

SUBMISSIONS TO -

Arthur Maloney, Q.C.

RE -

Metropolitan Toronto Review
of
Citizen-Police Complaint Procedure

FROM -

Canadian Civil Liberties Association
Metropolitan Toronto Chapter

DELEGATION -

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SUBMISSIONS TO THE INQUIRY ON THE METROPOLITAN TORONTO

POLICE COMPLAINT BUREAU

Introduction

The Canadian Civil Liberties Association is a national organization with a cross-country membership of more than 3000 individuals, more than 50 associated groups which, themselves, represent several thousand people, and eight affiliated chapters, one of which operates in Metropolitan Toronto. Our membership roster includes a wide variety of callings and interests - lawyers, writers, housewives, trade unionists, minority groups, media performers, business executives, etc.

The objectives which inspire the activities of our organization are essentially two fold:

- (1) the promotion of legal protections against the unreasonable invasion by public authority of the freedom and dignity of the individual and
- (2) the promotion of fair procedures for the determination of people's rights and obligations.

It is not difficult to appreciate the relationship between these objectives and the subject of citizen-police complaint procedures. With all their awesome power, the police are in a position to encroach heavily upon the liberties of the individual. It is essential, therefore, that there be fair and effective procedures available for making the exercise of this power fully responsive to the law and public policy of this community.

The Structural Problem

Allegations of police misconduct appear to be on the increase in Metropolitan Toronto. Within the last year alone, there have been a number of major clashes between police and citizens in this city - for example, the Artistic Woodwork strike, the Rochdale raids, and the Charles Street Incident. Moreover, the police have sustained a growing and constant barrage of criticism from various disaffected constituencies - blacks, unions, youth etc.

Like most members of the public, the Canadian Civil Liberties Association is in no position to assess the merits of these complaints. Whether and in what situations the police or the complainants were in the right and how far each was in the right, are issues beyond our competence to judge. Indeed, in our view, the inability to judge represents the most disturbing aspect of this entire issue. Our community has simply failed thus far to develop a satisfactory method for the investigation and adjudication of complaints against its police. Periodic allegations of police misconduct may be an unavoidable outgrowth of a complex society. But the inadequate resolution of such allegations is both avoidable and unacceptable.

The chief problem in our current complaint machinery is the absence of a capacity for independent investigation. The public agency primarily responsible for the investigation of police officers is the Complaint Bureau of the Police Commission. The public agency responsible for the assessment of the information is the Police Commission itself. This means that the initial investigators will usually be colleagues of the accused officer and the ultimate fact-finders will be the administrators of the Police Department.

This arrangement can hardly be expected to inspire public confidence. The investigating officers will be vulnerable to the suspicion that they are "covering up" for their colleagues. The Commissioners will be vulnerable to the suspicion that they are protecting the good name of the police department they administer. Thus, no matter how fairly the investigators or the Commissioners may perform in any particular case, they are not likely to be perceived as impartial in conflicts between officers and outsiders.

Moreover, some of the actual investigations performed by the Complaint Bureau have done little to dispel these misgivings about the structural machinery. By way of illustration, we present herewith a report on a recent case.

The Operation of the Complaint Bureau - A Case Study

In the fall of 1973, Vicki Terrise, a picket in the Artistic Woodwork labour dispute, was charged with and ultimately acquitted of assaulting the police. Our interest in her case was triggered by a news item which appeared in the Toronto Star of December 21, 1973. According to this article, a video taped film introduced into evidence at Ms. Terrise's trial "showed (a Metro police) officer shoving Ms. Terrise in the face and dragging her by the hair to the paddy wagon". Contrary to the reported testimony of "two Metro police officers," "It did not show her kicking a policeman".

On January 24, 1974, the Canadian Civil Liberties Association wrote to the Metropolitan Toronto Police Commission and asked whether an investigation had been undertaken into the apparent disparities between the disclosures of the video taped film and the testimony of the officers involved. The correspondence which followed provides some insight into the defects of the existing investigatory arrangements. (Copies of the letters are contained in the appendix.)

