
SUBMISSIONS TO

Commission of Inquiry Relating to
Public Complaints, Internal Discipline
and Grievance Procedures Within the
Royal Canadian Mounted Police

FROM

Canadian Civil Liberties Association
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Ottawa

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Introduction

The Canadian Civil Liberties Association is a national organization with a cross-country membership of more than 3000 individuals, more than fifty associated groups which, themselves, represent several thousand people, and eight affiliated chapters. 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 RCMP complaint procedures. With all their awesome power, the RCMP is 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 ensuing submissions are based, in part, upon the reported experiences of certain people who have been involved in recent conflict with the RCMP. In this regard, we received splendid co-operation from the Metis Society of Saskatchewan and our affiliated chapter in that Province, the Regina Civil Liberties Association. These organizations provided substantial last minute assistance in identifying complainants from their region of the country, and in helping us to locate them.

Our submissions are based, in part, also on the few official materials about the RCMP which are readily available for public inspection. In this regard, although we have received considerable co-operation from the staff of this Commission of

Inquiry, we have had a difficult time tracking down a number of relevant materials. In some cases, it appeared that the documents could be obtained only in Ottawa. Although the officials we spoke to indicated that they would send them to us as quickly as possible, as of the date of writing, certain materials have not yet reached us.

We mention these problems, not as an exercise in special pleading or even to excuse ourselves for a brief which is less complete than we would have wished, but rather, in the hope that this experience can contribute in some small way to the demystification of the RCMP. There is no reason we can think of why documentation relative to the RCMP should be so hard to get. Surely, the public interest would better be served if public documents relating to public Institutions were readily available from public sources in several centres throughout the country.

The Commission is committed to transparency and accountability in its operations. It will continue to work closely with the public and stakeholders to ensure that its decisions are based on the best available information and are in the public interest.

The Commission will continue to monitor the implementation of its decisions and will take appropriate action to ensure that its orders are fully complied with. It will also continue to provide guidance and support to the public and stakeholders to help them understand and comply with its decisions.

Procedures

Respecting Public Complaints

The Commission has established a clear and fair process for handling public complaints. This process is designed to ensure that all complaints are received, investigated, and resolved in a timely and effective manner. The Commission will continue to refine its procedures to ensure that they are transparent and accessible to all members of the public.

The Commission will continue to work with the public and stakeholders to improve its processes and ensure that it is meeting its obligations to the public. It will also continue to provide guidance and support to the public and stakeholders to help them understand and comply with its decisions.

In early October of this year, there was an unfortunate clash on Ottawa's Parliament Hill between a group of Indian demonstrators and the RCMP. At the time, the Federal Solicitor General was reported to have promised an investigation into the matter. A few weeks later, however, he declared that there was no need for an investigation because of the "incontrovertible fact that the RCMP acted with commendable restraint in dealing with the demonstration".

While the Canadian Civil Liberties Association has never possessed sufficient information about the events of that unhappy day to pass judgment on the merits of the conflict, we have been troubled all along by the Solicitor General's response to it. As the head of the Department which is responsible for the RCMP, his political self-interest is well served by an outcome favourable to the RCMP. Thus, despite our inability to dispute the validity of his conclusions, we fear that his imprimatur is devoid of the requisite objectivity to command public confidence.

But we would have been just as troubled if the Solicitor General had pursued the kind of investigation which had originally been indicated. Who would have conducted the investigation? The agency usually chosen for such matters is the RCMP, itself. Indeed, it is the only public agency readily available for these assignments. So long as investigators come from the ranks of the RCMP, the public could have little confidence in the outcome of their efforts. The investigating officers would be vulnerable to the suspicion that they were "covering-up" for their colleagues. Their superiors who evaluated the information would be vulnerable to the suspicion that they were protecting the good name of the police force they administered. Thus, no matter how fairly such an investigation, in fact, were conducted, it would not likely be perceived as impartial.

The same difficulty exists in those provinces to which the services of the RCMP are provided on a contract basis. Even though the provincial Attorneys General are less tied to the RCMP than their federal counterpart, they generally depend, nevertheless, upon the RCMP to conduct the investigation of complaints against the RCMP. Some of the actual experience exacerbates the concern about the propriety of in-house investigation.

During the past few years, for example, the Metis Society of Saskatchewan has been filing an increasing number of complaints on behalf of native people against various Mounties. But, when RCMP officers go out to investigate the complaints, they frequently encounter resistance from the very people who are seeking redress. Some of the native complainants have felt so traumatized by the circumstances surrounding their conflicts with the RCMP that they are not prepared to trust any RCMP officer, even one who has been sent out to investigate their grievances.

