

SUBMISSIONS TO -

City of Toronto
Executive Committee

RE -

Ontario Government Bill
on
Civilian Complaints Against the Police

FROM -

Canadian Civil Liberties Association

DELEGATION -

A. Alan Borovoy
(General Counsel)
Allan Strader
(Research Director)

Toronto

Thursday, June 11, 1981

The Canadian Civil Liberties Association respectfully requests the Toronto City Council to petition the Government of Ontario and the opposition parties at Queen's Park to ensure that this Bill is referred to a committee of the Legislature for detailed debate and public hearings. More specifically, what we seek is an opportunity for members of the public to appear and make representations with respect to the details of the Bill.

By now, there appears to be a community consensus that civilian complaints against the police should involve some form of independent civilian participation. Unfortunately, the community is currently quite divided as to precisely what form this participation ought to take. The government Bill contemplates essentially a system of internal police investigation monitored by external civilian review. As Solicitor General McMurtry noted, it would be rather "rare" for the independent civilian apparatus to investigate complaints from the outset. In the opinion of many members of the public, the Canadian Civil Liberties Association included, the government approach is severely flawed.

So long as the greatest number of front-line investigations are handled by officials who have departmental or even general police interests to protect, the system will effectively discourage many aggrieved people from making their complaints known. Such people have great difficulty confiding their complaints about the police to other police officers. Our organization 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 require independent investigation at the outset could prevent many complaints from ever seeing the light of day.

There is also a feeling in many community quarters that the government approach will not 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 gaps 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 least be counted on to press these matters - the aggrieved complainants. While we realize that the external authority would have some opportunity

to do its own investigations, as a rule this would come only after a thirty day period of internal investigation. After so long a time, it is not hard to imagine numbers of situations where evidence could be irretrievably lost. Thus, there is a substantial risk that large numbers of the public might come to perceive the external review as a rubber stamp for most of the internal investigations.

In short, a system essentially of 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 appear fair. From the standpoint of many members 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 many 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.

Unfortunately, the Bill is contentious in a number of additional respects. 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, it is questionable whether so high a standard of proof should be required. This is not to say, of course, that employment discharge, suspension, or discipline are not most serious consequences. It is to question, however, whether employment discipline for police officers should involve criteria so different from those which apply to civilians. In most unionized industrial settings, for example, the imposition of employment discipline does not require the kind of proof which is normally reserved only for criminal trials.

What must be borne in mind is that 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 must be misgivings about requiring the same standard of proof in both cases. In view of the number of times complaints of police misconduct involve one complainant on one side and several police officers on

to do its own investigations, as a rule this would come only after a thirty day period of internal investigation. After so long a time, it is not hard to imagine numbers of situations where evidence could be irretrievably lost. Thus, there is a substantial risk that large numbers of the public might come to perceive the external review as a rubber stamp for most of the internal investigations.

In short, a system essentially of 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 appear fair. From the standpoint of many members 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 many 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.

Unfortunately, the Bill is contentious in a number of additional respects. 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, it is questionable whether so high a standard of proof should be required. This is not to say, of course, that employment discharge, suspension, or discipline are not most serious consequences. It is to question, however, whether employment discipline for police officers should involve criteria so different from those which apply to civilians. In most unionized industrial settings, for example, the imposition of employment discipline does not require the kind of proof which is normally reserved only for criminal trials.

What must be borne in mind is that 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 must be misgivings about requiring the same standard of proof in both cases. In view of the number of times 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 the requirement of proof beyond a reasonable doubt will make the job a virtual impossibility.

Elsewhere, the Bill provides that the Metro Police Commission and Police Association will recommend at least one third of the members of the Independent Police Complaints Board. There is no necessary objection to having on the Board people with police training. But it is another matter entirely for the Board's membership to include people with police loyalties. It is expected that the interests of the Police Commission and Association will frequently be implicated in hearings of the Board. Why, then, should the Bill provide for the representation on the Board of implicated interests and omit such representation for aggrieved interests? Nowhere does the Bill provide for comparable recommendations to the Board from any of the racial and ethnic minority constituencies. Nor is there an opportunity for complainants to make analogous recommendations.

Where the Bill might have been more accommodating to police interests, it has failed to do so. It would leave intact many of the unfair working conditions which police organizations in this community have legitimately protested. For an account of some of these areas of police protest, we attach as an appendix to this brief, a copy of a submission presented jointly a few years ago by the Metro Police Association and the Metro Chapter of the Canadian Civil Liberties Association.

In any event, we are not necessarily asking at this point that the City of Toronto resolve whether to endorse the details of these criticisms. Suffice it for now to recognize that, at the very least, the Bill in its present form is contentious and controversial. This, we submit, should not be difficult for a City Council whose Mayor's Committee on Race and Community Relations so recently made some of the very points which appear in this brief. But all that we are asking at this point is an acknowledgement that the details of the Bill should be subjected to the scrutiny and debate of Legislative Committee hearings where members of the public are invited to present their views. Indeed, it would be our hope that this approach could be supported even by members of Council who might disagree with some of these criticisms. In our view, all sides might well agree that Committee hearings in this matter would enhance both the prospects for improving the Bill and the viability of the democratic processes in our community.

APPENDIX