After waiting approximately a month without receiving a reply, we wrote again on February 26, 1974, and requested a reply to our inquiry of January 24th. On March 5, 1974, we received, over the signature of the executive secretary of the Metro Police Commission, the following letter: "Receipt is acknowledged of your letters of February 26 and January 24th, last which have been referred to our solicitors".

To this date, we are unable to comprehend the meaning of this letter. Why did the Commission refer our letters to its solicitors; why, after six weeks, did it fail to answer our inquiry?

On March 12, 1974, we wrote again. The following is an extract from this letter.

"As you can appreciate, we are not aware of the reasons which prompted you to refer to your solicitors our letters of February 26th and January 24th. However, we draw to your attention the fact that the information sought by those letters falls entirely within the domain of the public interest. Might we, therefore, respectfully reiterate our request that you disclose whether the Metropolitan Toronto Police Commission has undertaken an investigation into the conduct of the officers concerned and, if so, with what results?"

On March 18, 1974, the Commission commented, for the first time, on the merits of our inquiry. The Commission secretary indicated that the Complaint Bureau had, indeed, investigated the matter but they had found no significant conflict between the police evidence and the video taped film. Their investigation which included a rerunning of the film failed to show the officer shoving Ms. Terrise or dragging her by the hair. Moreover, according to the Commission, "the alleged incident in which Ms. Terrise is stated to have kicked (the officer) apparently occurred prior to the film coverage and is not shown on the film".

Following the receipt of this explanation, we arranged to see the video film and read the transcript of the trial evidence. These sources seemed to indicate some rather important conflicts with the Commission's account of the case. According to the transcript of the evidence, the officer swore that he arrested Ms. Terrise immediately following their alleged altercation. Yet, except for a five second interval when she is not shown on the film, the video taped film first shows Ms. Terrise wandering loose among the crowd without any evidence of pursuit or arrest. Indeed, she is shown continuously from that point until the time of her arrest. But the film shows nothing of her kicking an officer. Moreover, contrary to the impression conveyed by the Commission, the film does show some police officer grabbing her in the face and pulling her by the hair. This is contained in the sworn trial evidence of Ms. Judy Jackson, the film operator, and it is confirmed by a staff member of the OCLA who subsequently viewed the film.

Accordingly, we wrote to the Commission on April 4, 1974, and requested an explanation of how these and other apparent conflicts might be reconciled with the Commission's version of the case. When, on May 7, 1974, we had not received a reply, we wrote a further letter reiterating our request for the explanations sought by our April 4th letter. ~~But~~ our letter of May 7th contained one additional matter: We drew to the Commission's attention, a statutory declaration which had been sent to us by Clayton C. Ruby, Ms. Trerise's defence counsel. According to Mr. Ruby, he had been advised by members of the Police Complaint Bureau that, as of the date the Commission had purported to exonerate the officers in question, it had not reviewed the transcript of the trial evidence. Thus, our letter of May 7th asked the Commission, from its point of view, to verify the accuracy of Mr. Ruby's assertions and, if accurate, to explain further its failure to check the transcript during the course of an investigation so beset by conflicts of testimony.

Finally, we received from the Police Commission a letter dated May 15, 1974. Instead of replying to the questions raised in our letters of April 4 and May 7, the Commission reiterated what it had already told us - in its opinion, the Toronto Star story was inaccurate. And, said the Commission, since Ms. Trerise had been acquitted and had never made a complaint against the officers, "further correspondence would serve no useful purpose".

For the first time in four months of correspondence, the Commission claims that Ms. Trerise's failure to file a complaint is somehow relevant to the Commission's responsibility to explain the behaviour of Metropolitan Toronto Police officers. This is an excuse unworthy of a public authority. While we have never discussed the issue with Ms. Trerise, we can well understand the reluctance of people to become involved in prolonged and probably unpleasant investigations. In any event, the public conduct of public officers in the course of their public duty is a matter of public concern. There is no valid reason why a full and open explanation by the responsible authority should not be immediately forthcoming without anything further on anyone's part, much less a complaint from someone who has already suffered the ordeal of arrest, incarceration, and prosecution.

