SUBMISSIONS TO - The Committee on Neighbourhoods,
Housing, Fire and Legislation
City of Toronto

RE - Bill 201 - Police Complaint Machinery

FROM - Canadian Civil Liberties Association
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To the extent that Bill 201 provides for some kind of independent civilian review of complaints against the police, it represents an improvement over the status quo. Unfortunately, however, the Bill has omitted a very crucial component of a fair system - independent investigation. In the main, Bill 201 contemplates a system of internal investigation monitored by external review.

So long as the front line investigations are handled by officials who have departmental or even general police interests to protect, the system will be severely flawed. Many aggrieved people simply will not confide their complaints about the police to other police officers. The Canadian Civil Liberties Association has had this experience time and again, particularly with minority racial and ethnic constituencies. Since so much depends upon the willingness of aggrieved people to take the initiative, any failure to provide for independent investigation could render many complaints stillborn at the outset.

Nor do we think that such a system could command a sufficient amount of general public confidence. Even though the reviewing authority is slated to be external to all police departments, it would nevertheless be largely dependent on the findings of the initial investigators. Unless there were some glaring gap in the material, the independent review would not be expected very often to detect inadequacies in the front line investigations. Again, the initiative to identify such inadequacies would most often have to come from those who can be least counted on to press these matters - the aggrieved complainants. Thus, there is a substantial risk that the public might come to perceive the external review as a rubber stamp for most of the internal investigations.

In short, internal investigation, even if monitored by external review, cannot adequately address the problem which has occasioned the impulse for reform - the perception of bias. No matter how fair in fact, internal investigation is not likely to <u>appear</u> fair. From the standpoint of the public, the investigating officials would continue to be vulnerable to the suspicion that they were "covering up" for their colleagues or fellow police officers. From the standpoint of the accused police officers, in-house investigation would continue to be vulnerable to the suspicion that internal jealousies and considerations of public relations could prevail over the interests of scrupulous fact-finding.

A number of commentators have suggested that outside investigators would not be as effective as internal ones for the job of penetrating the police bureaucracy. According to this argument, only the colleagues of impugned officers would be likely to get crucial information from them. Rarely are such arguments based upon anything except intuition. There are facts, however, which point in the opposite direction. The most important of the recent royal commissions into police conduct have relied exclusively on outside investigators - the Morand Commission on Metro Police Practices and the McDonald Commission on the RCMP. Indeed, faced with the bitterness of the black community over the recent Johnson shooting incident, the Metro Police Chief himself requested the OPP to conduct the investigation. We are aware of no suggestion that those outsiders have been unable to penetrate the bureaucracy. On the basis of all the foregoing, the Canadian Civil Liberties Association would urge this Committee to press for the adoption of independent investigation of civilian complaints against the police.

Another flaw in Bill 201 is its provision that findings of misconduct against police officers will require proof beyond a reasonable doubt. Where the consequence of such a finding could be a criminal conviction and a term of imprisonment, this high standard of proof should be as available to accused police officers as it is to civilians who are accused of crimes. But, where the consequence could not go beyond the loss of a job, there is no basis for requiring so high a standard of proof. This is not to say, of course, that employment discharge, suspension, or discipline is not a most serious consequence. It is to say, however, that employment discipline for police officers should not involve criteria so different from those which apply to civilians. In most unionized industrial settings, the imposition of employment discipline does not require the kind of proof which is normally reserved only for criminal trials.

Moreover, police employment involves a position of public trust. The claim to hold such a position cannot command the same protection as the claim to stay out of jail. Thus, there is simply no basis to require the same standard of proof in both cases. In view of the number of times that complaints of police misconduct involve

one complainant on one side and several police officers on the other, even the best investigative system will be hard put to make a finding adverse to the police officers. But there is no point in making the job a virtual impossibility. We urge this Committee, therefore, to press for a more realistic standard of proof in these matters.

