

SUBMISSIONS TO:

The Honourable Steven Offer
Solicitor General of Ontario

RE:

Bill 107 (Police Services)

FROM:

Canadian Civil Liberties Association

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June 18, 1990

Introduction

The Canadian Civil Liberties Association is a national organization with the paid support, across the country, of more than 7,000 individuals, more than 50 associated groups, which themselves represent several thousand people, and 8 affiliated chapters. Our membership roster includes a wide variety of callings and interests - lawyers, writers, homemakers, trade unionists, professors, minority groups, media performers, business executives, etc.

Essentially our objectives are two-fold:

- to promote legal protections against the unreasonable invasion by public authority of the freedom and dignity of the individual
- to promote fair procedures for the resolution and adjudication of conflicts and disputes.

It is not difficult to appreciate the relationship between these objectives and the subject matter of Bill 107. As one of the few institutions in our society especially empowered to use force and violence, the police are in a position to commit substantial intrusions on the freedom and dignity of individuals. Unfortunately, our community has never provided sufficiently fair procedures for dealing with allegations of abuse by police.

Bill 107 is no exception. What especially concerns us at this point is that the government should fail so remarkably to respond to the racial tensions that have been ignited by the recent shooting incidents involving the police and certain members of the black community.

What follows is addressed, therefore, to overcoming some of the more unacceptable defects in the Bill. While time constraints do not enable us to address the Bill as comprehensively, at this point, as we would like, we believe the adoption of our proposals will create a significant improvement.

Disciplinary Investigations of Police

As far as disciplinary matters are concerned, the Bill perpetuates the primary flaw in the Metro complaints system - the vast majority of investigations will be performed by the police themselves. Even if outsiders to the affected police department periodically review complaint investigations, insiders, in the first instance, will generally conduct the investigations. One need not be a critic of the police in order to recognize that this system is fundamentally unfair. Investigations should not be conducted by those with departmental interests to protect or collegial relations to maintain. No matter how fair in fact, such investigations simply cannot appear fair.

Indeed, this system is unfair both to police and to civilians. To civilian complainants, the investigations will be vulnerable to the suspicion that fellow officers will "cover up" to protect their colleagues. To respondent police officers, the investigations will be vulnerable to the suspicion that collegial rivalries and departmental politics will prevail over scrupulous fact finding. Since society has been attempting to eliminate conflicts of interest in government generally, there is no excuse to perpetuate and extend this conflict of interest in policing specifically.

Indeed, there is good reason to fear that this system will not receive anywhere near the number of complaints that actually exist in the community. People with grievances against the police may well be reluctant to come forward if they know they have to confide such grievances to the very police force that they are impugning. Consider this incident: Several months ago a Metro police officer went to jail for assaulting a prisoner in his custody. His conviction was made possible largely by the testimony of one of his fellow officers. Unfortunately, the officer who testified was reportedly "cold shouldered" out of the department. According to

the press, his fellow officers punished his good citizenship by refusing to talk to him.

How can we expect members of the public - particularly vulnerable minorities - to trust the integrity of those who would behave in this fashion? It is fair to say, therefore, that, in this respect, Bill 107 does not respond seriously to current community tensions. Accordingly, the independent complaints commissioner should handle all civilian complaint investigations from the outset.

Audits of Police

But even this will not suffice. Whether or not complaints have been filed, the office of the complaints commissioner should be able to initiate audits of police practices and policies. There is no other way to get a handle on the current allegations of racism.

According to the task force established by the government, there is a widespread perception in significant sectors of the community that the police are quick to harass and slow to assist non-white citizens. Complaint investigations are simply not adequate to address such perceptions. There is a need to look at practices and patterns. Comparisons must be made. What differences, if any, are there in the policing of the Jane-Finch corridor and the streets of Rosedale? To what extent, if at all, would such differences be justified?

Without a power of independent audit, Bill 107 cannot respond relevantly to the racial tensions that the Toronto area has been suffering. Allegations of racism require systemic investigations. Reliance on complaint enforcement simply will not address systemic issues. We urge the government not to ignore or neglect the deeply felt expressions of grievance that the community has been hearing. Attached as an exhibit to this brief is a copy of a recently-published article which further elaborates on this proposal.

Criminal Investigations of Police

As far as criminal law enforcement is concerned, the special investigation unit should be housed, not in the office of the solicitor general, but in the office of the independent complaints commissioner. So long as such investigations emanate from the office of the solicitor general, they will be vulnerable to the perception of having been influenced by the solicitor general's political interests. After all, those who hold the office of solicitor general may feel a need to protect the good public relations of the police departments for which they are accountable and responsible.

Indeed, it is conceivable that the special unit might find itself investigating some allegations of criminal wrong-doing that relate to a guideline or policy established by the solicitor general. Suppose, for example, police officers are accused of committing serious assaults during the course of a raid against a gaming house after the solicitor general had promulgated a policy that the police should crack down on gaming houses? It is not hard to imagine, in such circumstances, how those who work out of the solicitor general's office would be suspected of conducting their investigations so as to minimize the risks of embarrassment to the solicitor general.

For similar reasons, the Bill should explicitly provide that the members of the special investigative unit not be current members of any police department and that, in the case of former police officers, they not be involved in investigating their former departments.