On the evidence, the Canadian Civil Liberties Association is in no position to make accusations against any of the officers in question. But we are in a position to impugn the Metropolitan Toronto Police Commission for its refusal to reply to reasonable questions. Even if the officers concerned were ultimately vindicated, the conduct of the Commission could not be excused. Our letter of April 4th revealed important discrepancies in the official record relating to how the officers handled the Terrese case. Our letter of May 7th revealed a significant inadequacy in the way the Complaint Bureau handled the investigation. The Commission's reiteration of its conclusions is no substitute for an explanation of these discrepancies.

The diversions, evasions, and omissions which characterize the Commission's foregoing correspondence -- can only strengthen the ~~misgivings~~ about in-house investigations.

The Reluctance to Complain

An examination of cases like Vicki Terrese's can provide useful insights into the workings of the Complaint Bureau. Perhaps, however, it would be even more instructive to consider the cases that have never surfaced.

In the past few years, the Canadian Civil Liberties Association has conducted several surveys among randomly selected arrested people in the City of Toronto -- winter 1970, fall 1972, summer 1973, winter 1973, and spring 1974. While the surveys usually emphasized other matters, they also attempted in a number of cases, to identify complaints of physical abuse by the police. Whenever we found such allegations, we asked whether any retaliatory legal action was being considered.

What is most significant in our findings is the overwhelming and persistent reluctance of aggrieved people to avail themselves of their legal remedies against the police. In the winter of 1970, of the 26 people who alleged police abuse and who answered this question, 21 or 81% proposed to do nothing to rectify the wrongs they had sustained. In the fall of 1972, the figures were 12 out of 12. In the summer of 1973, it was 21 out of 24; in the winter of 1974, 31 out of 34; and in the spring of 1974, 25 of 28

Over the four year period, of the 124 arrested people in all these surveys who claimed to have suffered physical abuse at the hands of the police, a grand total of 110 or 88% told us that they would not take any kind of legal action.

Even allowing for some distortion, exaggeration, and misconception in our interview subjects, the dominant trend is unmistakable. Among accused people in this city who feel victimized by police wrongdoing, the quest for legal redress is a rare phenomenon.

Our research went one step further. We attempted to learn the reason for this overwhelming resistance to retaliatory action. 105 of the reluctant grievors answered this question. Apart from the nine who said that the abuse was not serious enough and the one who said he deserved what he got, the answers revealed a disquieting cynicism about the consequences of seeking justice. Some said, "It is not worth the hassle"; some feared further pressure from the police; others said they couldn't prove their allegations. As many as 72 replied flatly, "It would do no good".

Somehow, therefore, our ~~system of justice has failed~~ failed to persuade those with grievances against the police that their rights will be respected and vindicated. Whether or not this cynicism is warranted, we are satisfied that it is real. The confidence of those affected is essential to the proper functioning of adjudicative machinery. It behoves us, therefore, to take steps to improve the appearance and the image of our complaint enforcement procedures.

Our Proposal

It follows from what was said above that, at the very least, this community needs some kind of machinery for the independent investigation of citizen complaints against the police. In this regard, we propose the establishment of an independent citizens' committee on police relations. In the interests of public acceptance, this committee should be composed of citizens representing a wide cross-section of community involvements and concerns. In the interests of public credibility,

most committee members should have no connection with the police department or its administration. In the interests of effectiveness, the committee should be given a staff and budget adequate to perform its functions with independence and vigor.

We seek to impose the independent citizens committee between the Police Commission and the public. When complaints and conflicts arise, the committee could act between the police interests and the citizens interests. Now, let us consider its possible functions and procedures.

Upon receiving a complaint from a citizen who claims to have been mistreated by the police, the independent citizens' committee, through its staff, would conduct, as expeditiously as possible, a thorough investigation into all of the facts. The committee's investigation could produce a variety of alternatives.

One possibility is that the committee investigators might uncover facts which reveal no fault whatsoever on the part of the accused police officer. If that be the result, the role of the independent citizens' committee would be to make a statement to the complainant in full explanation and exoneration of the police officer's conduct. It may be that there will be some difficult legal issues which require clarification.

