

TO WHOM DO THE POLICE ANSWER?

A Brief To The Oppal Commission On Policing

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On Behalf of:

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The 1988 amendments to the Police Act have not resulted in the credible and effective oversight mechanism that British Columbians need.

The following issues must be addressed to achieve an acceptable level of public accountability in policing:

1. The major problem with the existing system is that it is not independent of the police. It is largely internal. The vast majority of complaints are dealt with by the police in secret. When police have responsibility for investigating and disciplining themselves, they are in a conflict of interest. Because the oversight mechanism in British Columbia is not independent and open it is not perceived as accountable to the public. It is perceived as a closed, and secretive system.
2. Lack of police accountability is not just a perception it is a fact. It is a fact that police have not generally shown themselves to be vigilant in response to complaints of police misconduct. There is, at times, a shocking disparity between what is lawful and what police deem necessary to get the job done.
3. There is a need for a truly external, and separate mechanism to pursue complaints by citizens regarding police misconduct. This is a responsibility not of the police, but rather of government. The police are delegates of government, and as such must satisfy the requirements on government bodies to be fair, to obey the law including human rights legislation and the Charter of Canadian Rights and Freedoms.
4. The existing system for handling complaints is flawed by its lack of independence. This lack of independence is exacerbated by the fact that there is no contemporaneous oversight of the handling of complaints: reviews by the Police Board and the Police Commission occur only after the fact, and upon appeal by those rare complainants who have not been so frustrated by the system

that they have given up hope of receiving adequate response. Although the Complaints Commissioner is charged with monitoring complaints to ensure that they are dealt with according to the Act, in fact little if any monitoring goes on.

5. The Police Boards are not appropriate bodies for hearing appeals by complainants. As the employers of the municipal police departments they are in a conflict of interest.
6. Further, the Police Commission is not an appropriate appeal body. The Police Commission has traditionally been closely involved with municipal policing, and is often viewed as part of the police establishment. Although the members of the Commission are not themselves ex-police officers, their staff members are often seconded from the police forces. Notwithstanding recent efforts of the Commission to appear neutral, the Commission is still regarded by many of those citizens who are aware of it as part of the police establishment, lacking in the necessary neutrality to exercise impartiality in hearing appeals of internal disciplinary decisions.
7. There are other models to look to. Both Ontario and Quebec have systems that entail a higher degree of community oversight of policing activities. In British Columbia, we can learn from the experiences of other jurisdictions, but we should not assume that we cannot improve on the models that have been adopted elsewhere.
8. For example, although the Toronto model is often pointed to as a blue print for other jurisdictions, it is not as progressive as it might be. What may have been ground breaking in the early 1980s is not necessarily the best model for British Columbia in the 1990s.

9. In particular, the ability of the police to perform initial investigations of complaints must be questioned. In the Toronto model, actual investigation of a complaint is normally initially conducted by a special unit of the police. We are concerned about the impact that the initial investigation may have on the ultimate result. The dangers of lack of externality at the initial investigation stage may be reduced by the role of the Public Complaints Commissioner, and by the availability of review by an independent tribunal. Every complaint made to the police is also received by the Public Complaints Commissioner who monitors the police investigation and the decision of the Chief of Police in the matter. A complainant who is dissatisfied with the decision of the Chief can request a review by the Commissioner. The Commissioner then reinvestigates and reconsiders the matter. If, upon reviewing a complaint, the Commissioner decides that it is required in the public interest, a public hearing by a board of inquiry composed of a panel of civilians may be ordered. These boards of inquiry, which are established by legislation, are administrative tribunals independent of the police and of the office of the public Complaints Commissioner. The boards, which may be composed of one or three persons, hear and decide upon allegation of misconduct.
10. As well, the burden of proof on the complainant must be reconsidered. In the Toronto model, the complainant is required to prove beyond a reasonable doubt that misconduct occurred. When misconduct is proved beyond a reasonable doubt, a board of inquiry may impose discipline directly upon police officers. The penalty in major cases can range from a reprimand to dismissal from the force. We agree that an external body such as the boards of inquiry that exist in Toronto should have the power to discipline or dismiss, however, we take issue with the burden of proof on the complainant. Beyond a reasonable doubt, which is the criminal standard, places too high a burden on the complainant. A more appropriate standard is the civil standard, on a balance of probabilities.