Where the Bill should have been more accommodating to the accused police officer, it has failed to do so. It would leave intact the unfair working conditions to which police officers in this community are currently subjected. Despite the public service and sacrifice, police officers do not have the minimum level of job security enjoyed by most unionized employees. Constables are not entitled, as of right, to outside arbitration of their internal discipline and discharge grievances. If a police officer wishes to challenge the discipline which has been imposed upon him, he is virtually confined to appeals within the police structure - first to the Metro Police Commission and ultimately to the Ontario Police Commission. In view of the OPC role in police management, it can hardly be regarded as independent of police management. And the Metro Commission, of course, is police management. Thus, where most unionized employees can appeal disciplinary action to independent arbitration, police officers are at the mercy of their employers and those who share their employers' interests.

Significantly, this community has removed from the police the most potent instrument of self-help, the right to strike. Elementary equity requires that, in view of the demands made and the rights removed, our society should ensure to police officers the minimal protections available to most unionized employees. Considerations of morale also require it. Accordingly, the Canadian Civil Liberties Association calls on this Committee to recommend that police officers be given the right to independent arbitration of their internal discipline and discharge grievances.

Frequently working constables are required by their superiors to furnish full and detailed reports regarding various aspects of their activities. While such a practice may not be generally impeachable, there are occasions when it is unfair to the officers concerned. Sometimes these reports are required of officers in

situations where, unknown to themselves, they have been accused of some misconduct. Since the requirement to report in full could become a way of extracting self-incriminating evidence, the officer concerned should enjoy safeguards at least comparable to those which protect other unionized employees in similar situations.

At a minimum, the officer should first be told whether there are accusations against him and, if so, of what they essentially consist. This would enable his report to make the most effective possible defence at the earliest possible moment. Corroboration, for example, could be sought out while the events were still fresh. It is not difficult to anticipate how an early and competent defence could forestall further and needless complications. Moreover, timely disclosure of accusations could spare the officer from needless intrusions and harassment. If he first knew the substance of the complaint, he could confine his reponse to the relevant issues.

Another safeguard which usually accompanies such coerced statements in the industrial sector is the right of the impugned employee to prior consultation with an agent or union representative. This safeguard recognizes that periodically innocent people tend to incriminate themselves through incompetent or inadequate presentations. Untrained or perhaps nervous, such people might be injudicious about what they emphasize, minimize, or overlook. The most effective possible defence at the earliest possible moment entails the most effective possible presentation. Accordingly, the officer's duty to reveal should be predicated on a prior right to consult.

There is, however, one safeguard which police officers should have even though most other unionized employees cannot avail themselves of it. Since by the very nature of police work there is such exceptional vulnerability to accusations of a criminal nature, evidence which police officers must provide as a condition of their employment should be inadmissible against them in the event of a criminal prosecution. Whatever justification there might be for requiring and using policemen's reports in the context of employment discipline, there is no justification for such coerced material in the context of criminal prosecutions. In our view, the current regulations on compulsory statements expose police officers to needless and unfair hazards. Accordingly, the Canadian Civil Liberties Association calls on this Committee to press the Government of Ontario to do whatever it can, including instructions to its Crown Attorneys and representations to the federal authorities, to prevent the use of these coerced statements in the prosecution of the officers concerned.

Summary of Recommendations

In summary, the Canadian Civil Liberties Association calls upon this Committee to recommend that the Ontario Government implement the following measures.

1. Provide, in the first instance, for independent investigation of all civilian complaints against the police.
2. Provide that a finding of misconduct against a police officer, for employment purposes, need not require the criminal standard of proof beyond a reasonable doubt.
3. Provide for police officers the following safeguards:
   a) as a condition of being required to furnish reports on their activities, they should be given prior notice concerning the substance of any accusations against them, a reasonable opportunity for prior consultation with an agent or counsel, and a prohibition against the use of such statements in the event they are prosecuted.
   b) they should be entitled to independent arbitration of all their internal discipline and discharge grievances.