

# LEGAL SITES OF EXECUTIVE-POLICE RELATIONS: CORE PRINCIPLES IN A CANADIAN CONTEXT

By  
Dianne Martin<sup>1</sup>

## ***Abstract***

*This chapter provides an overview of the multiple sites where the governance of police in a democratic society is negotiated, with examples and solutions drawn from policy documents, public inquiries, legislation, and case law. Multiple factors bear on the ways that this intricately structured legal relationship is worked out in day-to-day situations, including political, institutional and legal influences. Bearing in mind the political and institutional contexts, this chapter examines the legal instruments and institutions that both structure the relationship and are part of resolving the inevitable conflicts that arise between these two very general concepts. The central argument is that these relationships have evolved in various ways into a partnership, negotiated daily at various sites within the legal and constitutional systems.*

*Many of these negotiations take place informally and out of public view while others are managed by the courts in individual cases. Issues only occasionally emerge as a matter of public concern and are usually perceived as an aberration or ‘crisis’. These crises can be identified in individual contexts, for example in Charter motions in criminal cases, or in civil law suits against the police, and in institutional settings, often precipitated by media controversy. The minority generate sufficient challenge to legitimacy that special responses evolve or are called upon: such as legislative change and new modes of civilian review; and Public Inquiries, often driven by community and media pressures. In all cases, it is argued, better outcomes would be achieved if both police actors and judicial and political decision makers were better informed about the history of the relationship and the reasons for doctrines.*

*These arguments are made with the use of examples from police services across the country, including the RCMP, and a case study of the governance of the Toronto Police service, to demonstrate how police are actually regulated, and the ways that the theory of accountability to the rule of law operates at different sites.*

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<sup>1</sup> Associate Professor, Osgoode Hall Law School, York University. Particular thanks to law student Katie Rowen for exceptional research assistance. Opinions expressed are those of the author and do not necessarily reflect those of the Ipperwash Inquiry or the Commissioner.

## **I. Introduction**

There is little dispute concerning the general proposition that police in a democratic society must be bound by the rule of law, accountable to civilian authority and the 'tool' of no political master.<sup>2</sup> That is so regardless of whether one interprets this principle to support close civilian supervision, leaving only a narrow sphere of independence for police action; or whether one opts to leave the residual discretion in the hands of the police (in support of their independence) and thus closely circumscribing the scope of civilian supervision and review.<sup>3</sup> That choice is influenced by a number of factors, including political ideology, and is examined here in light of a number of controversies concerning the effectiveness of police management in Ontario in the early years of the 21<sup>st</sup> Century.

It is also widely acknowledged that law enforcement activities are governed, or at least influenced, by an intricate web of rules and relationships, operating at multiple sites - legal, constitutional, political, social, international and more. In addition to the complexity of the legal structures involved, multiple factors bear on the ways that these intricately structured relationships are worked out in day-to-day situations. These relationships; between police officers and their superiors, between police officers and crown attorneys, between police managers and civil authorities, and between the police (both individually and collectively) and the courts, have evolved in various ways into mutually reinforcing (although not always amicable) partnerships, negotiated daily at

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<sup>2</sup> Jerome H. Skolnick, *Justice Without Trial*, 2d, (New York: MacMillan, 1975). But note that the extension of the doctrine of constabulary independence, which places the police 'above' politics, is much less well supported.

<sup>3</sup> See Roach, Stenning, etc these papers, for typologies of the civilian oversight/police independence dichotomy.

various sites within the legal and constitutional systems. Many of these negotiations take place informally and out of public view and only occasionally break down and surface as matters of public interest or concern. When they do, the crisis is usually managed and presented as an aberration, in an effort to preserve public confidence and the status quo.

It is not surprising that when an issue arises in a legal context that it is framed as an individual aberration. Most legal disputes are highly individual; for example, between the individual and the state, as in a criminal prosecution, or between individual and someone else, as in a civil law suit. In the context of policing, a crisis in governance only becomes a matter of public concern when a ruling or a judgement has considerable media interest, such as a ruling on a controversial subject.<sup>4</sup> A minority of these cases generate a sufficient challenge to legitimacy that special responses evolve or are called upon, such as public inquiries, legislative changes or reforms to modes of civilian review, often driven by community and media pressures,.

This chapter, although mindful of the broader context, will consider the legal ‘strand’ in this complex web - the role of law in the regulation of police conduct and practice. It will provide an overview of the multiple sites where the legal governance of police in a democratic society is negotiated, with examples and solutions drawn from the recent history of police governance in Ontario where the pendulum has swung between reforms introduced in the late 1980’s and early 1990’s to increase the scope and

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4 For example, the decision of Justice Anne Molloy of the Ontario Superior Court of Justice on September 16, 2004, in *R v Kevin Khan* received considerable attention. Justice Molloy dismissed drug charges against Mr. Khan on the basis that Toronto police used racial profiling when they stopped him in his expensive car, and fabricated evidence to then justify their stop and to link him to cocaine hidden in the car. Peter Small, "Judge raps police in profiling case. Throws out motorist's drug charge. Fantino takes comments 'very seriously'." *The Toronto Star*, September 17, 2004, A1. A subsequent story reveals that one of the officers involved, Detective Glenn Asselin, was cited by a judge in 1993 for similar conduct. Jim Rankin and Betsy Powell, "Officer had 1993 profiling ruling. Stopped black man in earlier contentious case. Criticized this week for targeting man due to race." Jim Rankin and Betsy Powell, *The Toronto Star*, September 18, 2004.

effectiveness of civilian oversight, to reforms that reversed that approach introduced in the mid 1990's. The dramatic changes enacted in 1996 are analyzed with an examination of that legislation and the case law which it generated with a view to assess how effective that approach has been. A case study of the response to the 1989 misconduct of two officers of the Toronto Police Service illustrates the operation and effectiveness of the system those reforms replaced.

Despite recognition that there are valid concerns about overly complex mechanisms, the chapter concludes that locating responsibility for police governance in multiple locations ensures that issues ignored or dismissed at one site will surface or be raised in another, preserves a healthy transparency, and also best serves to ensure police freedom from inappropriate political interference.

A final introductory caution is in order. Discussion of the role of law in police governance tends to focus on the ways that law serves (or fails to serve) as a *limit* on police practice and as a *curb* to police misconduct, as this is the context which produces the accessible record of law's role in governance, from decided cases to legislation and regulations and legally constituted commissions of inquiry. However, it is important to remember the limits of an analysis of legal rules and interventions. Two are particularly important. First, for police, the law is not a barrier or a threat, it is their "tool", and they have considerable expertise in wielding it in their own interest.<sup>5</sup> Secondly, the extent to which police control the 'facts' of an incident and the way that those 'facts' are interpreted

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<sup>5</sup> Richard Ericson notes that the criminal law is the police officer's tool in reproducing order; it is a resource, not a restraint. This function of "law" as it relates to lawyers has been analyzed frequently by students of both law and sociology, "Police Use of Criminal Rules" in Clifford D. Shearing, *Organizational Police Deviance: Its Structure and Control*, (Toronto, Butterworths, 1981), pp 83-110 at p 101. At the same time, the rule of law is taken for granted as the formal standard against which 'deviance' should be measured and judged.

will in most cases be unchallenged and will often determine both the ultimate outcome and the public's perception of what happened and why. In that sense the 'facts' matter more than the rules, and processes which determine how evidence is gathered and shaped, and how it is analyzed are every bit if not more important in achieving accountability and transparency than the most elaborate set of substantive rules.<sup>6</sup>

## **II. Multiple Sites of regulation: Complex or Comprehensive?**

Police officers complain that they are an over regulated occupation relative to others, and thus, by inference, are justified in resisting efforts to increase or improve regulation and governance. There is no doubt that police encounter a host of legal rules and expectations in all aspects of their occupational lives, and that many of those encounters have consequences for them both personally and professionally. The system of regulation and discipline faced by members of the Toronto Police Service has been described as “unnecessarily complicated”, and “... frequently reactive, slow, not fully transparent and unnecessarily bureaucratic.”<sup>7</sup> Police ‘unions’ like the Toronto Police Association, as well as other bodies, such as the Canadian Association of Chiefs of Police

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<sup>6</sup> Few modern institutions are as successful as the police at shaping the discourse concerning them. From the initial shaping of the facts of an incident or arrest to conform to policing goals and legal or psychiatric discourse, through the presentation of the same facts in court, to portrayal of the case or of police work generally in the media police control of information is extraordinary. Richard V. Ericson, Patricia Baranek, Janet B.L. Chan, *Representing Order: Crime, Law, and Justice in the News Media*, (Toronto, University of Toronto Press, 1991).

<sup>7</sup> Ontario Civilian Commission on Police Services, “Report on a fact-Finding into Various Matters with respect to the Disciplinary Practices of the Toronto Police Service, July 1999, p 3. This report dealt with a complaint from the Toronto Police Association that discipline was unfairly administered on the Toronto Service in that it was inappropriately lenient in regard to the misconduct of senior officers in comparison with the ways that ‘rank and file’ officers were treated. Although that complaint was not upheld, OCCPS found a number of matters requiring improvement.

have been highly effectively at disseminating this position.<sup>8</sup> It clearly influenced the reforms of the mid 1990's.<sup>9</sup>

On the other hand, as criminologist John Braithewaite points out, “a police service that is enmeshed in many webs of dependency will be vulnerable to the many when it corruptly does the bidding of one”<sup>10</sup>. Cases that excite public interest and raise concerns about accountability in the regulation of police tend to emerge because there are multiple sites where scrutiny of police conduct takes place. In a recent case involving a Toronto Police plain clothes unit, for example, many strands combined to produce a crisis; an RCMP wiretap apparently recorded a Toronto police constable in incriminating circumstances, a related corruption probe increased sensitivity, complaints from restaurant and bar owners about the extortion of bribes were taken seriously. Ultimately a number of officers, including the sons of a former chief, were charged both criminally and under the *Police Services Act*.<sup>11</sup> As the scandal grew so did demands for more and more effective accountability.<sup>12</sup>

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8 Linda Diebel “Mistrust of ‘suits’ fills void behind badge” *The Toronto Star* (2 May 2004) A1; David Hilderley “OPP adds support to Metro Police protest” *The Globe and Mail* (26 October 1992) A19 (protest regarding use-of-force amendments to the Police Act); Philip Mascoll, “Striking Metro police lock station doors” *The Toronto Star* (27 January 1995) A1, A6 (labour action in response to charges laid against officer regarding the ‘high-risk takedown of TV personality Dwight Drummond’); Paul Walter, “Investigative overkill poisons civilian review of police conduct” *The Toronto Star* (10 February 1995) A19 (president of the Toronto Police Association argues the force is subject to “excessive” oversight); John Duncanson, “Police chiefs getting ready to take on SIU” *The Toronto Star* (13 March 2000) A4; John Duncanson “Fantino tries to change rules on SIU probes” *The Toronto Star* (7 November 2000) A1, A26.

9 See: McLeod, Roderick, Q.C. A Report and Recommendations On Amendments to the Police Services Act Respecting Civilian Oversight of the Police, commissioned by the Ministry of the Attorney General and the Ministry of the Solicitor General (November 1996).

10 John Braithwaite, “On Speaking Softly and Carrying Big Sticks: Neglected Dimensions of a Republication Separation of Powers” (Summer 1997) 47 *Univ. of Toronto L.J.* 305.

11 Cal Millar, John Duncanson and Nicholaas Van Rijn “Police unit faces internal probe” *The Toronto Star* (17 April 2004) A4; Christie Blatchford “Police probe corruption as union boss steps down” *The Globe and Mail* (19 April 2004) A1, A9; John Duncanson “Betting scandal rocks police force” *The Toronto Star* (20 April 2004) A1; Nick Pron and John Duncanson “6 may face betting probe charges” *The Toronto Star* (21 April 2004) A1, A16; John Duncanson and Tracey Huffman “Source: Police shielded drug dens” *The Toronto Star* (24 April 2004) A1, A23; Nick Pron “Former chief’s son facing charges” *The Toronto Star* (26 April 2004) A1, A12; Christie Blatchford “Chief details charges against officers” *The Globe and Mail*

Conflict over and between these two positions has marked policing history for the past thirty years at least.<sup>13</sup> What is the better approach? Where does the ‘truth’ about the most effective approach to the regulation of lie? There is no easy answer and much of the answer that is available is found (usually and unhelpfully) in one’s perspective on the issue. To the individual (or community) who has been harmed by police error or police misconduct and not been satisfied by the remedies on offer, it is ‘clear’ that more effective discipline and accountability measures are required. To the police manager who finds it difficult to discipline or otherwise deal with an inadequate or problem officer it may be ‘clear’ that faster easier disciplinary measures and management tools are required. To the individual officer faced with multiple levels of scrutiny, any one of which with the potential to end a career, any additional means to monitor and sanction his or her decisions and conduct is experienced as oppressive. Other viewpoints are relevant as well.

In any event some complexity is inevitable given the broad approach to governance we have chosen in Canada. We have attempted to draw a bright line between policy and day to operations<sup>7</sup>, an extraordinarily difficult distinction. The basic structure for this exercise is that policy is the province of the elected and appointed civilian governors, while operations, and the carrying out of policy, are the

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(27 April 2004) A10; ; Linda Diebel and Cal Millar “RCMP probing Toronto Police” *The Toronto Star* (30 April 2004) A1.

12 John Barber “Enough with the few ‘bad apples’” *The Globe and Mail* (24 April 2004) M1; Linda Diebel and Cal Millar “Police reform: ‘I want action’” *The Toronto Star* (28 April 2004) A1, A19; “Police require outside probe,” Editorial, *The Toronto Star* (28 April 2004) A22; Royson James “An independent inquiry is the only way to solve police mess” *The Toronto Star* (28 April 2004) B3; Royson James “Fantino’s message is loud, but is it clear?” *The Toronto Star* (29 April 2004) B1, B5, A4. Recent scandals in Ontario, coupled with the change in provincial governments, has led to a review of the civilian complaints process: Richard Brennan “LeSage to review police watchdog system” *The Toronto Star* (10 June 2004) A1; Richard Brennan “Police complaints role ‘a challenge’, former judge says” *The Toronto Star* (11 June 2004) A20; “Police complaints reform overdue,” Editorial, *The Toronto Star* (11 June 2004) A26.

13 Roach, Stenning, Sossin, these papers.

province of the chief of police who serves as a sort of CEO, employed by the civilian authority. All employees and officers report, directly or indirectly to the Chief of Police and all discipline is administered in his or her name. The development, implementation and supervision of policy is aimed both at the police service as a whole and at police officers as individual employees. At the level of the police service, the chief reports on the success (or, in theory at least, on the failure) of policy to the political body charged with governance, and receives policy direction from them<sup>14</sup>. At the officer level, the conduct/misconduct of individuals is managed through a hierarchical, highly structured, legalistic mechanism which sets standards and determines how allegations of misconduct will be investigated and determined. Conflicts about what is policy and what is an operation are unavoidable and difficult to resolve. That the distinction might also lead to an overly bureaucratic and opaque management structure is a clear risk. The following brief description of the structures in place will serve to illustrate the degree of complexity at least.

### **1. The Legislative structure in Ontario**

Police services, despite their common law roots<sup>15</sup>, are creatures of statute and both their scope of practice and the modes of accountability are located in the legislation that creates them. In Ontario, authority for police to act flows from the *Police Services Act* <sup>16</sup> and the Solicitor General who is charged with the monitoring of all police forces

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<sup>14</sup> When that relationship breaks down and this apparently simple 'chain of command' is found wanting, or an event occurs which triggers outside intervention, further measures of accountability are engaged, which may have implications for the police service as a whole and for any individual officers who may be involved. See the discussion, *infra*.

<sup>15</sup> See Roach, Foundation paper.

