accusations of police malfeasance, the capacity for civilian oversight will be greatly reduced.

Ontario's system has been much emulated; both Quebec in 1990 and British Columbia in 1995 used Ontario as a model when they decided to expand the scope for independent investigations of their police. And in Ontario, Metro Toronto's own Police Services Board called on the government last month to shelve the police-complaints sections of Bill 105, "The proposed complaints system," said the board. "is a dramatic departure from the current system and may not support progress that has been made in police-community relations in Metropolitan Toronto over the past few years."

Why is the government trying to break something that doesn't need fixing?

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### ***MEDIA CLIPPING***

#### ***Conflict Erupts Over Police Accountability***

*(This article appeared prior to the completion of the Corbo Report  
on the police complaints process)*

MONTREAL, Quebec

November, 1996

To say that policing in the Montreal Urban Community has a bad reputation is to engage in the greatest of understatements.

One need only recall the familiar litany of men who have died at the hands of police over the past 10 years; Anthony Griffin, shot in 1987; Marcellus Francois, 24, shot in 1991 in a case of mistaken identity; Richard Barnabe, 39, beaten to a pulp in 1993 after breaking a church window; and Martin Suazo, 23, shot in 1995 after he was suspected of shoplifting.

Their names, and those of others who have died while tangling with the police, are repeated in news story after news story. Add to that the frequent reports of less-deadly hassles and the result is a widespread impression that Montreal's finest are brutal, out of control and racist (since many of

*(con't on page 16)*

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### ***Conflict Erupts Over Police Accountability***

the dead men were black or Hispanic). And don't even mention the *Surete du Quebec*, the provincial force that is about to undergo another review of how it carries out investigations.

"The Quebec system is one that other provinces look to as one of the most advanced," said Frances Gordon, British Columbia's police-complaints commissioner and a founding member of the Canadian Association for Civilian Oversight of Law Enforcement. Only Ontario rivals Quebec in terms of transparency and civilian control of the process, she said.

But the MUC police say the complaints process is unwieldy, time-consuming and expensive.

The police say the process scares most civilians away: Only 18 per cent of complaint forms handed out are filed with the police-ethics commissioner. On average, 28 months pass between the lodging of a complaint and the final decision by the police-ethics committee. If a decision is appealed to the Quebec Court, the time between initial complaint and final decision increases to an average of 53 months.

All that time costs money. From 1990 to 1996, the MUC police service says, it spent about \$1.6 million on lawyers' fees for its accused officers. From 1990 to 1995, the administration of the complaints process cost almost \$230,000; investigations, which are carried out by MUC police, cost about \$1 million; and time lost while testifying before the committee was calculated to have been worth a little more than \$1.9 million.

MUC Police Chief Jacques Duchesneau said the whole process would be better and cheaper if it were part of his "neighbourhood policing" project, which sets

up more police stations throughout Montreal Island and gives more autonomy to local commanding officers.

The chief said a citizen who feels an officer has breached ethics should complain to the commanding officer of his or her neighbourhood station. The commanding officer would decide whether to attempt mediation or conduct an internal investigation.

Based on the investigation's outcome, the police chief would decide whether the accused officer should appear before a discipline committee. The complainant could appeal that decision to the police-ethics commissioner.

If Chief Duchesneau had his way, the police-ethics commissioner, now the first stop in the complaints process, would be the last resort.

The police chief's motives are no doubt noble, but his plan would result in the police policing themselves, said Marvin Rotrand, an opposition-party city councillor.

Mr. Rotrand said the MUC could save money if it didn't pay accused officers' legal fees, a deal that isn't in any law but is part of the police union's contract.

The complaints process might be faster if the board overseeing police services had the same powers as similar boards in other provinces. Mr. Rotrand said this board could handle issues such as high-speed chases, the use of pepper spray and hiring more members of visible minorities, leaving police brutality, failure to uphold duty and other breaches of ethics to the police-ethics commission.

Unlike so many other aspects of law enforcement in Montreal and in the province of Quebec, it seems the police-ethics system needs tinkering, not wholesale change.

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### ***Conflict Erupts Over Police Accountability***

"It's not broken," Mr. Rotrand said. "It's affordable. It works well. The Quebec model is recognized as one of the most transparent, impartial and civilian-dominated systems in North America."

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#### ***MEDIA CLIPPING Policing the Police***

Montreal Gazette  
November, 1996

The more one looks at the Montreal Urban Community police proposal to increase their power to police themselves, the more it appears harebrained.

The plan, which the MUC's public-security committee is studying, would have commanders of local police stations handle all complaints lodged by citizens against police officers. These would include complaints about everything from rudeness to brutality. This system would replace the present provincial board that evaluates complaints - a board on which civilians form a majority.

Under the plan, the complainant would not meet with the commander, who would judge the case. Instead, the citizen would be filtered through investigating officers, who would give the commander a report. Citizens disappointed with the way the police department handled complaints could then appeal to the province's civilian-dominated board. But the need to take this additional step would likely discourage many plaintiffs.