11. It is to be anticipated that the police themselves will oppose greater community involvement in police oversight activities. Resistant police attitudes may lead to attempts to undermine externally imposed community review mechanisms. Although the rhetoric of community involvement in policing is pervasive and apparently enjoys the support of the police, that rhetoric seems to stop when it comes to the matter of oversight which is the legitimate sphere for community involvement. In Philadelphia attempts were made in the 1960s to inject civilian involvement into the investigation of complaints. The police force mobilized public opinion in its favour, with the result that the system was overturned. New York had a similar experience. Police opposition to the Toronto model is also well documented. A large proportion of the police force was opposed to participation by civilians in any aspect of the complaints system. Some officers expressed concern that such participation would lower the morale of the police force. Police opposition to institutional reform should be seen as what it is, an expression of the very problem that creates the need for civilian review.
12. Complaints about the police should be handled by a body that has the confidence of the complainant and the public, and is viewed as acting in the public interest. The composition of such a body should include representation from community organizations that are constituted by members of historically marginalized groups and committed to achieving equality for those groups, including women who are marginalized by virtue of gender, race, ethnicity, sexual orientation, and disability.
13. Complaints must be heard in public. Continued secrecy in the handling of police complaints is not acceptable.
14. The powers of the newly constituted body should include the power to initiate public inquiries into systemic problems of violence and crime such as the murders of sex trade workers in the Lower Mainland. This is in addition to the power that

the provincial government has to establish such public inquiries.

15. There must be a right of appeal from the findings of the complaints body. In British Columbia the Ombudsman used to have the authority to investigate the handling of police complaints. As a result of police lobbying the Police Act was amended in 1988, and now states that the Ombudsman Act does not apply. This is a totally unacceptable state of affairs. Even if one accepts that the police should be to some extent self regulating, it is totally unacceptable that the police regulatory bodies are not subject to review. The public no longer accepts that self regulating professional bodies should be immune from requirements of fairness. In September of 1993 the Law Society which has the responsibility for regulating the law profession will become subject to the powers of the Ombudsman as will the College of Physicians and Surgeons. The principle is that no one can be above the law. This applies to the police.
16. We recommend that the decisions and procedures of police regulatory bodies be made subject to review by an external body that is named, structured and understood by the public not to be part of the police. The Police Commission does not satisfy these criteria. The head of that external body should be an officer of the legislature, and should have the duty to report to the legislature. To the extent that police are to retain their self regulating status, civilian oversight should be used to ensure that the obligations to the public, that all self regulating institutions have, are fulfilled.
17. Members of the public such as women's centres should have the right to intervene in public inquiries. It follows that the complaints body must have the power to grant intervenor status and intervenor funding to advocacy organizations for members of disadvantaged groups.

18. It is essential that if the police are to be accountable to the public that the public know the policies, procedures, and practices that are purportedly being followed by the police; and that complainants be allowed to see the complaint file maintained by the police. In the Read and Mucklow case the police denied the complainants access to information about their case, and also refused to provide the complainants with documentation relating to police policies and procedures for the use of weapons by the police.
19. Drina Read and Patty Mucklow are not alone in believing that their police complaint generated acts of harassment by the police. This is a problem that must be addressed in any complaint mechanism, if the public is to have confidence in it.
20. The Police Discipline Code should be amended to include as police offenses:
 - a. intimidation or harassment by police members of a complainant or witness, and
 - b. discriminatory behaviour or comments on the basis of sexual orientation, gender, race, ethnicity, disability, or because someone is poor.

Drina Read and Patricia Mucklow are calling on the Premier and the Attorney General to act. We support them. We are also calling on the Oppal Commission to recommend an effective oversight mechanism so that women like Read and Mucklow do not have to engage in special pleading to politicians. Because the redress system is not working we have no choice but to resort to the political system. This is a very inefficient use of political resources. But until our concerns are addressed we will continue in our efforts.