<sup>16</sup> *Police Services Act*, R.S.O. 1990, c. P.15 [*Police Services Act*]. This is the model, broadly speaking, in place in all the provinces and territories and has similarities with the *RCMP Act*. The essential structure was not changed in the 1997 restructuring which eliminated the Office of the Public Complaints Commissioner.



and boards, and the issuing of policy directives.<sup>17</sup> The authority of the Solicitor General to govern is divested to local Police Services Boards<sup>18</sup>, and to the Ontario Civilian Commission on Police Services (OCCOPS), whose members are appointed by the Lieutenant Governor. The Act, as amended in 1997, provides that every municipality that maintains a police force, must have a police services board composed of three, five or seven members, depending upon the size of the municipality to manage it. Each board is composed of the head of the municipal council (or their designated representative), members of council, a civilian, and members appointed by the Lieutenant Governor.<sup>19</sup>

Police Services Board continue to be charged with the provision of police services in the municipality and are empowered to appoint the members of the force (including the chief), determine police objectives and priorities, direct and monitor the performance of the chief, and establish guidelines for dealing with complaints. The board also has the jurisdiction to enact by-laws for the effective management of the force.<sup>20</sup> The “policy vs. operations” distinction is expressly entrenched in the Act, which states that the board may not give orders to any member of the police force aside from the chief.<sup>21</sup> The duties and powers of the chief of police, who reports directly to the police services board, are also statutorily defined, as are the duties of police officers.<sup>22</sup> The Act is supported by fifteen active regulations which contain, among other things, the Code of Conduct for police officers which sets out a range of prohibited activities from corrupt practice to restriction on police political activity.

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<sup>17</sup> *Police Services Act*, s. 3 (2)

<sup>18</sup> *Police Services Act*, s. 27-40.

<sup>19</sup> *Police Services Act*, ss. 21-27

<sup>20</sup> *Police Services Act*, s. 31.

<sup>21</sup> *Police Services Act*, s. 31 (3).

<sup>22</sup> *Police Services Act*, s. 41 and 42.

OCCOPS' jurisdiction was expanded in the 1997 restructuring to replace the public complaints review system and was granted a new range of powers beyond their previous jurisdiction over local Police Services Boards, and as the forum for officers appeals from findings of misconduct. For example, OCCOPS is empowered to conduct investigations and inquiries into complaints about the policies or services provided by a police force, or the conduct of officers.<sup>23</sup> OCCOPS may conduct inquiries on its own motion, or upon the direction of the Solicitor General, a Police Services Board, a chief of police, a municipal council, as well as by a member of the public. An OCCOPS investigation or inquiry has all the powers of a commission under Part II of the Public Inquiries Act, and may impose wide-ranging sanctions, including: the suspension or removal of a chief, one or more members of a Police Services Board, or the entire Boards, the appointment of a replacement chief, and the disbanding of a municipal police force. Appeals from OCCOPS decisions are to the Divisional Court and must be made within 30 days of receiving notice of the Commission's decision.<sup>24</sup>

Mechanisms which address allegations of misconduct against individual police officers are found in Part V of the *Act*, which gives the chief of the police service broad discretion over all aspects of discipline, whether arising from a public complaint or from internally generated allegations of misconduct or employment infractions. Misconduct is a broad term that includes every thing from quasi criminal abuse of authority, withholding of services or the inducement of another officer to misconduct in breach of a municipal force's code of conduct, to more strictly job related behaviour concerning dress and appearance, firearms, personal property or money, punctuality and the like. A

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<sup>23</sup> *Police Services Act*, s. 22 (1)(a)(ii)(e).

<sup>24</sup> *Police Services Act*, s. 22, 23, 25.

chief may order an internal investigation into allegations of misconduct or may request that a member of an outside force, or a judge or former judge, conduct the investigation.<sup>25</sup>

There are additional provisions concerning complaints about officers from members of the public, but essentially the chief is given broad discretion over all aspects the public complaints process. The investigation is the control of the police, including the decision *not* to investigate those complaints that the chief deems to be made by a party not directly affected by the policy, service or conduct, or a complaint the chief deems to be “frivolous, vexatious or made in bad faith”.<sup>26</sup> A chief may also decline to address a complaint made more than six months after the facts on which it is based occurred.<sup>27</sup> Otherwise, the chief must review or investigate all complaints, notifying the complainant of and the implicated officer of the receipt of the complaint and the decision whether or not to further investigate. A decision of the chief not to investigate a complaint may be appealed to OCCOPS. Any complaints regarding the conduct of a chief or a deputy chief are referred directly to the relevant Police Services Board.<sup>28</sup>

Complaints by either a member of the public, the board or the chief may be resolved informally, or by way of a hearing. The powers of both the chief and the board are expansive and discretionary, and include dismissal, suspension, demotion, forfeiture of pay and reprimand.<sup>29</sup> An appeal to OCCOPS within 30 days of the decision may be

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<sup>25</sup> *Police Services Act* 33.74-76. This occurred in Toronto in the case of allegations of drug squad corruption. Gay Abbate and Joe Friesen, “Probe results in 22 charges filed against six officers” *The Globe and Mail* (8 January 2004) A14. David Tanovich, “Don’t let cops investigate cops” *The Globe and Mail* (31 August 2001) A13. Kirk Makin, “Police chief denies ‘blue wall of silence’ in corruption probe” *The Globe and Mail* (21 January 2004) A6.

<sup>26</sup> *Police Services Act*, s. 59.

<sup>27</sup> *Police Services Act*, s. 59 (4).

<sup>28</sup> *Police Services Act*, s. 60 (5).

<sup>29</sup> *Police Services Act*, s. 68.

brought a police officer, a complainant or a police services board. A hearing conducted by the Commission is an appeal, but new evidence into allegations of misconduct may be heard. Appeals from OCCOPS decisions are to Ontario Divisional Court, and may not be on a question of fact alone.<sup>30</sup>

While most matters of misconduct are investigated internally, whether brought by a police Chief or superior officer or initiated by a complaint from a member of the public, cases of death or serious bodily harm that may have resulted from criminal offences committed by police officers are investigated by an independent agency. The Special Investigations Unit (SIU) was formed via an amendment to the *Police Services Act* in 1999 as an independent agency. Investigations are conducted at the initiative of the director (who is not to be a police officer or former police officer) or at the request of the Solicitor or Attorney General. In a further attempt to maintain independence from the officers under investigation, the legislation also stipulates that an SIU investigator is not to work on an investigation that relates to members of a police force of which he or she was a member. The director can initiate criminal proceedings against an officer by laying an information and reporting the results of investigations to the Attorney General for prosecution.<sup>31</sup> The Act attempts to ensure compliance and states that “members of police forces shall co-operate fully” with the SIU in the conduct of investigations.<sup>32</sup>

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<sup>30</sup> *Police Services Act*, s. *Police Services Act*, s. 70-71.

<sup>31</sup> *Police Services Act*, s.113 creates a complete code of powers for the SIU.

<sup>32</sup> *Police Services Act*, s.113 (9). The SIU was and continues to be a lightning rod for police dissatisfaction with civilian oversight. Despite a legislative requirement to do so, police officers refused to cooperate with investigations, citing the Charter. In 1998 retired Justice George Adams, QC, was retained to devise ways to improve the relationship between police officers and the SIU. He came up with the distinction between subject officers who had the right to remain silent, and witness officers who were required to provide statements to investigators. “Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General And Solicitor General Concerning Police Cooperation with the Special Investigations Unit”, May 14, 1998. Many of his recommendations, including the creation of the two categories of officer, were implemented in January 1999 in Ontario regulation 673/98

Under the 1999 Regulation 673/98, the chief of police is charged with the responsibility for securing the scene of an investigation until the SIU arrives, and with segregating the officers involved. Officers involved in the incident are prohibited from speaking to each other, but are each entitled to legal and/or union representation. The regulations also require each involved officer to appear for an interview with the SIU and to turn over their notes regarding the incident.<sup>33</sup> A distinction is drawn between “subject officers” – those who caused the death or bodily harm, and “witness officers”, a categorization the SIU is now required to make before ever speaking to the officers involved in the incident.<sup>34</sup> The regulations also provide that while the Chief will also convene an internal investigation, this investigation will be into the policies and procedures of the force and will be “subject to the SIU’s lead role in investigating the incident”.<sup>35</sup>

## **2. Accountability by Other Means**

Legal measures which attempt to ensure accountability are not limited to the discipline, misconduct, investigation and review mechanisms contained in the *Police Services Act*. Deaths at the hands of police are scrutinized not only by the Special Investigations Unit and by police supervisors, but also through the mechanism of the Coroner’s Inquest. The actions and decisions of individual officers are scrutinized daily in the justice system, starting with the review of charges done by a Crown Attorney.<sup>36</sup>

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33 O. Reg. 673/98, ss. 3, 6, 8, 9, 11

34 O. Reg. 673/98, s. 10

35 O. Reg. 673/98, s. 11 (1) and s. 5. These reforms may not be entirely successful. In 2003 the Supreme Court of Canada recognized the tort of misfeasance in public office in a case involving Toronto Hold up Squad witness officers who obstructed and thus failed to co-operate with an SIU investigation into a fatal police shooting. *Odhavji Estate v. Woodhouse* (2003), 2003 SCC 69, 19 C.C.L.T. (3d) 163, 233 D.L.R. (4th) 193, 180 O.A.C. 201.

36 The division of responsibility which leaves investigations and the decision to charge in the hands of police and the decision of how and whether to prosecute in the hands of the crown is said to preserve police

Courts, both civil and criminal, participate in assessing the propriety of that investigation. In all cases police officers, police services, and possibly even police services boards<sup>37</sup> may be subject to a civil law suit. All of these sites of legal decision making have the potential for generating public attention and may have significant consequences for the individuals and police services involved.

**(a) The role of the courts**

**[i] Criminal/Charter cases**

The criminal law impacts police practice through rulings, particularly Charter rulings which limit the admissibility of evidence or otherwise constrain police investigative practices.<sup>38</sup> Although law enforcement traditionally resists the Charter, arguing that it frustrates the ability to maintain law and order, Charter values have undoubtedly altered the way in which policing in Canada is conducted.<sup>39</sup> The courts also

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independence and freedom from political interference. For example, the then Attorney General of Ontario Roy McMurtry said in 1978: "No one can tell an officer to take an oath which violates his conscience and no one can tell an officer to refrain from taking an oath which he is satisfied reflects a true state of facts" The Hon. R. Roy McMurtry, "Police Discretionary Powers in a Democratically Responsive Society" (1978), 41 RCMP Gazette no. 12 at 5-6.; And see *R v. Appleby, Belisle, and Small*, (1990) 78 C.R. (3d) 282 (Ont. Prov. Ct). Charges of theft brought against a reporter and those who leaked a copy of the upcoming federal budget (retrieved from a copy room) were stayed on the basis that the officer who laid them had no real subjective "belief" that a crime had occurred, but laid them from "excessive zeal". They were stayed despite the fact that no case was made for either the reality or reasonable grounds for perception of political interference in use of the criminal process, because no evidence was led that the source of the officer's "zeal" was political. The principle was recognized recently by the Supreme Court of Canada in the context of the RCMP: *R. v. Shirose*, [1999] 1 S.C.R. 565 at 591.

37 Although the claim was also allowed to proceed against the police chief for not ensuring compliance with the SIU investigation, the Police Services Board and the province were found in *Odhavji* not to owe similar private law obligations: *Odhavji Estate v. Woodhouse* (2003), 2003 SCC 69, 19 C.C.L.T. (3d) 163, 233 D.L.R. (4th) 193, 180 O.A.C. 201.

38 For example, *R. v. Golden* [2001], 159 C.C.C. (4th) 449 (SCC) recognized the intrusive and demeaning dimensions of personal searches and held that strip searches as routine policy to obtain concealed evidence or check for weapons cannot be justified under s.8 of the Charter, and will always be unreasonable if carried out abusively. *R. v. Brown*, (2003) 173 C.C.C. (3d) 23 (Ont. Court of Appeal) acknowledged the possibility of racial profiling in police stops.

39 Reginald A. Devonshire, "The Effects of Supreme Court Charter-Based Decisions on Policing: More Beneficial than Detrimental?" 31 C.R. (4th) 82. Recalls that the Canadian Association of Chiefs of Police (C.A.C.P.) was strongly opposed to the Charter. Between 1982 and 1993, 53 of 260 Charter challenges involved allegations of violations by police officers, many of which mandated a reform of police practices. The author conducted interviews with officers of the Metropolitan Toronto Police, and evaluated training

direct police practice through the interpretation of Criminal Code provisions such as the provisions which authorize arrest and detention<sup>40</sup> and the use of force. Section 25(4) justifies the use of force by a peace officer that is “intended or likely to cause death or grievous bodily harm” when it is reasonably required to effect a lawful arrest (with or without a warrant), is reasonably necessary to prevent harm to the peace officer or to others, or to prevent the suspect’s flight if not preventable by other means.<sup>41</sup> This provision often exonerates officers who are charged with use of force offences. Holding individual police officers accountable through direct criminal charges (especially around the use of force) has proved largely unsuccessful<sup>42</sup>, and even rare convictions or guilty pleas may not carry the type of punishment that might be usually seen as serving a

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material to assess the impact of Charter rulings, arguing that police have generally been able to adapt to the most “adverse” decisions by altering investigative methods and procedures, and even abandoning improper practices. The article lists some 18 police practices sanctioned by the SCC, and outlines the Toronto police response to each ruling. In addition, the article sets out the rulings that have conditionally approved or approved outright of particular police actions and practices. Devonshire concludes that there has been little attempt on the part of police to circumvent the Charter, with the Toronto police experts and manuals demonstrating “a good knowledge of, and positive attitude towards the Charter”. The statistics indicate only 19 cases where the SCC has found serious Charter violations and resolved the case in favour of the accused. During interviews with senior members of the Toronto police, the primary frustrations with the Charter appear to be that it has made investigations more difficult, labour-intensive and expensive, doubling paperwork and increasing trial times. Devonshire concludes that the C.A.C.P.’s concerns regarding the “Americanization” of our justice system have not been borne out in the post-Charter period, in large part because the exclusionary rule in the Charter is not automatic, and because the police have been able to integrate Charter standards into their policies and practices.

40 *Priestman v. Colangelo*, [1959] S.C.R. 615, 124 C.C.C. 1, 19 D.L.R. (2d) 1. See Grant Smythe Garneau, “*Roberge*: Judicial Extension of Police Powers” 33 C.R. (3d) 309. Garneau argues that the expansion of “apparently committing” to reasonable and probable grounds for arrest is incorrect, and that the court defeated the intentions of Parliament in regards to s.25(4). *R. v. Roberge* (1980), 31 N.B.R. (2d) 668, 75 A.P.R. 668. See also: Tracey Tyler “Conviction of officer a rare win by crown” *The Toronto Star* (11 January 1994) A1, A4

41 Note also that s.25 is frequently cited in the context of civil suits against officers arising out of the use of force, see e.g. *Chartier v. Greaves* [2001], O.J. No. 634; *Sherman v. Renwick* (2001), 2001 CarswellOnt 595.