The MUC police proposed this police-policing-themselves plan in response to Quebec Public Security Minister Robert Perreault's announced desire to find ways to cut the system's costs. Certainly, there is room for more efficiency. Two years can elapse between the filing of a complaint and the final decision.

This is a reason for streamlining the system, not for turning back the clock and handing to the police department many of the same self-policing powers that it held before Herbert Marx, a minister in the Bourassa government, designed the existing system.

The Marx scheme's great virtue is that it ensures neutrality in evaluating complaints. The evaluation board includes equal numbers of lawyers, representatives of the public and police officers. Such a climate of impartiality might be hard to find at all station houses.

One thing that particularly vexes the budget-conscious MUC police department is that the union representing its officers routinely appeals to a court most decisions against its members. Because the police department pays for accused officers' lawyers, local taxpayers have paid about \$1.6 million in legal fees since Quebec established the complaint's review system six years ago.

The hard truth is the complaints procedure is not a waste of Quebec taxpayers' money. The existing system costs a total of \$4.5 million a year. Considering that it is helping keep police around the province on their toes ethically, that's a bargain.

**MEDIA CLIPPING**  
***Quebec Force Must Face Police-Ethics Committee***

MONTREAL, Quebec  
November, 1996

The Quebec provincial police force will have to defend itself before a police-ethics committee against more than 50 complaints arising from the arrest of the entire Chambly police department two years ago.

The provincial committee received six complaints against 12 *Surete du Quebec* officers, and about 50 more are expected, said Yves Renaud, the committee's legal counsel.

The 12 have been accused of detaining and interrogating people without arresting them and of denying them their right to a lawyer. The officers also are accused of falsely representing themselves.

Mr. Renaud said it is rare, though not unheard of, for a police force to complain of a breach of ethics by another police force. "It's not unique...but it isn't very often that there are so many."

On September 1, 1994, the SQ stormed into Chambly, a bedroom community about 35 kilometres southeast of Montreal. The police arrested 139 people, including all 24 members of the Chambly force. They were

accused of participating in drug smuggling, prostitution and racketeering and being in possession of contraband.

Five officers eventually were charged with trafficking in steroids, the illegal storing of a firearm, running an illegal gambling operation, being in possession of bootleg alcohol, breaching the public trust and being involved in insurance fraud of less than \$1,000.

As of September, 1995, when a judicial inquiry concluded that the raid was "indefensible," none of the officers had been convicted.

In Quebec, the police ethics commissioner receives complaints against officers and decides whether to reject the charges or take them to the committee. That group decides whether an officers is guilty and, if so, metes out a punishment. The commissioner represents the complainant before the committee.

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**MEDIA CLIPPING**  
***Nova Scotia Chief Justice Addresses CACOLE Conference***

HALIFAX, Nova Scotia  
October, 1996

The man who headed the Donald Marshall inquiry says he's gratified by how the provincial government and police have responded to its recommendations.

Newfoundland Chief Justice Alex Hickman says Nova Scotians should be proud of their Public Prosecution Service, set up to free the criminal justice system from political interference.

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### *Nova Scotia Chief Justice Addresses CACOLE Conference*

Hickman, chief justice of the trial division of the Supreme Court of Newfoundland, was in Halifax to address the Canadian Association for Civilian Oversight of Law Enforcement.

Called to examine why Donald Marshall Jr. spent 11 years in prison for a murder he didn't commit, the inquiry called for sweeping reforms of the Nova Scotia justice system. The independent prosecution office was one of the key recommendations of its 1990 report.

"By and large, the public have no reason to be skeptical (about the law enforcement system), but perception means something and this is why I believe that all provinces in Canada should have a statutorily entrenched director of public prosecutions," Hickman said.

During his speech to the CACOLE delegates, Hickman said that in an era of fiscal restraint, the judicial system should be the last to feel the pinch because without adequate funding, it won't be able to do its job: protect the public and maintain the rule of law.

"If you trace back the history of the justice system and law enforcement in Canada, you will find that even in the depths of the Depression in the 1930's, there seemed to be a position below which the administration of justice was not allowed to go. But if that breaks down, you can have all the social programs in the world, you will find the problems of maintaining and enforcing them will be that much more difficult."

Justice Hickman emphasized it is up to an investigating police officer to lay charges in a case - not a Crown attorney. He said the police may and should lay charges even if the Crown attorney doesn't agree.

But, he said, it is up to the Crown attorney to decide whether to proceed with a case based on whether there is enough evidence to reasonably gain a conviction.

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### ***MEDIA CLIPPING***

### ***Quebec Police Chief Steps Aside***

MONTREAL, Quebec

October, 1996

The chief of the Quebec Provincial Police has stepped aside and a public inquiry will be held into allegations that officers made up evidence in a drug-trafficking case.

Robert Perreault, Quebec's security minister, announced that Serge Barbeau, the force's chief for the past two years, has agreed temporarily to withdraw from his duties.