Here, for example, is an extract from the affidavit of an aggrieved Indian.

"About a month after I made the statement of complaint (the fall of 1973)...a man who I believe to be a Staff Sergeant from Regina came around to ask questions about my complaint. I told him that I had already given a statement to Peter Bishop (a Metis leader) and that he should go and talk to him. I did not want to answer any of his questions because I did not want anything more to do with the Police".

A similar development occurred in the case of another native man who had complained that a Mountie, without provocation, had kicked him in the mouth so hard that he lost a tooth and was knocked unconscious. Sometime after his complaint had been registered (August 1974), an RCMP officer visited his community in order to obtain from him and his companions their version of the facts. However, the grievor and his friends refused to co-operate. According to the complainant's affidavit,

"...we went into the officer's room. He was in uniform. He told us that he would take a statement from us. All of us refused to make a statement. I did not trust the police to make an investigation".

In this case the RCMP investigation was delayed until the subsequent intervention of the Metis Society finally elicited the witness' co-operation.

While the foregoing investigations by the RCMP found no fault with the RCMP, they represent situations where aggrieved citizens, at least, were prepared to register their complaints. We could never begin to speculate, however, on the number of native and other people whose suspicions are so great that they would resist even the initial stages of the legal process.

In this connection, we found one Indian man who claims that, in an unprovoked assault on him (June 1974), two RCMP officers broke his arm. The Indian man readily admits that he resisted the initial effort to detain him. But he insists that by the time he arrived at the detachment quarters, he had accepted the situation. However, when he walked into the detachment garage, he says that one officer hit him in the stomach with his closed fist and another officer hit him on the back of the neck. At that point, he believes that he passed out. When he awoke, he says that he felt sick and had both a sore arm and sore neck. Subsequently, the doctor told him that his arm had been broken and he was obliged, for some time, to wear a cast on it.

Despite the extent of the injury he had suffered, the complainant has resolutely refused to seek redress. In the words of his affidavit,

"I do not want to lay a complaint against the RCMP because they might get back at me".

In order for in-house investigations to command the confidence of affected people, they would need to be conducted with extraordinary and obvious diligence. In some situations, however, these qualities have appeared to be conspicuously lacking.

One Indian woman, for example, says that, in April 1974 during a meeting with an RCMP official who investigates complaints, she reported an incident of alleged police misconduct suffered by her father a few weeks earlier. Although the meeting had originally been arranged to discuss some other case, the woman claims that she outlined in some detail the circumstances of her father's experience. She was able to do this, in part because she had been with him around the time of the incident.

In the first place, despite the woman's contention that her father "had not drunk very much" on the day in question, the officer concerned reportedly insisted on arresting him for drunkenness. When she attempted to assist her father, she was arrested as well. When father and daughter met the next morning upon their release from jail without charges, the father complained that the officer had beaten him in his cell. According to the Indian man's story, the officer had stomped on his foot and he "just kept kicking me and kicking me". In the result, the victim claims that he suffered

a broken toe. All of this, the native woman swears that she revealed at her April meeting with the RCMP official. She further swears that, at the official's request, she signed some notes which he had prepared on her description of the affair.

Notwithstanding these precautions and the official's parting words that he might wish to discuss this with her again, she told us on November 20, 1974, that, since their April meeting, the RCMP has not talked to her about the matter. After interviewing her, we called the RCMP complaint investigator for the region concerned, and asked what he knew of the case. Although there was evidence that this official remembered meeting with the woman and discussing with her another situation involving her father's alleged assailant, he claimed to remember nothing about the case in question.

While not all complaints can be found to have merit, they are worthy, at least, of a considered response. The most likely result of such apparent neglect is greater distrust of the in-house system.

Of course, not all citizen complaints against the RCMP die in their infancy. Some investigations have even produced findings adverse to the officers in question. It should not be assumed, however, that such results have necessarily dispelled the suspicions of the victorious complainants. Even in victory, they have had cause for uneasiness.

About two years ago, at a special RCMP trial in the Province of Saskatchewan, an RCMP corporal pleaded guilty to the service offence of "being unnecessarily violent" to an Indian complainant. According to reports which were filed at the time, the investigating officers had interviewed some twenty witnesses. Thus, on the surface at least, the complainant should have emerged from the process, persuaded of its value.

Notwithstanding the favourable verdict and the apparently thorough investigation, the aggrieved Indian felt a sense of disquiet. Although he was flown at public expense all the way from his home in the northern part of the Province to Prince Albert, the place of the hearing, he was not invited to attend the trial. During the

entire time of the hearing, he sat waiting in his hotel room. When he learned subsequently what penalty had been imposed in his absence, his misgivings intensified. The RCMP corporal who had assaulted him received a punishment no more serious than a \$50.00 fine.