42 Criminal convictions against police officers for actions occurring in the course of duty are notoriously difficult to obtain: See, most recently, the Otto Vass manslaughter case; Nick Pron and Betsey Powell “Officers cleared in Vass case” *The Toronto Star* (6 November 2003) A1. Traditionally, the Toronto Police Association has brought a great deal of public pressure to bear in regards to criminal prosecution of officers: Rosie DiManno “Police union follows its thin blue whine” *The Toronto Star* (1 October 2003) A2 (discusses union response to Vass charges and the very public manslaughter trial of Constable David Deviney in the Lester Donaldson shooting). See also *R. v. Wighton* (2003), 176 C.C.C. (3d) 550, 13 C.R. (6<sup>th</sup>) 266; *R. v. Smith* (1998), 163 Nfld. & P.E.I.R. 179, 503 A.P.R. 179. For interpretation of s.25 see *Bottrell v. R.* (1981), 22 C.R. (3d) 371.

deterrent function (although the impact alone of being charged criminally should not be underestimated).<sup>43</sup>

However, recent changes in police regulation, designed to promote accountability have not been interpreted in a manner which facilitates criminal charges against officers. For example, the use-of-force reports made mandatory by the Ontario government under Premier Bob Rae have been ruled inadmissible as evidence in the criminal prosecution of police officers.<sup>44</sup> The courts have also generally protected the privacy of police officers in the context of attempts by defence counsel to compel disclosure of an arresting or investigating officer's disciplinary record. Pursuant to *R v. Stinchcombe*<sup>45</sup>, the Crown must disclose to the defence all relevant material under their control. However, pursuant to *R v O'Connor*<sup>46</sup> (and the related Criminal Code scheme), material in the hands of a third party witness will only be ordered produced if a stringent test of relevance versus prejudice is passed. The issue then is the nature of the police disciplinary records and the role of the police in the prosecution process. In *R v. Paryniuk* (2002) (Ont. Superior Court of Justice), an accused charged with narcotics offences sought to introduce evidence pertaining to the ongoing Internal Affairs investigation into potential misconduct involving members of the Toronto Drug Squad who arrested him. The Crown

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43 *R. v. Cronmiller* (2004), 2004 BCPC 1. Six Vancouver police officer each plead guilty to three counts of assault in the beating of three men in Stanley Park. The three men were arrested in the middle of the night at a downtown mall, and then driven by officers to a secluded area of the park, where the assaults occurred. Weitzel J. held that while some leniency may be granted to officers who commit assault during a struggle while attempting to make arrest, the Stanley Park assaults, which he characterized as "mob mentality" on the part of the police, was not such an occasion. He did, however, not incarcerate any of them.

44 *R. v. Wighton* (2003), 176 C.C.C. (3d) 550, 13 C.R. (6<sup>th</sup>) 266. The Ontario Court of Justice held that the admission into evidence of the report, made under compulsion of Reg. 926 under the Police Services Act, would violate the accused officer's right against self-incrimination, and that the admission of use of force reports in criminal proceedings generally would impair the effectiveness of the statutory reporting regime.

45 [1991] 3 S.C.R. 326; The right to disclosure was framed as a constitutional right in *R. v. Carosella*, [1997] 1 S.C.R. 80.

46 *R. v. O'Connor*, [1995] 4 S.C.R. 411.



successfully argued that Internal Affairs documents were 3<sup>rd</sup> party records and should be governed by the *O'Connor* principle, as well as by investigative, informant and public interest privilege. The accused was not entitled to compel the production of the Internal Affairs investigation findings.<sup>47</sup> In *R. v. Altunamaz* [1999], the accused sought to compel production of the arresting officers' prior disciplinary/complaints records. The accused, charged with narcotics offences, brought an application for an order forcing disclosure of records of investigation by the Public Complaints Investigation Bureau, Police Complaints Commission and OCCOPS. The accused also sought disclosure of records of Internal Affairs and the Chief of Police into past allegations of misconduct and disciplinary proceedings. The Ontario Superior Court held that the records held by the Police Complaints Commission and OCCOPS were third-party records.<sup>48</sup> However, in *R. v. Scaduto*, the court held that the accused was held to be entitled to disclosure of records pertaining to past Police Act charges brought against several of the officers involved in his case. The court ruled that because the records in question had come into possession or control of the Crown, third party status could not persist.<sup>49</sup> On a related matter, though involving the public complaints process, the Ontario Court of Appeal has ruled that an officer's s.7 Charter right against self-incrimination does not extend to an officers' notebooks, and that the Police Complaints Commissioner was not prevented on relying on extracts from the officers' notebooks during a disciplinary hearing.<sup>50</sup>

### **[ii] Civil context**

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<sup>47</sup> *R. v. Paryniuk* (2002), 97 C.R.R. (2d) 151.

<sup>48</sup> *R. v. Altunamaz* [1999], O.J. No. 2262. (The judgement contains a summary of the different oversight bodies/complaints mechanisms in Ontario and their relationship to the Ministry of the Attorney General).

<sup>49</sup> *R. v. Scaduto* [1999], 63 C.R.R. (2d) 155, [1999] O.J. No. 1906, 97 O.T.C. 307.

<sup>50</sup> *Ontario (Police Complaints Commissioner v. Kerr)* (1997), 96 O.A.C. 284, 143 D.L.R. (4<sup>th</sup>) 471 (Appeal by the Commissioner of a Board of Inquiry finding that the notebook extracts were not admissible, resulting in the dismissal of the complaint).

Civil actions against the police may also serve an accountability and supervisory function. For example, the *Jane Doe* case was a clear judicial sanctioning of police policy and operations (with respect to the investigation of a serial rapist).<sup>51</sup> The same individuals who may lay formal complaints regarding use of force or unjustified arrest and/or search, may also launch civil suits against the police. These suits tend to involve allegations of malicious prosecution (after charges are dropped), battery, unlawful arrest and/or search).<sup>52</sup> The American experience with government “pattern and practice” suits against systematically unruly police forces is another example of the way in which civil law can be used effectively to promote changes in police practice (though, it is to be noted, through settlement agreements, rather than trials).<sup>53</sup>

#### **(b) Coroner’s inquests**

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<sup>51</sup> *Jane Doe v. Metropolitan Toronto (Municipality) Commissioners of Police* (1990), 50 C.P.C. (2d) 92, 40 O.A.C. 161, 74 O.R. (2d) 225, 72 D.L.R. (4th) 580, 5 C.C.L.T. (2d) 77, (sub nom. *Doe v. Metropolitan Toronto (Municipality) Commissioners of Police*) 1 C.R.R. (2d) 211 (Ont. Div. Court), *Jane Doe v. Metropolitan Toronto (Municipality) Commissioners of Police* (1991), 1 O.R. (3d) 416 (Ont. Court of Appeal).

<sup>52</sup> *McLean v. Siesel* (2004), O.A.C. 122, 2004 Carswell Ont 200 (unreasonable force), *Hudson v. Brantford Police Services Board*, [2001] 204 D.L.R. (4th) 645, 158 C.C.C. (3d) 390, 150 O.A.C. 87, 48 C.R. (5th) 69, [2001] O.J. No. 3779 (unlawful arrest and entry), *P.(P.) v. Pecorella* (1998), 1998 Carswell Ont 1887 (unlawful assault, false arrest and imprisonment), *Stevens v. Toronto Police Services Board* (2003), 2003 Carswell Ont 4612 (malicious prosecution, false arrest and imprisonment), *Lloyd v. Toronto Police Services Board* (2003), 2003 Carswell Ont 58 (malicious prosecution, false imprisonment), *Bainard v. Toronto Police Services Board* [2002], 2002 Carswell Ont 2366, [2002] O.T.C. 504 (malicious prosecution, false imprisonment), *Wason v. Gillis* (1996), 1996 Carswell Ont 1816, 3 O.T.C. 307 (wrongful arrest and battery), *Frazier v. Purdy* (1991), 6 O.R. (3d) 429 (malicious prosecution); and See *Odhavji*, *supra* note 35.

<sup>53</sup> The 1994 Violent Crime Control and Law Enforcement Act, gave the US federal government has the power to investigate and bring suit against any city whose police were routinely abusing their authority. Pittsburgh was the first large city where such a “pattern and practice” suit has been settled through a consent decree (1997) following allegations of excessive force, false arrests and improper searches by police. Vera reports that five years later, Pittsburgh has exhibited excellent compliance with the changes to police practices mandated by the consent decree, which listed 74 “tasks” which the force had to perform to resolve the suit. “Pittsburgh’s Experience with Police Monitoring” (18 June 2003), online: Vera Institute of Justice [http://www.vera.org/project/project1\\_1.asp?section\\_id=2&project\\_id+13&sub\\_section\\_id=1&archive=](http://www.vera.org/project/project1_1.asp?section_id=2&project_id+13&sub_section_id=1&archive=)

In Ontario, the coroner has a duty to investigate and hold an inquest into all deaths that occur while a person is “detained by or in the actual custody of a peace officer”.<sup>54</sup> A defining feature of the modern Ontario’s coroner’s system is its departure from its criminal law roots: the legislation itself clearly stipulates that an inquest proceeding is not to be construed as creating a criminal court of record, and prohibits any finding of legal responsibility.<sup>55</sup> However, inquests into police-related deaths in Ontario have developed into significant fora for public scrutiny. Despite, or because of lengthy and often contentious proceedings, involving complex legal wrangling, media coverage has been extensive and the issue of deaths at the hands of police are matters of considerable public concern.<sup>56</sup>

The Donaldson inquest in particular involved two of the key legal debates surrounding the modern police-related coroner’s inquest; namely, the issues of standing for non-parties<sup>57</sup> and the matter of legal representation of institutional parties such as the police.<sup>58</sup> Both issues are crucial to obtaining a complete narrative of how the death

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<sup>54</sup> *Coroner’s Act*, R.S.O. 1990, c. C. 37, s.10(4) [*Coroner’s Act*].

<sup>55</sup> *Coroner’s Act*, s.2(2). See the discussion in Julian N. Falconer and Peter J. Pliszka, eds., *Annotated Coroner’s Act 2001/2002* (Markham, Ontario;: Butterworths Canada, 2001) 4.

<sup>56</sup> Two of the most widely-publicized inquests in recent years were held into the shooting deaths of Lester Donaldson and Raymond Lawrence, both killed by members of the Metropolitan Toronto Police Service. Jack Lakey, “Police acted as they should have, Donaldson probe told” *The Toronto Star* (18 March 1994) A9. Gail Swainson, “Officer’s testimony questioned by expert” *The Toronto Star* (24 March 1994) A6. Gail Swainson, “Report contradicts officers, inquest told” *The Toronto Star* (15 February 1994) A6. Gay Abbate “Inquest wrangles over race” *The Globe and Mail* (26 May 1993). Tony Wong “Group wants race made an issue at inquest” *The Toronto Star* (23 March 1993) A7. Gay Abbate “Lawrence used cocaine, toxicologist tells inquest” *The Globe and Mail* (27 May 1993).

<sup>57</sup> Both the Black Action Defence Committee and the Urban Alliance on Race Relations sought standing to pursue the racial dimensions of the case, the coroner denied both groups’ applications, and judicial review was sought: *Black Action Defence Committee v. Huxter, Coroner* (1992), 11 O.R. (3d) 641, 16 Admin. L.R. (2d) 88 (Div. Ct.) leave to appeal to Ont. C.A. dismissed. Ultimately the Urban Alliance on Race Relations, alone, was granted standing to pursue issues limited to cross-cultural sensitivity and the mentally-ill. All other claims were denied. John Deverell “Racial issue ruled out for inquest” *The Toronto Star* (23 February 1993) A7. : Bob Brent “Black group tries new tack to get role at inquest” *The Toronto Star* (4 September 1992) A9.

<sup>58</sup> A conflict of interest issue arose over the question of whether one lawyer was entitled to jointly represent the officers implicated in the shooting, the Police Services Board, and the Chief, at the inquest.

occurred. Under the Act, the test for standing is whether an applicant is “substantially and directly interested in the inquest”.<sup>59</sup> There remains debate regarding the possibility of “levels of standing” at a coroner’s inquest, given that s.41(2) only grants a party with standing the right to examine witnesses on matters “relevant to the interests of the person with standing”.<sup>i</sup> Traditionally, the police have sought to narrowly circumscribe the scope of coroner’s inquests, resisting efforts to introduce evidence surrounding issues such as systemic biases, racial profiling, and the like.

### **III. Legal Activity versus Transparency and Accountability**

#### **1. The Rise and Fall (and Rise Again) of Civilian Oversight**

The legal structure outlined above took effect in Ontario on January 1, 1998, replacing an equally sweeping reform introduced in 1990. The 1990 reforms favoured civilian oversight, the 1998 regime restricts both public access to the process and civilian oversight. Both approaches have received considerable criticism. In 2004, the third reform initiative in 20 years was set in motion and is widely expected to restore an increased measure of civilian oversight. What is going on?

Part of this history is attributable to the differing approaches to police governance of the political parties who have been in office when these changes were made (The Liberals in 1990 and the Progressive Conservatives in 1997, and the Liberals again in 2004). A large part, however, is structural. The police enjoy a high degree of community

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The conflict of interest inherent in such representation (given the diverse and potentially conflicting interests of these parties) was held to be sufficient to disqualify him. *Booth v. Huxter* (1994), 16 O.R. (3d) 528, 111 D.L.R. (4<sup>th</sup>) 111 (Div. Ct). “Court backs coroner over conflict ruling” *The Toronto Star* (15 January 1994) A13. Gail Swinton “No proof of conflict, Donaldson inquest told” *The Toronto Star* (27 October 1993) A12.

<sup>59</sup> *Coroner’s Act*, s.41(1).

support despite periodic concerns raised by high profile scandals, and they are successful in resisting changes in governance and regulation from any source. Most citizen complaint and review schemes have been largely unsuccessful at reducing police misconduct or at increasing public accountability. Andrew Goldsmith in introducing the 1991 edition of his collection of articles detailing police accountability systems around the world, (including England, Australia, Canada, and U.S. cities like Chicago, Pittsburgh, Philadelphia, and San Francisco) identifies failures to reduce misconduct or to increase community confidence in police accountability in all of those jurisdictions. He notes that "the widely attributed failure of internal complaints mechanisms reflects a loss of public confidence in the way in which the police have responded previously (or more to the point, have not responded) to expressions of citizen dissatisfaction and to evidence of misconduct more generally within their own ranks."<sup>60</sup>

When change does occur, particularly change that increases oversight, it does so in the aftermath of a significant crisis in public trust. For example, public concerns about police misconduct and existing police controlled complaint mechanisms raised throughout the 1970's led to the establishment of a unique civilian review agency to deal with complaints of concerning misconduct by Toronto police in 1984.<sup>61</sup> The Office of the Police Complaints Commissioner, (PCC) was mandated to provide independent review and resolution of citizen complaints in Toronto (including the authority to

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<sup>60</sup> Andrew Goldsmith, "External review and Regulation", in Andrew J. Goldsmith, ed, *Complaints Against the Police: The Trend to External Review*, (Clarendon Press, Oxford, 1991) pp 15 -61; p.19; pp 73-83, 227-263. And See: Dawn Currie, Walter DeKeseredy, Brian Maclean, "Reconstituting Social Order and Social Control: Police Accountability in Canada" 2:1 *The Journal of Human Justice* (1990) 29 at pp 33-37. They identify both the failure of the police to respond internally to misconduct and a failure of scholars and others to address police intransigence on the issue.