Perreault acted amid allegations investigators fabricated evidence in a drug-trafficking case. Four officers were later acquitted of perjury and obstruction of justice charges.

The announcement of the provincial

police chief's removal comes three days after three officers investigating the alleged wrongdoing were indefinitely suspended without pay, the Montreal Gazette reports.

The suspension of Chief Inspector Bernard Arsenault and inspectors Louise Boudreault and Hilaire Isabelle came after their lawyer criticized the provincial police chief and others on the force for their handling of the internal investigation.

The three were appointed to probe allegations that police fabricated evidence in a drug-trafficking case against brothers Gerald and Richard Matticks. (con't on page 20)

(con't from page 19)

### *Quebec Police Chief Steps Aside*

Documents collected during the police-corruption study were confiscated when the three officers were suspended.

Police handling of the Matticks affair drew a blast in June, 1995, from Quebec Court Judge Micheline Corbeil-Laramée.

She determined that police had planted bills of lading at the business of William Hodges, one of seven men - including the Matticks brothers - charged with importing nearly 40 tonnes of hashish.

The trial judge abruptly halted the case and freed the seven accused June 15, 1995, after concluding that police had tampered with evidence.

Perreault told a news conference that Georges Boilard, deputy chief of provincial police, has been named interim chief.

The decision to hold a public inquiry was made after Chief Justice Jean-Pierre Bonin, of the criminal division of the Quebec Court, stepped down from an inquiry involving the *Surete*.

Judge Bonin's letter of resignation made it clear that tension and lack of co-operation within the force had reached such a critical point that a closed-door administrative inquiry was no longer adequate.

And, given the level of acrimony within the SQ over demands that it be accountable for its actions, the testimony at the inquiry could include unexpected disclosures that could further undermine the force's credibility.

The inquiry could take more than a year and cost taxpayers anywhere between \$6-million and \$10-million.

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### **MEDIA CLIPPING**

#### *Many Who Provoked Police Wanted to be Shot, Study Says*

VANCOUVER, British Columbia  
October, 1996

Almost half of 58 people in British Columbia, who provoked police officers to use lethal force against them in recent years, wanted to be gunned down, a new criminology study shows.

Many of them were, although not all fatally.

In the wake of the police shooting of a pistol-wielding, mentally ill man in Vancouver's Stanley Park, the master's thesis by Simon Fraser University's Richard Parent sheds light on the horrifying dilemmas in which police officers end up killing people with a death wish.

Some police officers have long called these bizarre incidents "suicide by cop." But, until Parent's study came along, no one had shown the number. Parent, a 17-year-veteran of the suburban Delta, B.C., police force, calls the result glaring.

"The hardest part for the suicidal person in these cases is to make a decision," Parent said. "They aren't able to walk to the bridge and jump. And they see police as a faceless force of the government - just a mechanism to take them out."

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(con't from page 20)

***Many Who Provoked Police Wanted to be Shot, Study Says***

Parent's study, which he believes is the first of its kind in the country, shows how in the last 15 years B.C. police officers killed 28 of the 58 people involved in documented cases where suspects placed police in a legal position to use lethal force.

Parent's thesis, entitled *The Phenomenon of Victim-Precipitated Homicide*, suggests many distraught victims have picked up images from the entertainment industry that it is somehow heroic to be killed by the police.

While any officer who kills a person suffers emotional trauma, Parent acknowledged the agony can be more severe for those who kill the suicidal, extremely drunk or mentally ill.

**1997**  
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# *Canadian Association for Civilian Oversight of Law Enforcement*

## *Membership Information*

CACOLE is a national organization of agencies involved in the oversight of police officers in Canada.

CACOLE is dedicated to advancing the concept, principles and application of civilian oversight of law enforcement throughout Canada.

The CACOLE charter allows for the following classes of membership:

### **Regular Membership - Individual & Organizational**

1. Organizations that have the mandate, by or under a law, to provide civilian oversight in Canada.
2. Organizations whose membership is composed of organizations that fall within paragraph 1.
3. Individuals affiliated with organizations that fall within paragraph 1 or 2.

Regular members may vote on all Association business at Association meetings and receive a reduced registration rate for the Annual Conference.

### **Associate Membership - Individual & Organizational**

Organizations and individuals that have an interest in civilian oversight in Canada may apply for Associate membership in the Association. Examples of who may apply for this category are:

- members of police services;
- members of other criminal justice system agencies;
- members of institutes, research bureaux, law enforcement associations, criminal justice planning councils;
- members of the Bench or Bar;
- professors of accredited colleges and universities who teach or conduct research in the field of criminology or criminal justice;
- persons who are interested in or have contributed to the civilian oversight of law enforcement.

Associate members may vote for Associate Directors on the Board of Directors. Where an Associate is an organization, the head of the organization exercises his/her vote.

### **Honorary Membership**

Organizations and individuals nominated by the Board of Directors, are eligible for honorary membership in the Association.