Employment Equity

It is possible for employers and others to wrap themselves in the

rhetoric, while ignoring the reality, of employment equity. Sometimes, employment equity plans are unacceptably inadequate; sometimes they might even be excessive.

For these reasons, the Bill should be amended in order to provide that specific employment equity plans be published sufficiently in advance of their adoption so that the public can make a timely response to their provisions. There is a better chance for more equity if there is more public participation.

Rights for Police

It is hard to expect fair treatment by police when there is not fair treatment of police. Under the Bill, discipline or discharge imposed upon a police officer, as a consequence of an internally generated matter, is not subject to independent adjudication. The officer is confined to appeals to the local police services board and ultimately the Ontario commission. That would be like confining the appeal rights of an auto worker at General Motors to the company's board of directors and the local Chamber of Commerce.

Our society has deprived police officers of one of the most potent instruments of pressure available to employees - 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. At the very least, therefore, police officers should be given the right to independent arbitration of all their discipline and discharge grievances.

Summary of Recommendations

The Canadian Civil Liberties Association calls on the Solicitor General of Ontario to introduce amendments to Bill 107 so as to achieve the following:

1. All investigations of civilian complaints, for disciplinary purposes, should be conducted by the office of the independent complaints commissioner.
2. The independent complaints commissioner should have the power to initiate complaints.
3. Whether or not a complaint has been filed, the independent complaints commissioner should have the power to initiate audits of the investigative and prosecutorial practices and policies of the police.
4. The special investigations unit that handles allegations against the police, for criminal law enforcement purposes, should be located in the office of the independent complaints commissioner rather than in the office of the solicitor general. The Bill should explicitly provide that none of the investigators will be current members of any police department and, in the case of former members, they must be explicitly excluded from involvement in matters dealing with their former departments.
5. Employment equity plans for various police forces should be published sufficiently well in advance of adoption so that the public might make representations on them.
6. Police officers should have access to independent adjudication of all their discipline and discharge grievances.

Racial tension: time for bold steps

BY A. ALAN BOROVOY and DANIEL G. HILL

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INVIEW OF the tensions that have been ignited by the police shooting of yet another unarmed black youngster in the Toronto area — the third in 18 months — it is time for the Ontario government to take some bold initiatives.

The office of the independent complaints commissioner envisioned by the government's current police services bill must have a broader mandate. It should not simply review the complaint investigations conducted by the police. It should be the primary investigator of all civilian complaints against the police — for both disciplinary and criminal law-enforcement purposes. But even that is no longer good enough.

The complaints commissioner should also have the power of self-initiated audit. By confining the commissioner to the handling of specific complaints lodged by members of the public against particular officers, the government is guaranteeing our continuing inability to get a handle on the charges of systemic racism.

According to the task force on racism and the police that was appointed by the government, there is a widespread perception in significant sectors of the community that the police are quick to harass and slow to assist the non-white citizens of this province. These perceptions have been repeated time and again in one forum after another. They have been expressed not only by those identified as radical but also by those seen as moderate.

Complaint investigations simply cannot come to grips with patterns and practices. To uncover the facts in such matters, it is necessary to make comparisons. What, if any, differences or similarities exist when blacks or whites are suspects or victims? How does the policing of Toronto's Jane-Finch corridor differ from that in affluent Rosedale? To what extent, if at all, are the differences justified?

Unless the new law attempts to address such questions, it simply is not responding to the tensions that this community is suffering.

Complaint enforcement cannot do the job. While it is necessary, it is clearly not sufficient. The office of the independent complaints commissioner must be empowered and equipped, on its own initiative, to

examine files, records and witnesses in order to uncover systemic problems in police policies and practices.

Our society at large knows very little, for example, about who and what determines the matters the police investigate, how they conduct their investigations, which parties they decide to charge, and with what offences.

Every day, judgments of this kind are being made in the bowels of our various police departments. The public is entitled to know a lot more than it does, and to say a lot more than it has, about how this awesome discretion is being exercised.

While independent audit might be novel in Canadian law-enforcement, it is not new to Canadian government operations. The Security Intelligence Review Committee exercises such a function with respect to the Canadian Security Intelligence Service (CSIS), as do some ombudsmen on most government departments within their jurisdiction.

CANADIANS were shocked by the revelations at the Mt. Cashel inquiry in Newfoundland, the Marshall inquiry in Nova Scotia, and the aboriginal inquiry in Manitoba. When systemic issues were finally examined, double standards and improprieties quickly came to light.

In Nova Scotia, we learned that blacks and native people were being treated to a different kind of justice than affluent whites. Indications of similar patterns emerged in Manitoba. In Newfoundland, there was evidence that the Roman Catholic church received a level of solicitude that was not available to many other sectors of the population.

There is no reason to believe that Ontario is significantly more immune to such problems than are these other regions of the country. Only the foolishly complacent would continue to ignore the deeply felt expressions of grievance that we have been hearing from blacks and other non-white people.

It may very well be that most Ontario police officers are dedicated to the public interest. But some of these issues transcend the conduct of individual officers. To whatever extent policies are defective, the behavior of individuals will inevitably follow suit.

It is time, therefore, that the Ontario government took serious action to address systemic issues. The independent complaints commissioner must acquire an audit function.