<sup>61</sup> Clare E. Lewis, who headed the expanded complaint commission that followed this experiment, details the history of the system as a response to growing public concern, in: "Police Complaints in Metropolitan Toronto: Perspectives of the Public Complaints Commissioner" in Andrew J. Goldsmith, ed, *Complaints Against the Police: The Trend to External Review*, Clarendon Press, Oxford, 1991, pp. 153 - 176.

sanction officers found guilty of misconduct), while leaving most initial investigations of complaints in police hands. The system was widely praised and offered as a model for other jurisdictions and was extended to cover all police forces in the province in 1991.<sup>62</sup>

Successful,<sup>63</sup> or not<sup>64</sup>, it did not last long. Following considerable police lobbying and a change in government, governance of police services in Ontario was once again studied, and revamped in 1997 (the changes came into effect January 1, 1998). In a fairly brief report to the new government Roderick McLeod, Q.C. successfully argued for the need to simplify and narrow the legislative foundation for governance of the police. Significant changes to the structure of civilian oversight followed the McLeod report and while the new Act did not make all the changes proposed in the report, it did include the abolishment of the Public Complaints Commissioner and the “narrow legislative

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62 The Police Services Act was amended to add part VI (since repealed) to deal with the Complaints system.. Part VI created a complete disciplinary regime, including a civilian oversight component. Citizen complaints were investigated at first instance by police officers assigned to the "Police Complaint Bureau". Details of complaints and progress of the investigation were reported monthly to the office of the Public Complaint Commissioner (PCC) who could intervene at any time. The results of the police investigation of the complaint were then provided to the Chief or his designate for a determination. The Chief had the authority to mediate a resolution between the citizen and the subject officer; order a disciplinary trial (as above); or, 'take no further action'. If the citizen was dissatisfied with the result (90% of complaints result in 'no further action') she could appeal the result to the PCC. The PCC was required to review the police investigation and was authorized to reinvestigate the complaint, either in the event of an appeal, (or if dissatisfied with the investigation), and could order a trial before a "Public Complaint Tribunal", a three person tribunal chaired by one of a panel of lawyers appointed by the Attorney General along with one member each from panels composed of appointees the local Police Association (police union), and the Attorney General. The tribunal had full disciplinary powers up to and including dismissal. See, for example, Werner E. Petterson, "Police Accountability and Civilian Oversight of Policing: An American Perspective", in Andrew J. Goldsmith, ed, *Complaints Against the Police: The Trend to External Review*, (Clarendon Press, Oxford, 1991), 280-283.

63 Susan Watt, "The Future of Civilian Oversight of Policing" (2001) 33 *Canadian Journal of Criminology* 347-362. Watt describes the Ontario PCC as the first successful Canadian effort at the civilianization of police complaints procedures. She suggests that the Ontario system will ultimately be accepted by police and lead to the creation of similar systems in other Canadian jurisdictions.

64 In discussing the repeal of the PCC, criminologist Tammy Landau identifies some of the many criticisms that were made of the PCC. For example, the fact that the Commission had very limited powers to investigate or initiate a complaint and that adjudicated decisions with respect to the outcome of complaints continued to rest with the chief. As part of the reason for its repeal, she points out that the rank and file never accepted the legitimacy of a civilian authority; Tammy Landau, "Back to the Future: The Death of Civilian Review of Public Complaints Against the Police in Ontario, Canada" in Andrew Goldsmith and Colleen Lewis, eds., *Civilian Oversight of Policing: Governance, Democracy, and Human Rights* (Oxford: Hart Publishing, 2000) 66-67.

framework” McLeod called for, including leaving the details of the conduct of investigations into complaints to the discretion of individual forces.<sup>65</sup> The Ontario experiment in civilian oversight was apparently over.

It appears that death of civilian oversight was brief. Another cycle of scandal has fuelled public dissatisfaction<sup>66</sup>. The failure of accountability mechanisms has, in turn, produced calls for reform.<sup>67</sup> With another change in government in Ontario, civilian oversight is being studied again. Former chief Justice Patrick LeSage has just been appointed to examine the mechanisms for dealing with complaints concerning police in Ontario.<sup>68</sup>

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65 Roderick McLeod, Q.C., *A Report and Recommendations On Amendments to the Police Services Act Respecting Civilian Oversight of the Police*, commissioned by the Ministry of the Attorney General and the Ministry of the Solicitor General (November 1996).

66 Far-reaching corruption scandals have plagued the Toronto Police Service in recent months: Nick Pron and John Duncanson, “Officers face charges of fraud, theft and assault” *The Toronto Star* (7 January 2004) A15; Christie Blatchford, “Six officers to be charged in corruption investigation” *The Globe and Mail* (7 January 2004) A9; Gay Abbate and Joe Friesen, “Probe results in 22 charges filed against six officers” *The Globe and Mail* (8 January 2004) A14; Kirk Makin, “Police blocked corruption probe” *The Globe and Mail* (20 January 2004) A1, A12; Kirk Makin, “Police chief denies ‘blue wall of silence’ in corruption probe” *The Globe and Mail* (21 January 2004) A6; Christie Blatchford, “‘Conscience is clean’ Fantino says” *The Globe and Mail* (21 January 2004) A6; Betsy Powell and Nick Pron, “Weeding out corruption” *The Globe and Mail* (22 January 2004) B1, B6; Cal Millar, John Duncanson and Nicholas Van Rijn “Police unit faces internal probe” *The Toronto Star* (17 April 2004) A4; Christie Blatchford “Police probe corruption as union boss steps down” *The Globe and Mail* (19 April 2004) A1, A9; John Duncanson “Betting scandal rocks police force” *The Toronto Star* (20 April 2004) A1; Nick Pron and John Duncanson “6 may face betting probe charges” *The Toronto Star* (21 April 2004) A1, A16; Katherine Harding “Mayor let down by chief’s reply to corruption recommendations” *The Globe and Mail* (23 April 2004) A12; John Barber “Enough with the few ‘bad apples’” *The Globe and Mail* (24 April 2004) M1; John Duncanson and Tracey Huffman “Source: Police shielded drug dens” *The Toronto Star* (24 April 2004) A1, A23; Christie Blatchford “Chief details charges against officers” *The Globe and Mail* (27 April 2004) A10.

67 The recent scandals have prompted calls for reform: Linda Diebel and Cal Millar “Police reform: ‘I want action’” *The Toronto Star* (28 April 2004) A1, A19; Christie Blatchford, “Judgment day for Toronto Police Service” *The Globe and Mail* (28 April 2004) A12; “Police require outside probe,” Editorial, *The Toronto Star* (28 April 2004) A22; Royson James “An independent inquiry is the only way to solve police mess” *The Toronto Star* (28 April 2004) B3.

68 The provincial government has responded by appointing retired Superior Court Chief Justice Patrick LeSage to conduct a comprehensive review of the civilian complaints process and issue recommendations for its overhaul: Richard Brennan “LeSage to review police watchdog system” *The Toronto Star* (10 June 2004) A1; Richard Brennan “Police complaints role ‘a challenge’, former judge says” *The Toronto Star* (11 June 2004) A20; “Police complaints reform overdue,” Editorial, *The Toronto Star* (11 June 2004) A26. There is some evidence that the Toronto Police Service has recognized the need to be seen to be

## **(b) Police Discipline**

The apparent failure of public complaint and internal discipline regimes to change police behaviour illustrates the inadequacy of reform strategies that concentrate on legalistic solutions. The police are trained to view the criminal law as their "tool". That perception sustains them in their work and in efforts to deflect public criticism and demands for public accountability. It encourages the belief that as members of the police force they are immune from criminal liability, and it dominates the structure and procedures around the disposition of citizen complaints.

### **[i] Criminalizing the Discipline Process**

Although the police are frequently bitter about the inappropriate 'benefits' granted to accused persons by the criminal law, ironically, this view of the criminal law may manifest itself in an almost evangelical belief in the criminal trial process when it frees a police officer who has been accused of criminal conduct arising out of violence that the police perceive to be necessary.<sup>69</sup> An examination of the Metropolitan Toronto Police Force attitudes toward internal employment discipline illustrates the phenomenon. Despite clear rulings from the courts that disciplinary proceedings against officers under the Police Act are not penal or quasi-criminal, but rather administrative and disciplinary in nature,<sup>70</sup> the proceedings remain shrouded in quasi-criminal trappings, primarily at the insistence of rank and file officers who are attempting to bring some fairness to proceedings they view as inherently unfair. The procedures set out in the *Police Services*

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responding to the corruption crisis: Betsey Powell "Tipster line for bad cops" *The Toronto Star* (7 June 2004) E1 (force announces anonymous tip line, as per the recommendation of George Ferguson).

69 For example, the police distrust of courts and disdain for criminals who "demand all the safeguards of due process" ... "assumes thereby that they [the safeguards] exist".; Doreen McBarnet, "Arrest: The Legal Context of Policing", pp 24-40, p.25,27, in Simon Holdaway, ed, *The British Police*, (Arnold, London, 1979).

70 *Re Trumbly et al* (1986) 55 O.R (2d) 570 and cases cited therein at pp 590 and ff.



*Act* are interpreted to create a forum analogous to a criminal court for the disposition of serious misconduct allegations against officers, whether brought as citizen complaints or not. Experienced criminal defence lawyers represent the accused officer, rather than labour or administrative lawyers. Formal "briefs," identical to those used in criminal prosecutions are prepared. The practices and procedures followed, from providing "particulars" and "disclosure" to "setting dates" and imposing "sentences", reflect this perception and reinforce the adversarial and punitive aura of the proceedings. Yet no one is satisfied. Members of the public participating as victim witnesses are isolated from the process and are rarely satisfied by the outcomes of the hearings<sup>71</sup>, while individual officers feel that they have been selected as scapegoats by police management.<sup>72</sup>

A vivid illustration of strategic use of the special relationship that exists between police officers and the criminal law is found in the case of Metropolitan Toronto Police Constable Terence Weller (a case decided by the original PCC). Weller was ordered to resign when a public complaint tribunal found him responsible for a serious assault that ruptured a suspect's testicles and dislocated his knee. The Toronto Police Association, which had earlier "declared war" on the public complaints tribunal,<sup>73</sup> was outraged that the officer had been denied the opportunity to "clear" himself of the charges in a *criminal* trial. A police officer member of a neighbouring Police Association laid an information alleging that Weller had committed assault causing bodily harm in order to give the

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71 Andrew J. Goldsmith, ed, *Complaints Against the Police: The Trend to External Review*, (Clarendon Press, Oxford, 1991) at pp. 15-61.

72 <sup>72</sup> Richard Ericson, identifies the use of internal discipline rules and procedures in order to maintain the belief that misconduct is isolated to "bad apples" both within the police culture itself, and, of course, in the community at large; "Police Use of Disciplinary Rules" in Clifford D. Shearing, *Organizational Police Deviance*; "Its Structure and Control", (Toronto, Butterworths, 1981) pp 97-101. And See: "Submissions on Behalf of Jane Doe: Ontario Civilian Commission of Police Services Inquiry (Junger Inquiry), Parkdale Community Legal Services, 1991.

73 Pat McNenly, "Police Union vows fight to abolish complaints board", *Toronto Star*, December 20, 1985.

officer that opportunity. However, the Attorney General stayed the proceedings on the ground that it was an abuse of the criminal process to lay a charge with no honest belief (based on reasonable and probable grounds) that an offence had occurred, foiling the officer's bid to clear himself in what he and his colleagues perceived to be a forum more sympathetic to them than the one operating under the Police Complaint Commissioner.<sup>74</sup> The police have employed other novel legal methods to resist disciplinary action. For example, there have been attempts to argue that both disciplinary and criminal proceedings violate an officer's s.11(d) Charter right against multiple convictions. However, In *R. v. Wigglesworth*, the SCC held that disciplinary offences (in that case, under the RCMP Act) are separate and distinct from criminal charges.<sup>75</sup>

### **[ii] Civil Challenges to Discipline**

Police officers have also resisted disciplinary action by launching malicious prosecution suits against police services boards and disciplinary bodies. In *Bainard v. Toronto Police Services Board* the officers had been charged with both disciplinary and criminal offences after allegedly assaulting a homeless man. After all proceedings were stayed, due to delay witness credibility issues, the officers brought an action for

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<sup>74</sup> The agent of the Attorney General in placing his reasons for the stay on the record, noted that Weller's 'conviction' by the Police Complaint Tribunal had been upheld on appeal to the Divisional Court. There was no doubt that the charge had been laid as a device, demonstrating a troubling belief in the tendency of criminal courts to acquit police officers who harm citizens while in the execution of their duty. *Her Majesty the Queen v Terence Weller*, Ontario Court (Provincial Division) April 21, 1988, Before Judge J. Kerr, Scarborough, (unreported).

<sup>75</sup> *R. v. Wigglesworth* [1988], 1 W.W.R. 193, 61 Sask. R. 105, 60 C.R. (3d)193, [1987] 2 S.C.R. 541, 24 O.A.C. 321, 45 D.L.R. (4<sup>th</sup>) 235. See also *Armstrong v. Peel Regional Police Services Board* (2003), 2003 CarswellOnt 3331 (distinction between criminal and disciplinary proceedings); *Burnham v. Metropolitan Toronto Chief of Police*, [1987] 2 S.C.R. 572, 32 C.R.R. 250; *Trimm v. Durham Regional Police Force* [1987], 37 C.C.C. (3d) 120, [1987] 2 S.C.R. 582, 24 O.A.C. 357, 45 D.L.R. (4<sup>th</sup>) 276, 32 C.R.R. 244; *Trumbley v. Flemming* [1987], 29 Admin. L.R. 100, 81 N.R. 212, 24 O.A.C. 372, (sub nom. *Trumbley v. Metropolitan Toronto Police*) [1987] 2 S.C.R. 577, 32 C.R.R. 254, 37 C.C.C.(3d) 118, 45 D.L.R. (4<sup>th</sup>) 318, [1987] 2 S.C.R. 577 trilogy on s.11(d) Charter compliance of disciplinary proceedings.

damages in relation to the disciplinary proceedings. The Ontario Superior Court dismissed the action, acknowledging that while the officers were victims of a “very sloppy investigation”, there was no evidence of malice in relation to the investigation or the laying of the disciplinary charges.<sup>76</sup> In the 2004 case *Heasman v. Durham Regional Police Services Board*, Durham Region officers sued the police services board for breach of fiduciary duty, negligent investigation and abuse of public office for investigation resulting in charges of neglect of duty and discreditable conduct, which were later stayed. The court dismissed the claim, holding that the Board had no fiduciary obligation to act only in the interests of the plaintiff officers. Other lawsuits are pending.<sup>77</sup>

### **[iii] Judicial Review**

Both the streamlined process introduced in the 1997 reforms, and the predecessor provisions have been frequently challenged as police officers seek judicial review of disciplinary decisions and penalties<sup>78</sup>. *Browne v. OCCOPS* (One of 2 joined appeals) is the current leading case on the powers of OCCOPS under the new regime. Officers were initially successful before their chief and again at divisional court in a review of a successful appeal by the complainants, until the case eventually reached the Ontario Court of Appeal. The procedural arguments raised by the officers were

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<sup>76</sup> *Bainard v. Toronto Police Services Board* [2002], O.T.C. 504. See also (2004), 2004 WL 858890 (Ont. S.C.J.), 2004 CarswellOnt 1675 (officers suing board for breach of fiduciary duty, negligent investigation and abuse of public office for investigation resulting in charges of neglect of duty and discreditable conduct, which were later stayed. Court dismissed the claim, holding that the provisions of the Police Services Act and the Public Service Act create a complete code of discipline for the OPP, leaving no gap in jurisdiction to hear the matter as a civil cause of action, and that the Board had no fiduciary obligation to act only in the interests of the plaintiff officers).

<sup>77</sup> *Heasman v. Durham Regional Police Services Board* (2004), 2004 WL 858890 (Ont. S.C.J.).