A proper role for the committee is to interpret police behavior under such circumstances. The significant point to observe here is that exoneration of a police officer emanating from an independent citizens' committee will carry greater public weight than if it had emanated from the internal administration of the police department. Such a body is more likely than a police commission to preserve the police-citizen relationship when the facts require exoneration.

Another possible result of investigation is a finding of partial or total fault on the part of the accused police officer. At this point, a proper function for the independent citizens' committee would be to attempt conciliation of the dispute. This might take the form, for example, of an apology, the payment of a damage claim from the Police Department to the complainant, and/or even the initiation of disciplinary proceedings. It is not difficult to imagine how such expeditious settlements could preserve intact the police-citizen relationship. Again, we believe that the attempt to settle would be more successful where there is a mediator between the police and the citizen.

The third alternative resulting from the investigation would be a finding of total or partial fault on the part of the police officer and a failure on the part of the committee to effect a satisfactory settlement. In response to this set of circumstances, we believe that the independent citizens' committee should be empowered to convene a public hearing into the entire matter.

In view of the fact that, at this stage, the committee would have formed its own view of the case, the members of the Board of Inquiry which is established to conduct the hearing, should be independent both of the police department and the citizens' committee. The Board of Inquiry should allow all parties to present their case in a public forum. Everyone concerned, including the complainant, the police officer, and the citizens' committee should be entitled to counsel and to a thorough presentation of their evidence and arguments. In the result, the Board of Inquiry should make a finding on all of the facts in the dispute.

At this point, it is important to note that, under our proposal, neither the citizens' committee nor the Board of Inquiry would have the power to impose a binding decision. The citizens' committee is confined to investigation and conciliation; the Board of Inquiry is confined to determining the facts. The decision as to what to do about the facts that are found, would remain where it is today, in the hands of the Police Commission. But the Police Commission would make its decisions under the influence of an independent inquiry. We do not seek to divest the Police Commission of its responsibility to administer the Police Department. We seek only to create a fact-finding mechanism which will enjoy greater public confidence.

Proposals for independent review, of course, are not new to this community. They have been made, time and again, by many organizations representing a wide variety of constituencies. What might represent a new development, however, is the indication which has emerged recently of a possible change in attitude among the police. Traditionally, police spokesmen have expressed disapproval of the concept of independent investigation. But there have been recent signs that these objections may be softening.

We have been advised that on September 5th, this Review Body held a meeting with members of the Metropolitan Toronto Police Association. The attendance of police officers had been invited through an advertisement in the Association bulletin. Approximately 200 officers attended. Significantly, most of the participants at this meeting criticized the existing method of handling citizen-police complaints and they called for a new system of Independent Investigation.

In our view, these officers correctly took the position that the interests of the police, as well as the citizen, can be more adequately protected by an outside investigatory body. From the police standpoint, investigations conducted by Department personnel are vulnerable to the suspicion that petty jealousies and considerations of public relations could prevail over the interests of scrupulous fact-finding.

We are further advised that, at the September 5th meeting, many of the officers also requested that their internal discipline and discharge grievances be subject to Independent arbitration. The Canadian Civil Liberties Association is in full accord with this proposal. In Ontario today, if a police officer wishes to challenge the propriety of discipline which has been imposed upon him, he is confined to appeals within the police structure. Where most unionized industrial employees can appeal disciplinary action to impartial arbitration, police officers are at the mercy of their employers and those who share their employers' interests. Significantly, our society 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 which our society makes of the police and the rights which it removes from them, they ought, at least, to have the minimum job security protections which are available to most unionized employees.

With the growth of police-citizen contact and conflict, we can expect an increase in the number and intensity of grievances by and against the police. It is important, therefore, that we establish the kind of grievance and review machinery which will command community respect. While we are not necessarily wedded to the details of the above proposals, we are persuaded of the need to adopt the concept. Independent investigation of citizen complaints and Independent arbitration of police discipline are the indispensable conditions of fair play and public confidence.

APPENDIX

The Case of Vicki Trerise

Correspondence between
the Canadian Civil Liberties Association
and
the Metropolitan Toronto Police Commission