According to the complainant's affidavit, the guilty officer had pushed him in the shoulder, kicked him in the ribs, and punched him so hard on the bridge of his nose that he was rendered unconscious. He says that these blows left him dizzy, his eyes black, his side sore, and his face and shirt covered with blood. For some reason a decision was made to keep him from telling his story in his way to the trial officers. Although the complainant was kept out, the trial did hear from character witnesses favourable to the accused.

We have been advised that it is customary, on pleas of guilty, for complainants not to attend RCMP service trials. We cannot help wondering, however, to what extent this custom simply aggravates the inevitable suspicions concerning in-house adjudication.

The handling of this case was marred by yet another questionable procedure. When the complaint was first registered, a representative of the Metis Society escorted the complainant to the Government offices. Although the Metis representative requested that he be kept informed about the developments in the case and was assured that the Government would do so, he says that he was never contacted further.

While there is no way of knowing whether the Society's involvement could have altered the penalty which ultimately was imposed, that is a possibility which cannot be ignored. Intervention by competent advocates has often succeeded in influencing the conduct of governmental processes. In any event, this was assistance to which the complainant was entitled. To deny it or to neglect it could only diminish further the confidence of the native people in the investigative procedures of the RCMP.

But even if the RCMP were to improve its complaint procedures and were to punish more severely its offending officers, we do not believe that there would be a commensurate increase in public confidence. No improvement on internal procedures would be adequate

to handle those complaints which were devoid of merit. In any cases where the complaining citizens were wrong and the impugned officers were right, the officers, of course, would deserve to be vindicated. But exoneration by insiders would do little to reduce the suspicions of outsiders.

In our opinion, therefore, the indispensable condition of public confidence is independent investigation. Accordingly, we propose the establishment of a new agency, independent of the RCMP and of government, which would be available, on an ongoing basis at both federal and provincial levels, to investigate the complaints of citizens against the RCMP. We believe that such an agency should be endowed with sufficient power and resources to investigate, conciliate, and, where necessary, convene public hearings.

We have reason to believe that the constable, as well as the citizen, would benefit from the adoption of this idea. From the standpoint of the constable, 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. While we are not generally aware of the opinions of RCMP members about such matters, we do know that there has been a softening of the traditional attitudes of policemen at other levels. One of the most significant developments in this regard was a special meeting on September 5 of this year which was attended by some 200 members of the Metropolitan Toronto Police Association. According to reliable sources, it was the overwhelming consensus of this meeting that internal investigations of citizen complaints should be replaced by a new system of independent investigation.

In the appendix of this brief, we provide an outline of how this system might work. While we are not wedded necessarily to the details of that outline, we are wedded to the concept. With the growth of police-citizen contact and conflict, we can expect an increase in the number and intensity of grievances against the RCMP. It is important, therefore, that we establish the kind of grievance machinery which will command public respect. In our view, only some form of independent machinery can answer this need.

In those areas of law enforcement which fall exclusively within the federal jurisdiction, the constitutional power to establish such machinery is clear. In those areas which fall within provincial jurisdiction, the establishment of this machinery might require the imposition of federal standards through re-negotiation of the RCMP contracts, or the enactment of new provincial legislation, or perhaps a mixture of both. In any event, although the legal problems may be formidable, they are not insoluble. The essential prerequisite is the will to do it. It is in this area, that we ask for leadership from this Commission of Inquiry.

Procedures

Respecting Internal Discipline

The first step in resolving a dispute is to identify the problem. This involves understanding the interests of all parties involved. Once the problem is identified, the next step is to explore possible solutions. This involves brainstorming ideas and evaluating them based on their feasibility and desirability. The final step is to select a solution and implement it. This involves negotiating with the other party and reaching an agreement that is acceptable to both.

Effective conflict resolution requires a focus on the interests of all parties involved. This involves understanding the underlying needs and concerns of each party. Once the interests are understood, the next step is to explore possible solutions that satisfy the interests of all parties. This involves brainstorming ideas and evaluating them based on their feasibility and desirability. The final step is to select a solution and implement it. This involves negotiating with the other party and reaching an agreement that is acceptable to both.

It is important to remember that the goal of conflict resolution is to reach a mutually acceptable solution. This involves understanding the interests of all parties involved and exploring possible solutions that satisfy those interests. Once a solution is reached, it is important to implement it effectively and monitor the results to ensure that the solution is working as intended.