<sup>78</sup> Although there have been successes, both by officers and complainants, the courts have generally been deferential to OCCOPS decisions. See *Townley v. Ontario (Police Complaints Commissioner)* (2000), 2000 Carswell Ont 343; *Ontario (Police Complaints Commissioner) v. Hannah* (1997), 145 D.L.R. (4<sup>th</sup>) 443, 1997 Carswell Ont 820; *Thomas v. Ontario (Police Complaints Commissioner)* (1994), 1994 Carswell Ont 3222.

dismissed. The Court held that OCCOPS should not be held to a strict standard in of notice in reporting their decisions to the parties as long as the subject officers would know the case they had to meet.<sup>79</sup>

The predecessor legislation generated a considerable body of case law. Illustrating the role played by s.25 of the Criminal Code in disciplinary proceedings, *Durancik v. Ontario (Attorney General)* considered the relationship between Board of Inquiry hearings and the Criminal Code protection afforded to peace officers regarding the use of force. The Ontario Divisional Court held that the Board erred in failing to consider s.25 of the Criminal Code, and that without considering s.25, the Board could not have legally concluded that the officer had used unnecessary violence<sup>80</sup>. *Tomie-Gallant v. Ontario (Board of Inquiry)* addressed the issue of the burden of proof in a Board of Inquiry hearing. The officer sought judicial review of a finding of guilt on charges of making an unlawful arrest under the Police Act regulations. The Ontario Divisional Court held that the Board of Inquiry had wrongfully reversed the burden of proof by requiring the officer to convince the board of more than the fact that she had reasonable and probable grounds for making the arrest.<sup>81</sup> In *Dulmage v. Ontario Police Complaints Commissioner*, the Ontario Divisional Court dealt with an officer's claim of reasonable apprehension of bias on the Board of Inquiry. The case involved a complaint by a black woman regarding a strip-search. The Congress of Black Women of Canada had made public statements condemning the officer's conduct. A member of the panel was also a member of the Congress. The court held that the Board, as then

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79 *Browne v. OCCOPS* (2001), 207 D.L.R. (4th) 415, 151 O.A.C. 302, 56 O.R. (3d) 673 reversing (1999), 127 O.A.C. 182 (Ont. Div. Ct.); and reversing (2000), 4 C.C.E.L. (3d) 153 (Ont. Div. Ct.).

80 *Durancik v. Ontario (Attorney General)* (1994), 114 D.L.R. (4<sup>th</sup>) 504, 75 O.A.C. 27.

81 *Tomie-Gallant v. Ontario (Board of Inquiry)* (1995), 33 Admin. L.R. (2d) 34, 88 O.A.C. 96.

constituted, was prohibited from continuing the proceedings, finding that the test for reasonable apprehension of bias had been met.<sup>82</sup>

Complainants may also seek judicial review, and *The Corp. of the Canadian Civil Liberties Assn. v. Ontario Civilian Commission on Police Services* is an example of complainant-driven judicial review. The chief had dismissed as "unsubstantiated" complaints respecting decision to transfer young female protesters to a facility where police knew they would be strip-searched. The decision was affirmed by OCCOPS and the complainants applied successfully for judicial review pursuant to s. 72(5) of Police Services Act. The court held that the standard of review is whether the commission's decision was patently unreasonable. In reviewing the decision of the chief, the commission must determine whether the alleged facts constitute a reasonable basis for the complaint. The court found that both the commission and chief applied the wrong evidentiary standard in determining whether hearing should be held. Only evidence which "may" constitute misconduct or unsatisfactory work performance is required, not "clear and convincing" evidence, and the failure of the commission to apply correct standard under the Act rendered its decision patently unreasonable. The complainants were held to be entitled to a hearing to be conducted by a different police force.<sup>83</sup>

### **3. Political and Civil Accountability**

#### **a) The relationship between the Police Services Board and the Chief of Police**

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<sup>82</sup> *Dulmage v. Ontario (Police Complaints Commissioner)* (1994), 30 Admin. L.R. (2d) 203, 21 O.R. (3d) 356, 75 O.A.C. 305, 120 D.L.R. (4th) 5

<sup>83</sup> *Corp. of the Canadian Civil Liberties Assn. v. Ontario Civilian Commission on Police Services* (2002, 165 O.A.C. 79, 61 O.R. (3d) 649, 97 C.R.R. (2d) 271, 220 D.L.R. (4th) 86 (Ont. C.A.). for further confirmation that the standard of the review for a PCC Board of Inquiry decision is that of unreasonableness, as well as the deference generally afforded the Board of Inquiry by the courts

Given the nature of the relationship created by the Police Services Act between the Chief of a Police Service and the Police Services Board who employs her or him, conflicts between them inevitably arise, particularly over the under-developed notion of the distinction between policy and operations. Police chiefs may feel that the board has overstepped its bounds by interfering in actual operations, while the board may clash with chiefs over what it views as policy issues and the Chief's failure to implement police directions. That's has certainly been the case in Toronto, where contract (of employment) negotiations have also been highly contentious.<sup>84</sup> Tensions between the Toronto Police Services Board Chair and the Toronto Chief have on occasion been publicly acrimonious.<sup>85</sup> While the legislation appears to confer tremendous power on the boards, the ability to exercise this power has been limited by the actions (and inaction) of chiefs and by a political reluctance to openly question the authority of the chief on what may appear to be "operations" issues, or to appear 'soft on crime' or 'anti-cop'.<sup>86</sup>

The search for an appropriate response to the problem of racism/racial profiling within the force represents an example of a particularly difficult issue that has generated considerable tension between the board and various chiefs over the years. The interests of the Chief and those of the Board have been recognized as divergent on the matter of pursuing the racial dimensions of police violence, a conflict made public at publicized

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84 Two Toronto Chief's, former Chief William McCormack and current Chief Julian Fantino have both been involved in public and sometimes hostile contract negotiations with the Toronto Police Services Board. Linda Diebel, "No fast renewal of chief's contract: Miller" *The Toronto Star* (22 January 2004) A1, A14. Although the Toronto Board position has been that the Chief Fantino will not be offered a second term and thus a search for the next chief commenced in the fall of 2004, power struggles over the issue have been relentless. Linda Diebel, "Battle still rages over chief's future. Power struggles continue on board. Fantino says he's above fray, but is he?" *Sunday Star*, September 19, 2004, A1.

85 See particularly the tensions surrounding the replacement of Chief Boothby and the conflict between Board Chair Susan Eng and Chief McCormack. John Duncanson, "Boothby doomed as chief: sources" *The Toronto Star* (8 May 1999) A4. Jack Lakey "Eng queries secret study on blacks" *The Toronto Star* (12 February 1994) A8.

86 This may be seen as directly related to the proportion of the Board which is comprised of elected city-councillors, concerned about their prospects for re-election.

coroner's inquests (Raymond Lawrence, Lester Donaldson in particular) dealing with police shootings of young black males.<sup>87</sup> Although the courts have recognized the phenomenon of racial profiling and the findings of the various commissions of inquiry have unequivocally noted the presence of racial bias in policing,<sup>88</sup> it has been difficult for Toronto police chiefs to acknowledge that racism may be systemic and unconscious as well as deliberate and/or malicious. The Toronto Police Services Board, under its jurisdiction to set policy has sought to make the issue a priority, but these efforts have been met with extreme resistance (and even denial) by the union and successive chiefs.<sup>89</sup>

## **(b) The relationship between Police Management and the Police**

### **Association**

The relationship between police management and the police association has also become more confrontational and adversarial in recent years.<sup>90</sup> Perhaps the most hotly-contested issue, however, has been the issue of political activities and

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<sup>87</sup> See, in particular, the discussion, *Supra*, of the Donaldson Inquest and the conflict of interest involving police lawyer Todd Archibald.

<sup>88</sup> See, for example, *R. v. Golden*, [2001] 159 C.C.C. (4<sup>th</sup>) 449 (Supreme Court of Canada); *R. v. Griffiths*, (2003) 11 C.R. (6<sup>th</sup>) 136, 106 C.R.R. (2d) 139. *R. v. Brown*, (2003) 173 C.C.C. (3d) 23. (Ont. Court of Appeal) The accused, a black Toronto Raptor's basketball player, was stopped for speeding, required to give a breath See also Kirk Makin "Police engage in profiling, chief counsel tells court" *The Globe and Mail* (18 January 2004) A1, A26

<sup>89</sup> Jim Coyle criticizes Bromell's "knee-jerk and petulant...defiant and threatening" rejection of the judicial notice taken of the existence of police racial profiling in the Dee Brown case, and calls for a change in police union leadership. "Bromell huffs and puffs and blows his credibility" *The Toronto Star*, April 19, 2003, A25 The Canadian Race Relations Federation and others criticize Toronto Police Service for not acting more quickly to respond to the Crown's admission of racial profiling and the recommendations of a recent summit on racial profiling in the justice system. Toronto police union president Craig Bromell and Chief Fantino continue to deny the existence of racial profiling. Catherine Porter "Action urged on race profiling" *The Toronto Star* January 19, 2004, A11..

<sup>90</sup> The aggressively activist union stance in Toronto stems from the 1995 wide spread protests and job action against provincial use-of-force requirements that a report be filed every time an officer drew his or her weapon. The union undertook an illegal work-to-rule campaign that Chief McCormack was seemingly powerless to prevent. Jack Lakey, "Police ignoring job action: Chief" *The Toronto Star* (15 May 2003) B2. Philip Mascoll, "Striking Metro police lock station doors" *The Toronto Star* January 27, 1995, A1, A6. In his memoirs, the former chief presented the issue as a highly political, almost 'plot' against police by the government of the day. Bill McCormack, *Without Fear or Favour: The Life and Politics of an Urban Cop* (Toronto: Stoddart, 1999) Chapter Twenty-one, "Bob Rae's Kind of People".

endorsements by Police Associations, particularly the Toronto Police Association. The Police Services Act specifically limits the political activities of individual officers: Regulation 554/91 prevents the endorsement of political candidates or parties and permits an officer to voice political opinions on behalf of the force only when authorized to do so by the Board or the Chief.<sup>91</sup> The Toronto Police Association claims that the regulation does not apply to them and that it is the association's constitutional right to lobby, to express political positions and to endorse candidate and political parties. The issue erupted in a controversy surrounding fundraising campaign called "True Blue". The Toronto Police Association utilized telemarketers to solicit contributions from the public. In return for a contribution of a certain amount, donors would receive a Toronto Police Association decal, (different colours denoted the level of the contribution) which they could display – in the windshield of their car, for example.<sup>92</sup> The association abandoned the campaign in the face of nearly unanimous public and political concern, but the general issue continues to arise.<sup>93</sup>

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<sup>91</sup> *Police Services Act*, Amended to O. Reg. 89/98, s.3.

<sup>92</sup> Timothy Appleby, "Toronto police union turns to telemarketing" *The Globe and Mail* (22 January 2000) A23. John Duncanson, "Drive not linked to force, chief says" *The Toronto Star* (23 January 2000) A4. Virginia Galt and John Saunders, "True Blue controversy shakes solidarity in the ranks of police, board says" *The Globe and Mail* (31 January 2000) A16. Colin Freeze "Toronto police, board agree on fundraising issue" *The Globe and Mail* (2 May 2000), John Duncanson "Chief brokers deal with board, union" *The Toronto Star* (2 May 2000) B1, B4. Bagesheree Paradkar, "True Blue gets mixed reviews from officers" *The Toronto Star* (28 January 2000) A19. John Duncanson and Jennifer Quinn, "Showdown! Police chief threatens union boss over True Blue fundraising scheme" *The Toronto Star* (27 January 2000) A1, A24. Gay Abbate, "Politicians launch crackdown on police union" *The Globe and Mail* (28 January 2000) A1, A17. Paul Maloney and Bruce DeMara, "New bylaw bans True Blue" *The Toronto Star* (29 January 2000) A1, A21. Gay Abbate, "Police union defies orders, leaders face sanctions" *The Globe and Mail* (29 January 2000) A1, A27.

<sup>93</sup> Linda Diebel, "Police union resists board" *The Toronto Star* (23 January 2004) F1 (Complaints and court ruling sought on the issue of police union political endorsements). Rosemary Speirs "OPP union sends out a Long letter" *The Toronto Star* (14 June 2000) A6. Paul Maloney "Police union endorsements split council" *The Toronto Star* (26 August 2000) B1, B3. John Duncanson "Police union puts heat on candidates" *The Toronto Star* (19 October 2000) D1, D4. Colin Freeze "Police union and politics and volatile mix" *The Globe and Mail* (6 November 2000) A21. Royson James "City councillors are too fearful to bell Bromell" *The Toronto Star* (20 November 2000) B1. Gay Abbate, "Bully tag worked, union leader says" *The Globe and Mail* (2 October 2003) A17. Gay Abbate, "Police union accused of intimidation" *The*



Other issues have proven to be almost as contentious, such as the powers of the Special Investigations Unit (SIU) and antipathy towards civilian oversight in general. As police chief's attempt to deal sternly with misconduct, from officer use of excessive force to corruption, police unions respond with tactics such as by holding unofficial "votes of confidence" in their performance. It was in this manner that the Toronto Police Association expressed its displeasure with Chief Julian Fantino<sup>94</sup>; however the phenomenon has not been isolated to Toronto.<sup>95</sup>

What goes around comes around however and the Toronto Police Association has itself been rocked by a widespread corruption scandal involving prominent members (including President Rick McIntosh) <sup>96</sup>. The scandal, which resulted in criminal charges including breach of trust, fraud, influence peddling, obstruction of justice and weapons-related charges, has caused tension between the union and both the chief and the Police Services Board<sup>97</sup>. Because two of the accused were union

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*Globe and Mail* (27 January 2000) A1, A21.

<sup>94</sup> Gay Abbate, "Union puts Fantino's leadership to a vote" *The Globe and Mail* (15 November 2001) A24. John Duncanson and Jennifer Quinn, "Doubts raised over chief's leadership in police vote" *The Toronto Star* (19 January 2002) A27. Jennifer Quinn and John Duncanson, "Police chiefs feel heat of unions" *The Toronto Star* (14 January 2000) A1, A18. See also Vanessa Lu "8 officers sue police chief over fink fund case" *The Toronto Star* (21 January 2003) A16. Colin Freeze "Drug squad officers blast police brass in civil suit" *The Globe and Mail* (22 January 2003) A20. Gay Abbate, "Pall cast over bargaining with police" *The Globe and Mail* (22 November 2001) A30. Jim Rankin, "Police union sues Fantino" *The Toronto Star* (25 November 2001) A10. Jim Rankin and John Duncanson, "Bromell blasts chief over charges" *The Toronto Star* (20 September 2001) B1, B5.

<sup>95</sup> Graeme Smith, "Saskatoon police chief faces revolt in the ranks" *The Globe and Mail* (2 July 2003) A5. Rod Mickelburgh, "Rumours swirl around Vancouver chief" *The Globe and Mail* (8 May 1999) A12.

<sup>96</sup> Nick Pron and John Duncanson "4 officers facing criminal charges" *The Toronto Star* (4 May 2004) A1, A13. Jonathan Fowlie "Officers charged in 'shakedown' case" *The Globe and Mail* (4 May 2004) A1, A14. Jonathan Fowlie "McCormack defends his wife" *The Globe and Mail* (7 May 2004) A13.

<sup>97</sup> Jason Tchir "Hammer drops on four cops" *Toronto Sun* (4 May 2004) 1, 5. Jonathan Fowlie and Katherine Harding "McIntosh submits formal resignation" *The Toronto Star* (21 May 2004) A11. Union boss resigns almost three weeks after being charged with four criminal offences in relation to the corruption scandal. The scandal has also caused division within the Toronto Police Association itself: Jonathan Kingstone "Union boss: I am the victim of smear" *Toronto Sun* (4 May 2004) 5. Nick Pron "Union trying to oust charged officers" *The Toronto Star* (5 May 2004) A1, A21. Jeff Gray and Jonathan Fowlie "Police union moves to oust its president" *The Globe and Mail* (5 May 2004) A8. Robert Cribb and Nick Pron "Police union meets to oust pair" *The Toronto Star* (6 May 2004) A16. Jonathan Fowlie and Jeff Gray

officials at the time, the charges have led to a resurfacing of the issue of whether union officials are technically police officers, or whether they have immunity from Police Services Act provisions.<sup>98</sup> At the same time, the shocking charges have bolstered political support for proposed changes to civilian oversight structures in the province.<sup>99</sup>

#### **IV A Case Study: The Junger/Whitehead Inquiry**

Many of these issues were examined by the Ontario Civilian Commission on Police between October 1990 and May 1992. The Commission was brought in to investigate the policies practices and procedures for internal investigations of the Metropolitan Toronto Police Force. These issues were investigated in the context of the ways that the misconduct and discipline of former Constable Gordon Junger and former Sgt. Brian Whitehead were handled. The context was explosive: police corruption and police involvement in prostitution, and public concern was considerable. In August 1992 the Commission issued a comprehensive report that was equally critical of Toronto police officers, the Chief and the Police Services Board. The report made twenty-four wide sweeping recommendations designed to improve the accountability and public trust they concluded had been lost.<sup>100</sup>

##### **1. The Case of Gordon Junger**

In the fall of 1989, Toronto Police Force Constable Gordon Junger and his girlfriend, Franklina (Roma) Langford, operated an escort service in Toronto called the

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“Police group won’t discuss officers” *The Toronto Star* (6 May 2004) A15.

98 John Barber “You go, Mike. We’re counting on you” *The Globe and Mail* (8 May 2004) M2. Barber cites the need for a definitive judicial finding on the subject of Police Services Act jurisdiction over union officials.

99 Jennifer Lewington “Police oversight issue unifies city hall” *The Toronto Star* (6 May 2004) A15.

100 The Ontario Civilian Commission on Police Services, *Report of an Inquiry into administration of internal investigations by the Metropolitan Toronto Police Force*, August 1992.

“Pleasure can Be Yours Escort Service”. After Ms. Langford complained to Toronto Police Internal Affairs about Junger’s role in the escort service and a number of other matters of discreditable conduct, including possession of narcotics, Junger was arrested on December 5, 1989 in a hotel room where he was acting as an ‘escort’ for a female client. The client was, in fact, a policewoman and the entire exchange with her was videotaped. Although charged with “Living on the Avails of Prostitution” and possession of cannabis, Junger was never prosecuted.

In lieu of prosecution, Junger’s lawyer negotiated an agreement, in writing, with officers from Internal Affairs that would result in Junger resigning from the force as of February 1, 1990 and in exchange a possession of narcotics charge would be withdrawn, no criminal or Police Act charges would be laid against him “arising from or with respect to his relationship both personal and business with Franklina Langford”, all physical evidence relating to the investigation was to be destroyed, and Junger would not receive a negative employment reference. To all intents the agreement was fulfilled before any aspect of the ‘deal’ became public. Junger resigned, the charge was withdrawn, and the Metropolitan Toronto Police Services Board simply were advised, in brief report from the Chief made in closed session, that an officer about whom there were allegations of drug use, and prostitution related activities had left the force. Apparently even the Chief did not know all of the details in February when the deal was executed, but when he learned the specific terms of the agreement in March he still did not advise the Board about the agreement but instead asked the Force’s legal advisor to develop guidelines for any future agreements of that sort.

## **2. The Case of Brian Whitehead**

On November 7, 1989 a woman working as a prostitute was picked up by an off duty police officer, former Sergeant Brian Whitehead who threatened to arrest her, if she didn't do what he asked. She complied but after Whitehead told her he would continue to abuse her sexually, she sought legal advice about what he had done to her and how to make him stop. Toronto Police Internal Affairs were advised, agreed to preserve the woman's confidentiality, and after a three week investigation, on November 22, 1989, arrested Whitehead for sexual assault and extortion. Although arrested and detained briefly, Whitehead wasn't processed on these charges. Instead, on March 11, 1990 he was charged with "Corrupt Practice" under the Police Services Act. Pursuant to a plea agreement reached without any notice to Jane Doe, Whitehead pleaded guilty to the charge of corrupt practice. Although a joint submission had made for a penalty "days off", he was instead demoted to Constable on May 11, 1990. The criminal charges against him were withdrawn by the crown. The promise of confidentiality was not kept and in March 1991 Chief McCormack threatened to release her identity. He was prevented from doing so on March 19, 1991, when Jane Doe was forced to obtain an injunction.

## **3. The Media - 1990**

The story of Jane Doe and (former) Sgt. Brian Whitehead did not appear in the press until March 1991, but there was considerable media attention to the escapades of Gordon Junger and his controversial deal with Toronto Police. A review of the print

media produces a valuable record of what was said before evidence at the Inquiry clarified the facts, what wasn't said, and by whom.

In the first story on the Junger affair, written by Toronto Star reporter Alan Story<sup>101</sup>, Chief William McCormack claims that no "special deal" had been reached with Junger and that a thorough and impartial investigation had been conducted into possible criminal offences that he might have faced. The Chief's explanation for the withdrawal of the possession of cannabis charges is that the evidence of a key witness (presumably Roma Langford) had changed. On the issue of a deal to drop charges against Junger, he is quoted as saying that the allegation by Junger that a deal had been struck "does not dignify a reply." In the days following, Chief McCormack insists that he did inform the Police Services Board concerning the deal and the resignation. Some board members have no memory of being advised about such a remarkable case.<sup>102</sup>

Evidence called at the Inquiry ultimately establishes that Roma Langford adamantly denies ever saying that she would recant her evidence concerning the drug charge against Junger (and is believed) and that she also told Internal Affairs about two officers on the force who had performed sex acts for money. . In regard to Ms. Langford's position, former Chief McCormack is quoted as saying; "Who do you believe? The word of the police chief or that of a prostitute?" In regard to the matter of other officers (one of whom it is now known was his son Bill), he is reported as saying that "no evidence" had been found to substantiate the claim, but that the continued publicity concerning the matter was hurting morale. The same story notes that Ms. Langford provided police with a number of audio tapes of telephone conversations

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101 Alan Story, "Morality officer ran sex-for-pay service" *The Toronto Star*, April 7, 1990, A1.

102 Tracy Tyler, "Police board's memories vary on escort case" *The Toronto Star*, April 11, 1990, A7.; Andrew Duffy, "Chief promised no charges if officer quit" *The Toronto Star*, April 12, 1990, A8.

concerning the escort service as well as call sheets containing the officer's names.<sup>103</sup>

This story is followed with the first of many strong editorials on the allegations and former Chief McCormack's responses:

"Metro Police Chief William McCormack has reacted angrily to allegations that the force suppressed a sex-for-money scandal involving force members. He insists the Metro force conducted a "thorough" inquiry. Yet contradictory statements by a key player in the scandal have raised more questions. For example;

- Was a thorough investigation conducted into all possible Charges against the key officer about his running of the escort service before he left the force, without being prosecuted?
- Second, did the police force's internal affairs bureau conduct an exhaustive investigation before concluding that there was no evidence linking two other officers to the escort service? The woman involved in the service now says she has evidence showing their participation.
- Third, why were no drug charges laid against the key officer or his then companion when hash oil was found in their townhouse?

To his credit, McCormack has now invited the Ontario Police Commission -- a body with investigative powers -- to go through files on the case and put the doubts to rest. However, even without seeing the files, commission Chairman Douglas Drinkwater yesterday called it "a tempest in a teapot," saying "we don't have any big, grave concerns."<sup>104</sup>

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<sup>103</sup> Cal Miller and Lisa Priest, "Chief irate over publicity in escort case" *The Toronto Star*, April 18, 1990, p A1. The matter of the other officers allegedly involved in the escort service surfaced again almost 15 years later. Reports concerned the investigation into 52 Division shakedown scandal, disbandment of 52 Division plainclothes unit and allegations from eight transvestite prostitutes that they provided free sex to a police officer. Jonathan Kingstone and Rob Lamberti "T.O. cop extorted payoffs at clubs?" *The Toronto Sun* (18 April 2004). The story became more specific and linked allegations of prostitution scandal to Bill McCormack Jr., son of former Chief Bill McCormack. McCormack Jr. was Gordon Junger's partner at the time. implicated in the 52 Division shakedown scandal. Article links these prostitution allegations to the Junger scandal. Jonathan Kingstone and Rob Lamberti "Hooking police rumour" *The Toronto Sun* (19 April 2004). Finally it is confirmed that Bill McCormack Jr. was suspended pending investigation (he was subsequently charged with a number of Criminal Code offences), rumour links him to Junger scandal, but he denies all wrongdoing. Mark Bonokoski "Rumour wed to lies" *The Toronto Sun* (20 April 2004).

<sup>104</sup> Editorial, "The escort affair" *The Toronto Star*, April 19, 1990.

Media coverage of the evidence heard by the Commission was extensive and continued to build to the long awaited report.

#### **4. The Report: August 1992**

In the introduction to their report, the commissioners set out their four central criticisms. They concluded that:

“There has been a tendency by the force to treat cases involving errant officers as an in-house problem, rather than a matter of public concern. In an effort to rid the force of an officer who was considered unsuitable, expediency has taken precedence over principle. Accountability for police discipline and civilian review has been compromised. Inadequate consideration has been given to victims of police wrongdoing.”<sup>105</sup>

They identified as a key problem a culture of denial and insularity. That culture was demonstrated in the evidence of police witnesses who consistently minimized their errors and blamed anyone but themselves. They noted with concern:

“The Metropolitan Toronto Police Force has maintained throughout this Inquiry that nothing seriously went wrong -- nothing that a few procedural changes could not fix. The Chief of Police William McCormack told the Inquiry that the force has not been "procedurally perfect," but his officers have acted in good faith. It is significant that, as far as this Inquiry has been informed, not a single member of the force has been reprimanded in connection with these matters.

Internal Affairs, which conducted the investigations into Junger and Whitehead, has gone on record in its final submission (p. 2) as assessing its performance as flawless -- "totally proper, totally correct and totally legal" and in the best interests of the force and the community.”<sup>106</sup>

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<sup>105</sup> The Ontario Civilian Commission on Police Services, *Report of an Inquiry - into administration of internal investigations by the Metropolitan Toronto Police Force*, August 1992, Part 2, Introduction, pp 3-4.

<sup>106</sup> *ibid*

Attitudinal and structural failures within the Toronto Police Force were directly implicated in the Report as creating a crisis of public confidence in their governance.

The commissioner's conclude their introductory remarks as follows:

"If the Metropolitan Toronto Police Services Board had reacted differently in April, 1990 when circumstances of the resignation of Gordon Junger first came to light in the media, this Inquiry need never have taken place. If the Board had used its own authority to uncover the facts of the Junger case and respond appropriately, the Ontario Civilian Commission on Police Services would not have felt obliged to intervene.

If the Chief of Police for Metropolitan Toronto had responded vigorously and openly when he discovered the full details of the Junger resignation agreement, instead of keeping them confidential, the reaction to this whole matter would have been different.

Had the force been less defensive and the Board less complacent at the outset, the public would have been assured that the issues were being addressed. This report would not have been necessary."<sup>107</sup>

They rejected entirely the former the Chief's rationalizations of the agreement reached with former Constable Junger (the "deal" the Chief denied had taken place).

Instead, they characterized it as an attempt to make the ends justify the means:

"The Inquiry heard a range of justifications from the force for the agreement, such as: it was worth it to get rid of a bad officer; there was no intention of complying with the terms anyway; the criminal case against Junger had fallen apart because the witness had changed her story; there was no hope of any other successful prosecutions; once he resigned, disciplinary charges were irrelevant; and it would have taken a long time to go through the disciplinary hearing process and would have cost the taxpayers a lot more to continue to pay Junger's salary on suspension until the case was resolved.

All of these excuses amount to the end justifying the means. They are totally unacceptable.

It is disturbing that the response of the Internal Affairs unit, which signed the agreement on behalf of the Chief, has been to continue to deny any error. The final written submission from Internal Affairs concluded that "the conduct of Internal Affairs was appropriate, just and fair." (p.3) The motive expressed by Internal Affairs witnesses -- their desire to

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<sup>107</sup> *ibid*



secure the resignation of an officer they believed should be off the force – may have been understandable, but their actions were wrong.

The Commissioner's are clear in placing some of the responsibility for the cavalier attitude of Internal Affairs toward on the Chief and the Police Services Board. They said:

“The smugness of Internal Affairs in finding itself to be totally without fault is likely in part the result of the fact that no one has been censured for conduct in connection with any aspect of the Junger matter. According to testimony, the closest the force came to admitting a problem was to indicate that the agreement should have been shown to a lawyer before it was signed. This sounds like a procedural error only. It ought to have been recognized that in substantive terms, there were serious problems with the agreement.”<sup>108</sup>

They were equally critical concerning their finding that Chief McCormack failed adequately to inform the Police Services Board or to act on what he learned:

“Chief William McCormack testified that he was not fully aware of the details of the resignation agreement when he gave consent to it. The information he received about the agreement appears to have been second or third-hand. When he did see it, he was still not overly concerned because he believed that prosecution of the officer either in criminal court or a disciplinary hearing was not a viable option. He insisted that the agreement was not a "deal" because neither party got anything out of it.

But he was sufficiently worried about public criticism when he saw the agreement that he thought it best to keep the agreement confidential.

The Chief of Police should have been fully informed -- and should have ensured that he was fully informed -- of the details of the agreement before his signature was attached to it. Once the Chief became aware of the agreement, he should have repudiated it and taken it to the Police Services Board. Keeping the agreement confidential, especially from his own Board, was an inappropriate reaction.”<sup>109</sup>

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<sup>108</sup> The Ontario Civilian Commission on Police Services, *Report of an Inquiry - into administration of internal investigations by the Metropolitan Toronto Police Force*, August 1992, Part 6 “The Junger Agreement” p 1- 2.

<sup>109</sup> *Ibid* pp4-5.

Their conclusion that the Police Services Board's response was "wholly inadequate" included the Board's failure to require answers from the Chief. In other words, it is not adequate supervision to simply accept whatever information the Chief chooses to provide.

The Report devoted Part 9 to the treatment of the victims of police misconduct - in this case both Roma Langford and Jane Doe. In almost all cases the Report chose to accept the "word of prostitutes" over that of police officers or of the police chief. Although Internal Affairs "quickly and professionally" investigated Jane Doe's allegations against Brian Whitehead (which were confirmed in all respects), they rejected the officer's rationalizations for failing to proceed with criminal charges, which she advised them she was anxious to proceed with, and were critical with the way that she was treated in regard to the Police act charges. They said:

"Disciplinary hearings are not in-house matters to be dealt with in private by the force. Jane Doe should have been informed and involved. Furthermore, it is presumptuous and patronizing to make decisions on behalf of an adult who is capable of deciding on her own what is best for her. Police officers must take into account the greater good of the community in their decisions, but they should not presume to know what is best for an individual victim without consulting the person.

The sad thing is that the response of the force to Jane Doe only got worse. She was not notified, as the key witness, of the disciplinary proceeding. Neither was her lawyer. Her statement was changed at the hearing by the prosecutor, at the insistence of Whitehead's lawyer, without her knowledge or concurrence. The prosecutor and defence agreed on a penalty of days' off (which was rejected by the hearing officer). During the hearing, in her absence, the promise to Jane Doe to protect her identity was ignored, and her name was entered into the transcript.

The subsequent treatment of Jane Doe by senior management of the force seemed to emanate from a quite remarkable fog of ignorance. It is almost unbelievable that -- having failed to notify Jane Doe of the disciplinary hearing, having reneged on a commitment to keep her name confidential, and having made unauthorized changes to her statement at the hearing - the force would call a news conference in which the Chief

blamed Jane Doe for not showing up at the hearing and protecting her own interests. To add insult to injury, Jane Doe was also forced to go to court for an injunction to prevent her name being disclosed through public release of the transcript by the force.

The force was simply too eager to deflect any public criticism from itself. It reacted defensively and in the process disregarded the interests of an individual who was twice victimized -- by the original offence and by the police disciplinary system.”<sup>110</sup>.

The Submissions on behalf of Jane Doe identified systemic gender bias as part of the explanation for the way that the complaints of Jane Doe and Roma Langford were handled. The Commissioners accepted the need to investigate further the issue of gender bias:

“Counsel for Jane Doe has suggested that a study be conducted into the treatment of women complainants and offences against women. We agree that more must be done to grapple with this issue. There is something seriously wrong when sexual assaults are going unprosecuted in cases where the accused is identified, and the allegations are substantiated by police investigators.