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We have long believed that it is difficult to expect fair treatment from those who, themselves, do not receive fair treatment. In our view, members of the RCMP are subject to a form of legal bondage which is anything but fair. Indeed, in many crucial matters, these officers are denied the minimum level of legal safeguards which the humblest of Canadians take for granted.

Although our inability to obtain all the relevant material we had sought precludes detailed commentary on these matters, perhaps some highlights will suffice. At the moment, members of the RCMP are legally subject to imprisonment on the basis solely of RCMP service trials. These internal trials are conducted in camera and the accused Mounties have no right to representation by outside counsel. Moreover, while a Mountie, accused of a service offence, need not testify at his trial, he is one of the few people in our society who can be jailed for refusing to answer questions in the context of closed police investigations.

It is difficult to understand why the willingness to dedicate one's life to the service of one's country should be rewarded by the loss of the most fundamental civil liberties known to common law democracies. Moreover, it is difficult to appreciate what public interest would suffer if the Mounties were accorded more of the concomitants of first class citizenship.

Accordingly, we would recommend that the power to impose terms of imprisonment be removed from members of the RCMP hierarchy. To whatever extent the offences in the RCMP Act are considered worthy of punishment by incarceration, adjudication should be rendered by tribunals independent of the Department. Indeed, in the greatest number of cases, it would appear appropriate for this jurisdiction to be exercised in the ordinary way by the ordinary courts of law.

Moreover, like most other trials involving the threat of jail, trials under the RCMP Act should generally be conducted in an open public forum. And, like most other accused people, the accused officer should be entitled to a choice of counsel

outside the Department. Where the refusal to submit to Departmental Interrogation, under some circumstances, might justify employment discipline, it is difficult to conceive of the circumstances under which such conduct could justify physical confinement. On this basis, we would recommend the elimination of jail terms as a penalty for silence during such investigations. Moreover, the accused Mountie under the RCMP Act should acquire the kind of protections against arbitrary arrest and pre-trial confinement which are currently available to the accused citizen under the Criminal Code.

At the moment, by virtue of both the RCMP Act and the common law, the RCMP Commissioner is virtually all powerful as regards the employment conditions of the members. Although we see no problem in the exercise by the Commissioner and his representatives of initiatory powers concerning employment conditions, we are troubled by the absence of proper review machinery. Under existing arrangements, if an RCMP member wished to question the propriety of a disciplinary suspension or discharge which had been imposed upon him, his only recourse would be to appeal within the Departmental structure.

Significantly our society denies to RCMP members the most potent instrument of employment self-help, the right to strike. Moreover, it appears that any form of independent union organization or attempt at collective bargaining would be unacceptable to the RCMP hierarchy. In the absence of some overriding public interest, elementary equity would require that, in view of the demands made upon the Mounties and the rights denied to them, they should enjoy at least a minimal measure of job security.

On this basis, we would recommend that the members of the RCMP acquire the right to independent arbitration of their job-related discipline and discharge grievances. Until and unless their relations with their employers were governed by collective bargaining agreements, the arbitrator would be bound, of course, to judge the grievances according to the criteria propounded in the statute and regulations. But the existence of outside adjudication would introduce to the system at least some semblance of procedural fair play.

1. The Commission has considered the evidence presented to it and has concluded that the following recommendations should be made:

- (a) The Commission should recommend that the Government should consider the possibility of introducing legislation to provide for the establishment of a new body to be known as the 'Independent Commission on the Environment'.
- (b) The Commission should recommend that the Government should consider the possibility of introducing legislation to provide for the establishment of a new body to be known as the 'Independent Commission on the Environment'.

Summary of Recommendations

- (c) The Commission should recommend that the Government should consider the possibility of introducing legislation to provide for the establishment of a new body to be known as the 'Independent Commission on the Environment'.
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In summary, the Canadian Civil Liberties Association requests this Commission of Inquiry to recommend the following measures.

1. The establishment of a new agency, independent of the RCMP and of government, which would be available on an ongoing basis at both federal and provincial levels, to investigate, conciliate, and, where necessary, convene public hearings into the complaints of citizens against the police.
2. The adoption of changes in the procedures for internal discipline, to provide that:
 - a) RCMP members will no longer be punishable by imprisonment for maintaining silence during closed Departmental investigations
 - b) accused RCMP members will acquire the kind of protections against arbitrary arrests and pre-trial confinements which are available to accused citizens under the Criminal Code
 - c) Accused RCMP members will be entitled to a choice of counsel outside of the Department
 - d) RCMP members will no longer be punishable by imprisonment, unless there is adjudication, independent of the Department
 - e) RCMP members will have a right to independent arbitration of their job-related discipline and discharge grievances.