Police forces should be interested in ways of ensuring that more cases go to court. It is frustrating for police to substantiate that an offence has been committed and not be able to proceed because of the reluctance of the victim. For the victim, the longer-term consequences of avoiding facing the accused can be devastating.

We recommend that a task force be established by the Attorney General to develop practical means of supporting victims so as to encourage their cooperation in testifying against perpetrators of sexual crimes. The findings of the task force should help police forces to prosecute more sexual assaults successfully. The task force should not be limited to cases where the accused is a member of a police force, but it should give special consideration to that aspect of the issue.

Based on the practical measures developed by the work of the task force, all Police Services Boards should develop strategies to support victims of sexual assault and encourage their cooperation in prosecutions. Special consideration should be given to cases where the accused is a police officer.

Once these strategies are in place. (emphasis added)”<sup>111</sup>

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<sup>110</sup> The Ontario Civilian Commission on Police Services, *Report of an Inquiry - into administration of internal investigations by the Metropolitan Toronto Police Force*, August 1992, Part 9 Treatment of Victims, p 2 – 4.

<sup>111</sup> *Ibid* pp 6-0, recommendations 17-20.

## 5. Lessons Learned: 1992-2004

### (a) The Chief of Police: 1992 - 1999

After the Report was issued, former Chief McCormack continued to insist that he and his officers had done nothing wrong.<sup>112</sup> However his most vigorous arguments in this regard were not made until after he retired and published a memoir; *Without Fear or Favour: The Life and Politics of an Urban Cop*.<sup>113</sup> He titles the chapter concerning the Junger affair “An officer and a Gigolo” and repeats the position, rejected by the OCCOPS Report, that Ms. Langford changed her evidence, and that therefore police had no option but to accept Junger’s resignation. He then proceeds to blame the controversy concerning police handling of the case on the newly elected New Democratic Party government and on the Inquiry panel itself.<sup>114</sup> In a position reminiscent of more recent attacks on members of Police Services Boards, he ends the chapter with a long description of the attempt to link Laura Rowe, a new Toronto Police Services Board member, with Roma Langford, the woman who reported Gordon Junger to Internal Affairs. In McCormack’s account, a traffic officer claims to have recognized Ms. Rowe as a passenger in a car being driven by Roma Langford who he charged with impaired driving. The officer selects Ms. Rowe’s photo from “numerous others shown him by senior officers”, and “also attended her swearing-in ceremony at headquarters the next day, in front of television news cameras and everyone else in the room, identified Laura Rowe as the passenger in Roma

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<sup>112</sup> <sup>112</sup> Rosie DiManno, The chief still doesn't get it, *The Toronto Star*, Aug. 29, 1992, A4; Christie Blatchford, “Shameless! Cops don't flinch at Junger report”, *Toronto Sun*, August 29, 1992, p 5.

<sup>113</sup> Toronto: Stoddart, 1999.

<sup>114</sup> *Ibid* ch. 19.

Langford's car.” Retired Chief McCormack gives no credence to Ms. Rowe’s statement that she was not there and did not know Ms. Langford, nor the statement from Lara Hoshowsky that it was she who was with Ms. Langford. Instead he offers the following questions as if they had not already been answered:

“What would Bob Rae's choice as the new member of the Police Board have been doing in a car with a drunken prostitute, on the eve of her swearing-in ceremony? Neither Rae nor Rowe, a lesbian activist, would say, which I thought very curious in light of the premier's oft-repeated declaration that an NDP government would be an open government. Nor did the province's top law official, Solicitor General Allan Pilkey, care to comment.”<sup>115</sup>

This political critique continues in Chapter twenty one “Bob Rae’s Kind of People” with a wide-ranging set of complaints about Susan Eng who replaced June Rowlands as Chair of the Police Services Board. The tenor of his unhappiness with Ms. Eng appears rooted in her insistence on full reporting to the Board and on enforcing Board policy.

This inability to accept or honour the approach that OCCOPS took to his and his senior officer’s decisions in the Junger/Whitehead cases, so clearly demonstrated in his memoir, may be relevant to understanding the difficulties the Board had in implementing the recommendations. If the Chief of Police is unable to accept criticism or direction from his or her employer, and resists acting on clear policy directives, the distinction between policy and operations will never serve the goal of accountability and transparency in executive – police relations.

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<sup>115</sup> *ibid*

## **(b) The Toronto Police Services Board**

### **[i] 1992-1999**

The Toronto Police Service's Board under chair Susan Eng made consistent efforts to accept the twenty-four Recommendations and to develop an accountability culture, but these efforts did not survive their term as a Board. The Board's initial responses were encouraging. Within a month of the issuance of the Report, they acknowledged the criticism and the need to both accept responsibility for the errors and to change the practices and the culture that permitted the failures in governance.<sup>116</sup> In February 1993 they provided OCCOPS with the draft of what would become known as the "1992 Directive" and a "firm commitment" to implement all of the Junger/Whitehead recommendations. However by 1999, on the watch of a new chair (Norm Gardener), a new chief (Julian Fantino) and new legislation, OCCOPS said "Unfortunately, it is our conclusion that this commitment has yet to be fully met."<sup>117</sup> It is not clear what role these changes in personnel and political culture may have played in this failure.

The first indication that all was not well comes from a report on discipline on the Toronto force prepared in November 1996 by Thomas Lederer of the law firm Genest Murray. They said in the executive summary: "We conclude that the discipline process currently in place at the Metropolitan Toronto Police Service is unpredictable

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<sup>116</sup> Extract of the Minutes of the September 10, 1992 Board meeting, Ontario Civilian Commission on Police Services, *Report on a Fact-Finding into Various Matters with Respect to the Disciplinary Practices of the Toronto Police Service*, July 1999, p 33. This Fact Finding and report was made in response to a complaint from the Toronto Police Association that there was a double standard for discipline - senior officers were being treated more leniently than front-line officers. That allegation was not made out, but in the process of investigating it OCCPS took the opportunity to revisit the implementation of the recommendations made following the Junger/Whitehead Inquiry.

<sup>117</sup> *ibid*

and inefficient. The existing discipline process does not consistently inspire confidence and often the participants in the process are dissatisfied.”<sup>118</sup>

The difficulties are not resolved. OCCOP’s 1999 report highlights the continuing difficulties the Toronto Police Services Board faces in governing the country’s largest police service. In the first recommendation of the 1999 Report, OCCOPS highlights the lack of any effective mechanisms to monitor the implementation (or lack of implementation) of the Police Services Board’s policy directives.

### **Recommendation 1**

“The Metropolitan Toronto Police Services Board should develop mechanisms to improve its effectiveness in overseeing implementation of its policies by the force. The Board should have the capacity to monitor compliance with its policies on an ongoing basis and to investigate specific matters where necessary as they arise. The Board shall report to the Ontario Civilian Commission on Police Services within six months on the decisions it has made to respond to this recommendation.” <sup>119</sup>

OCCOPS supported its concern and recommendation in some detail. First they identified the problem of “Fragmented Information”. That is, rules and disciplinary information filed and compiled in a range of locations. The result of this fragmentation is that a “multi-layered complex of policies, orders, directives and procedures that govern behaviour of civilians and police officers” are not made available to members in any way that ensures that the information is: received, read and understood, and is

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<sup>118</sup> Report Prepared by Genest Murray Debrisay Lamek in response to the request by the Metropolitan Toronto Police Services Board to Conduct a Review in Accordance with the Resolution of the Board dated November 14, 1996, ii.

<sup>119</sup> Ontario Civilian Commission on Police Services, Report on a Fact-Finding into Various Matters with Respect to the Disciplinary Practices of the Toronto Police Service, July 1999 34-35.

being followed.<sup>120</sup> That criticism was also true of Board Directives. What happened in the few years since the Junger/Whitehead scandal?

The Police Services Board of 1992 committed itself to establish “standards of conduct”, and to put in place “policies and procedures to ensure appropriate standards of conduct are complied with in the future. They were determined to “set in place mechanisms to ensure that the Chief, Internal Affairs, and the entire discipline system of the Force is monitored by the Board in order to ensure that appropriate standards of conduct are maintained.” Former Chief David Boothby advised that Board in February 1993 that these directions had been followed. However something happened in the subsequent years and with the Board that followed. In 1999, OCCOPS concluded that;

“Unfortunately, the Board did not follow through in auditing the Chief’s implementation mechanism. ... until recently the Board had no formal mechanism for monitoring compliance with Board policies. Consequently, reports are requested, but there is a tendency for them to ‘fall off the scope’ over time, if no response is provided by the police service.”

To deal with this obvious problem OCCOPS recommends a system of effective auditing implementation by the Police Service of Board policy. OCCOPS were also concerned that one of the key problems identified by the Junger/Whitehead Inquiry; that is, the failure of the then Chef to keep the Police Services Board apprised of allegations of serious misconduct was once again a concern. <sup>121</sup>

Accordingly, they said in **Recommendation 2:**

“The Metropolitan Toronto Police Services Board should adopt a policy stating clearly and unequivocally the obligation of the Chief to report fully on cases involving alleged wrongdoing by members of the force if the integrity of the force or the public interest is affected. The policy should state the obligation of the Board to be so informed. In addition,

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<sup>120</sup> *ibid*

<sup>121</sup> *Ibid* pp 36-37.



the Board should require regular status reports on serious disciplinary matters.”

Although it would clearly be unworkable for a chief to report every misdeed by a member of the service, the “1992 Directive” placed the balancing point in favour of reporting. That was no longer occurring. By May of 1998, then Chief David Boothby advised the Board that he did not report all allegations. For example, he did not report allegations arising from complaints through the Public Complaints Investigation Bureau; allegations made to Unit Commanders and investigated through the normal disciplinary process; allegations about the conduct of members of other police services; about Board members; and those which would endanger an individual or obstruct an investigation. In fact, reports were only “generated” when Internal Affairs opened a criminal investigation file (reminiscent of a problem uncovered by Junger/Whitehead). Not even cases involving misconduct by command officers (senior management, in other words) were being routinely reported to the Board, such as the matter of Deputy Chief Reesor and the unauthorized handling of a revolver.”<sup>122</sup> Improvements in reporting were made, and “effective January 1999 the Board began receiving updates on “public complaints of a ‘serious’ nature and relevant information regarding issues involving officers of senior rank.”<sup>123</sup>

Not all of the Junger/Whitehead recommendations were seen as requiring follow up, however. For example, recommendations 17 and 18 concerning gender bias and the

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<sup>122</sup> Deputy Reesor was ‘counseled’ by Chief Boothby for transporting a revolver he (legally) owned to sell (legally) to another police without obtaining a transfer permit (Police Officers do not require these permits for transferring their service revolvers). Police association head Craig Bromell used the distinction between this counseling and the dismissal of two civilian employees of the firearms unit when goods were found missing from the firearms unit. News, “Police union boss plays politics”, *Now Magazine*, May 7- 13, 1998

<sup>123</sup> Ontario Civilian Commission on Police Services, *Report on a Fact-Finding into Various Matters with Respect to the Disciplinary Practices of the Toronto Police Service*, July 1999 pp 39-40.

treatment of victims, were noted as having been fulfilled.<sup>124</sup> In assessing what “fulfilled” actually means, it is helpful to keep in mind the experience and advice of Jane Doe on the ‘successful’ implementation of recommendations such as the appropriate investigation of sexual assault. OCCOPS asked for a detailed report from the Board concerning its progress in implementation of Junger/Whitehead, and it’s own subsequent recommendations, by December 31, 1999.<sup>125</sup> In fact, no report was received until May 1, 2000.<sup>126</sup> There was a change in Chief during the time that OCCPS sought a report on the Toronto Board’s progress, and the delay was not unreasonable given an outgoing Chief’s wish to not bind his successor, current Chief Julian Fantino. However in the May 2000 response, the Board claims to have substantially complied with all or most of OCCPS’ recommendations. The devil, as always, is in the details of that implementation’.

## **[ii] 1999 – present**

The “Final Response to Ontario Civilian Commission on Police Services (OCCPS) Regarding their Fact Finding Report” from the Toronto Police Services Board is found in an Extract from the Minutes of the Meeting of the Toronto Police Services Board held on May 1, 2000 as number 156. It is a 25-page document, with 28 recommendations. In response to OCCOPS’s recommendation that: “The Board must fulfil its governance role and assert control over the systems and policies for which it is accountable by periodically requiring audits of the service’s implementation of its lawful directions and policies”, little new is actually proposed. The Response

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<sup>124</sup> *Ibid* pp 48-49.

<sup>125</sup> Ontario Civilian Commission on Police Services, *Report on a Fact-Finding into Various Matters with Respect to the Disciplinary Practices of the Toronto Police Service*, July 1999 P4.

<sup>126</sup> Extract From the Minutes of the Meeting of the Toronto Police Services Board Held on May 1, 2000. Item #156/00 “Final Response to the Ontario Civilian Commission in Police Services (OCCPS) Regarding the Fact-Finding Report”.

acknowledges that the background to the OCCOPS recommendations is the “1992 “Junger/Whitehead directive, which was not properly implemented until 1997. On the issue of the need for periodic audits, the response simply asserts that “the issue of auditing is not new to the Board”, lists a number of audits conducted from April 1991 to 2000 , and notes that in February 2000 the Board required the Chief, in consultation with the City Auditor to develop an audit work plan. The Board’s response to Recommendation 16, is to require the Chief to provide an annual report tracking the implementation of internal and external audit recommendations.<sup>127</sup>

OCCOP’s recommendation 11 concerns the need for a review of the discipline process to improve efficiency and accountability and reduce delays in processing discipline charges. The response to that recommendation indicates that a complete review is dependent on improvements to information technology, improvements that are in the process of being implemented. Other measures include better case load management across units, and the implementation of a team approach to the investigation of Public Complaints so that regardless of leaves, etc, one member of the team is “continually addressing” each complaint. Finally, the Board are advised that Chief Fantino, as part of the 90-day review of operations he undertook upon becoming Chief, “is personally examining integrity issues”.

These are typical assessments and typical responses. They are difficult to analyze in the absence of concrete details and facts, and one is left to measure them against events, which may not be the most helpful approach. The most obvious events for that purpose are the corruption scandals that exploded since the May 2000 response..

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<sup>127</sup> *Ibid* pp21-22.

In January of 2004, after a two and a half year investigation, criminal charges, including fraud, theft, extortion and perjury, were laid against six former drug squad officers. The allegations stemmed from the officer's alleged treatment of suspects and accused persons in drug investigations, which included theft of money, assault and perjury.<sup>128</sup> There is no doubt that the accused officers defended themselves vigorously against the allegations in the course of the investigation, and rumours surfaced about efforts to stonewall the RCMP probe, but Chief Fantino, who to his credit brought in a senior RCMP investigator, Chief Superintendent John Neily, to head up the probe, resists any claim that there are widespread or systemic problems associated with the drug squad scandal.<sup>129</sup>

In answer to concerns initially raised by defence counsel with Chief Boothby, Chief Fantino not only brought in Supt. Neily, he commissioned the services of retired justice George Ferguson, Q.C. on November 29, 2001 to prepare a report with recommendations for addressing the issues of corruption. Part I of "Review and Recommendations Concerning Various Aspects of Police Misconduct" addresses "Disclosure of Police Misconduct."<sup>130</sup> Part II addresses Systemic issues, including

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<sup>128</sup> Nick Pron and John Duncanson, "Officers face charges of fraud, theft and assault" *The Toronto Star* (7 January 2004) A15; Christie Blatchford, "Six officers to be charged in corruption investigation" *The Globe and Mail* (7 January 2004) A9; Gay Abbate and Joe Friesen, "Probe results in 22 charges filed against six officers" *The Globe and Mail* (8 January 2004) A14.

<sup>129</sup> Kirk Makin, "Police blocked corruption probe" *The Globe and Mail* (20 January 2004) A1, A12; Kirk Makin, "Police chief denies 'blue wall of silence' in corruption probe" *The Globe and Mail* (21 January 2004) A6; Christie Blatchford, "'Conscience is clean' Fantino says" *The Globe and Mail* (21 January 2004) A6; Betsy Powell and Nick Pron, "Weeding out corruption" *The Globe and Mail* (22 January 2004) B1, B6.

<sup>129</sup> The issue of disclosing to the defence in a criminal trial the disciplinary records of investigating officers has been contentious in Ontario for a number of years. It was exacerbated by the decision to stay numerous drug charges investigated by the discredited officers. See generally; *R. v. Paryniuk* (2002), 97 C.R.R. (2d) 151; *R. v. Altunamaz* [1999], O.J. No. 2262; *R. v. Scaduto* [1999], 63 C.R.R. (2d) 155.

<sup>130</sup> The report is significantly more narrow in scope than the terms of reference, which included an examination of organizational structure, the culture of policing, and fairly wide scope of integrity testing and background checks. Mr. Ferguson chose (without providing a rationale for the choices except to say

recruitment, training and promotion, internal affairs, and officer abuse of alcohol and drugs. The report to the Chief is dated January 2003. Chief Fantino did not provide the report to the Police Services Board until February 26, 2004.<sup>131</sup> No explanation has been provided for either the decision to retain Mr. Ferguson without obtaining directions, or even advice, from the Police Services Board, nor for the delay in providing the report to the Board, although both have been criticized.<sup>132</sup> In any event, the drug squad scandal is not the only one facing the Toronto Police Service.

In mid April, 2004, the news broke that more corruption charges were expected. First the plainclothes unit at the downtown 52 Division was disbanded in response to a major investigation into an alleged shakedown of area bars.<sup>133</sup> Then the scandal spread as former Chief Bill McCormack's eldest son is identified with it (and linked to the Junger scandal of the 1990's).<sup>134</sup> Rick McIntosh, the head of the Toronto police Association steps down because he too is linked to the scandal.<sup>135</sup> A third set of serious misconduct allegations involving officers involved with a serious drug addict included another of former Chief McCormack's children and more charges.<sup>136</sup> Not surprisingly there have

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that these are areas where change is required) to report only on recruitment, training and promotion, the structure and function of internal affairs and the use of alcohol and drugs.

131 In his March 26, 2004 letter to the Police Services Board, "Response to recommendations if the Honourable Justice George Ferguson", Chief Fantino said that Ferguson's report was received in March 2003.

132 Katherine Harding "Mayor let down by chief's reply to corruption recommendations" *The Globe and Mail* (23 April 2004) A12.

133 Cal Millar, John Duncanson and Nicholaas Van Rijn "Police unit faces internal probe" *The Toronto Star* (17 April 2004) A4.; Jonathan Kingstone and Rob Lamberti "T.O. cop extorted payoffs at clubs?" *The Toronto Sun* (18 April 2004).

134 Jonathan Kingstone and Rob Lamberti "Hooking police rumour" *The Toronto Sun* (19 April 2004).

135 Christie Blatchford "Police probe corruption as union boss steps down" *The Globe and Mail* (19 April 2004) A1, A9.

136 Christie Blatchford "Numbered firm received cheques" *The Globe and Mail* (21 April 2004) A15; Jonthan Fowlie "A venerable police dynasty in turmoil" *The Globe and Mail* (24 April 2004) A16.; John Duncanson and Tracey Huffman "Source: Police shielded drug dens" *The Toronto Star* (24 April 2004) A1, A23; Shannon Kari "Addict-thief helped by officer in police probe" *The Globe and Mail* (26 April 2004) A10; Nick Pron "Former chief's son facing charges" *The Toronto Star* (26 April 2004) A1, A12.

been calls for an independent inquiry<sup>137</sup> but Chief Fantino is left in charge of the issue, with the assistance of Mr. Ferguson.<sup>138</sup>

#### **IV. Conclusion and Recommendations**

Criminologist John Braithwaite argues that “legal checks on abuse of power [are] difficult at best, counter-productive at worst”, and suggests instead two key “counter-intuitive” strategies. He advocates replacing narrow, formal and strongly punitive sanctions with broad, informal and weak sanctions; and separating enforcement targeting from the identification of the actor who benefits from the abuse of power – or removing investigation of the police from police hands. Specifically addressing the conflict between public concern over police misconduct and corruption and the police outcry over compromised independence, Braithwaite suggests that in order for the police to be resilient in resisting domination by any one structure or group (whether state, business or professions like the law), the police must actually be dependent on all of them. That is, to promote both accountability *and* independence from political interference, the police structure must be receptive to checks on power from diverse sources, including oversight bodies, civil society, loosely organized community groups, a free press, the judiciary and, at the highest level, the executive branch of the state structure. <sup>139</sup>

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<sup>137</sup> John Barber “Enough with the few ‘bad apples’” *The Globe and Mail* (24 April 2004) M1; Royson James “An independent inquiry is the only way to solve police mess” *The Toronto Star* (28 April 2004) B3.; Royson James “Fantino’s message is loud, but is it clear?” *The Toronto Star* (29 April 2004) B1, B5; “Police require outside probe,” Editorial, *The Toronto Star* (28 April 2004) A22.

<sup>138</sup> Katherine Harding “Board backs Fantino’s handling of probe” *The Globe and Mail* (27 April 2004) A10; Linda Diebel and Cal Millar “Police reform: ‘I want action’” *The Toronto Star* (28 April 2004) A1, A19.

<sup>139</sup> Braithwaite, *Supra*, Note 1.

Concern over multiple sites of regulation dominated law enforcement concerns in the 1990's and continues to resonate in many circles, but an interest in returning to a broader range of oversight mechanisms appears to be somewhat on the rebound in light of recent events. One hopes so, as it is an important feature of both the accountability and responsibility aspects of police executive relations. When the executive is attentive to the complexities of the relationships and viewpoints, it is less likely that one perspective will dominate. A review of the recent history of the Toronto Police Service demonstrates how important it is that police governors, in this case the Toronto Police Services Board, be aware of the history and complexity of the institution they are responsible for. Perhaps the single most important reform one could recommend in this regard is the guarantee of some continuity on police services boards so that essential history and appreciation of the multiple factors engaged when any change is attempted is preserved.

However, the complexity that is strength must not be a complexity of rules. Rather, it is a complexity comprised of multiple sites of observation and accountability and includes many that are quite free from legal rules and doctrine. For example, the involvement of a community legal clinic in assisting Jane Doe in her struggle to hold former Sgt. Whitehead to account was instrumental in elevating the Junger Inquiry into a wide-ranging and significant tool of police governance<sup>140</sup>. Similarly, the catalyst for the Toronto Drug squad investigation was the effort of a defence lawyer who had reason to trust the Professional Standards Branch of the Toronto Police and

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<sup>140</sup> Discussed in Dianne L. Martin and Ray Kuszelewski, "The Perils of Poverty: Prostitutes Rights, Police Misconduct and Poverty Law", *Osgoode Hall Law Journal*, 35 (1997): 835-63.

brought his concerns and evidence of corruption to Chief Boothby and then to Chief Fantino. In other words, there were resources in the wider community that acted as agents for investigation and accountability. Other examples abound and should be respected and supported rather than denigrated or merely tolerated. A similar catholicism of approach is required to ensure that the tension between policy and operations remains nuanced and evolving. The investigation of sexual assaults and sexual offences, for example, are a matter of operations, but these investigations generate significant policy issues that cannot be considered in a vacuum<sup>141</sup>. Once again, multiple sources of information and opinion should be encouraged.

Finally, without (and perhaps even with) a fundamental re-examination of the enterprise of law enforcement in a postmodern world, one has to expect continued conflict and crises as we swing between independence and accountability, oversight and autonomy. The challenge is to appreciate that a pendulum always swings back and to strive for an appropriate balance regardless of ideological preference.

**COMMENTARY BY SUSAN ENG**  
**on**  
**“The Legal Sites of Executive Police Relations” by Dianne Martin**

The great paradox in police accountability is the inadequacy of the law in holding those responsible for enforcing it to account for breaching it. The entire web of legislative instruments catalogued in Diane Martin’s paper relies on its multiplicity rather than the

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<sup>141</sup> For example, the “Jane Doe” case. *Doe v. Metropolitan Toronto (Municipality) Commissioners of Police* (1998) 39 O.R. (3d) 487; Melanie Randall, *ASex Discrimination, Accountability of Public Authorities and the Public/Private Divide in Tort Law: an Analysis of Doe V. Metropolitan Toronto (municipality) Commissioners of Police*, (2001) 26 *Queen’s Law Journal* 451-494. And see: *Odhavji*, *supra* note 43



individual effectiveness of its constituent parts. Certainly, there are advances but the consensus among police watchers is that our accountability mechanisms have yet to fulfill their promise. And yet, one of the cornerstones of a liberal democracy is that all are treated equally under and before the law.

There is no shortage of erudite analysis of why this should be the case. From careful examination of the legal infrastructure to musings about a police subculture; from decrying lack of political will to criticizing the inattention of civilian overseers, it has all been done. So why does experience continue to trump expectations?

Perhaps it's the small minded, not the high-minded, decisions that drive our reality. Here's one example. The disappearance of the Ontario Police Complaints Commissioner in 1997 could be said to be a hallmark of the political climate of this past decade. First established in 1981, the public complaints system had become accepted as part of the policing landscape in Toronto. But when the system was introduced province wide, the loudest objections came not from the police lobby, as might be expected, but from the smaller municipalities who could not bear the cost of the hearings to decide on the complaints.

Costs skyrocketed when officers hired top-notch lawyers to represent them. If they were cleared, the municipality paid the legal expenses. From 1992 – 1996, Toronto paid out about \$5.2 million in legal expenses for disciplinary matters, including public complaints. A proportionate sum would wipe the entire budget of a smaller municipality.

Perhaps that's why the provincially funded Special Investigations Unit was kept while the relatively less reviled Police Complaints Commission was disbanded. Thus, one very important vehicle for police accountability was sacrificed at the altar of municipal parsimony. The initial monetary savings are illusory because civil lawsuits have started to take its place and the costs to defend them and payouts on successful claims may well exceed the cost of the public complaints system.

Those who are questioning why the Ontario government is reviewing the options for reintroducing a public complaints system rather than just dusting off the previous legislation might do well to suggest to them that they simply set aside some funds to finance the hearings.

Or perhaps why our reality doesn't match our expectations is that we have not demanded the level of integrity, competence and accountability from one of our most vital public services. Professor Martin points out in her paper that the 1992 Junger Whitehead Directive was found to have been not in use by 1999, despite a wrenching public inquiry and stinging report. The only qualification I would make to those assertions, as one of the authors of the Directive, is that it was fully implemented while the Police Services Board consistently demanded it. The Directive was subsequently ignored without consequence until the Review in 1999. That the executives of a professional organization would promptly disregard one of its own Directives once the pressure was off should not be acceptable but it continues to happen in the policing realm.

Even when the judicial system finds its voice, against overwhelming odds, to point out misconduct, the organizational response is negligible. Listen to what Mr. Justice Fraser said in rejecting Sgt. Kenneth Deane's testimony that he saw Dudley George holding a rifle and that he saw a muzzle flash. To explain why no rifle was found anywhere near the body, he testified that he saw Dudley throw the rifle away.

To accept the defence argument, Judge Fraser said, the Court would have to believe that Dudley George, having just been shot in the chest, which fractured his clavicle, punctured his left lung, fractured [two of] his ribs and tore open a number of blood vessels, after all this, he decides to get rid of his rifle and manages to fling it across a road into a ditch!.

When there are blatant cases of unbelievable testimony, they cannot help but erode public confidence and tarnish the image of all police officers. And yet, there was no internal disciplinary action taken on this aspect of the case. Would such a lack of institutional integrity and competence be acceptable in any other profession?

I suppose the question is "acceptable to whom?" The common denominator in this examination is public opinion. Despite the public outcry when scandal hits, despite the soul searching of inquiries and symposiums, and despite the threat by the police union that they plan to target their critics, police chiefs bask in the reflected glory of nearly 100% approval ratings for the police.

We are fond of explaining the police subculture in terms of “we and they”. This does not tell the whole story. Rather, police buy into the social hierarchies the rest of us try to deny exist. The police subculture makes a distinction between those people they will do things for and those people they do things to.

Among the people the police do things for, are their political masters, particularly if they inhabit the same quadrant of the political spectrum. Police service boards were conceived as a buffer between the political powers and the day-to-day workings of a police force. They were meant to guarantee the freedom from political interference that Kent Roach has addressed. And importantly, they are obliged to translate the needs and expectations of the public at large into policies that govern the standards of behaviour in the police service.

There is a long history in Toronto surrounding the policing of public protests. The public interest in freedom of speech collides with the public interest in preserving public order. Traditionally, police interpret their greater mandate to preserve public order – they have a Public Order Unit in the police force – there is no Freedom of Speech Unit.

The public outcry over the alleged excessive use of force at the Economic Summit and subsequent public protests eventually, but not immediately, brought about the adoption of policies to require the Public Order Unit to engage with protest organizers to prevent unnecessary use of force. Up to that point however, it can be argued that the protesters would be regarded by police as those outside the mainstream, not at all the

people they did things for but people they did things to. What brought the change in policy was a police services board prepared to give higher value to the freedom of speech. Indeed, in those heady days, it was possible to hope that not only was civil disobedience protected, but as Alan Borovoy would argue, even uncivil obedience.

Normative behaviour in the Toronto Public Order Unit had sufficiently changed by the time of the Queen's Park protests that the Toronto police were commended for their restraint while the OPP went on with a course of action that would land them in a public inquiry.

The point here is simply that a police services board acting as a buffer between what might be a majoritarian view and minority rights serves to uphold what society professes to value, in this case, the freedom to protest. And to apply one of the models of political intervention in the deployment of police resources referenced in Professor Roach's paper, such intervention was debated publicly and adopted only after full representation from the police service.

What if there is no buffer between that majoritarian view and minority rights? I would like to, but won't, argue that only a police services board can provide that buffer – since the makeup of those boards changes. But in the case of the OPP and RCMP, there is no civilian governance body between the police service and the politicians, whom we are calling here the Executive branch.

What happens when the highest ranking of the people the police do things for conveys the majoritarian view, that the social disorder presented by the protestors is a graver issue than their civil right to protest? What happens to an operational directive that was based on the protection of civil rights and contemplated only the necessary level of restraint? One could argue that the protestors would then become the people that police do things to.

If this seems a too harsh indictment of police culture, we need only gauge our own reactions to the conviction of people not considered to be part of the “criminal classes”. Didn’t the headlines scream with horror that Alan Eagleson might be required to wear an orange jumpsuit and pick up leaves around Queen’s Park?

The police are simply reflecting back to us the essential double standard of our society. While we universally profess to value equality before the law, we actually accept that some are more equal than others. The police are asked to choose for us and if they choose wrongly, or make the right choice at the wrong time, they are castigated.

The reality is that a significant enough proportion of the public do not see themselves as former Police Board Chair Norm Gardner’s “scumbags” but rather as upstanding citizens who need the protection of the police from such people. For that service, a windshield decal is cheap at twice the price. And just like a CAA sticker, it entitles you to service you might not otherwise get. That’s why the Toronto Police

Association launched their “True Blue” campaign and thought they could expect the dollars to keep rolling in.

But the “True Blue” campaign was a watershed in another way. Although we might characterize the telemarketing scheme as a shake down or protection racket, there was little to distinguish that effort from the fear mongering that takes place every year at budget time. The only difference is that our politicians take the hit publicly for us when they question police spending whereas these phone calls were coming into our homes. That was when the general public began to realize that they were being called on their double standards. So until the silent majority engages in the debate with the vocal minority about the proper role of the police in a liberal democracy, and together face the mixed messages that we send to our police agencies, the dissonance between what we hope and what really happens will continue.

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