

SUBMISSIONS TO -

The Honourable Ian Scott
Attorney General of Ontario

RE -

The Improvement of Police-Community Relations

FROM -

Canadian Civil Liberties Association

DELEGATION -

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January 23, 1989

The Police and Community Tensions

In the wake of the two recent police killings of black people in Peel and Toronto, there has been a disquieting escalation of tension between the black community and the police. These tensions have been exacerbated by the charges laid against the police officers who were allegedly involved. Members of the black community have expressed outrage that the officers were not charged with murder. They believe that there was bias in the investigation and resulting charges. Members of the police community are angry that their colleagues have wound up charged with any serious offences. They believe that the decision-makers played politics with law enforcement.

In the opinion of the Canadian Civil Liberties Association, it is understandable that there is so much suspicion about the integrity of the response to these police killings. Both of the investigations involving the Metro Toronto and Peel Regional Police were conducted by the O.P.P. The decisions regarding what, if any, charges to lay resulted from an interplay between the O.P.P. and ministry officials whose daily work entails close collaboration with the police. Even if the investigative and prosecutorial decisions were fair in fact, there is a great risk that they cannot appear fair.

Despite the fact that the O.P.P. and the accused police officers belong to different police forces, they share a

number of common interests. In this regard, consider the reported testimony of RCMP Sergeant Harry Wheaton at the Royal Commission on the Donald Marshall prosecution in Nova Scotia. In the course of explaining some of the self-imposed restraints on the RCMP investigation of the Sydney Nova Scotia police force, Sergeant Wheaton made the following comments: "Police officers are a fraternity. You feel a certain loyalty to one another". Sergeant Wheaton explained that he declined to use certain investigative techniques because it might have ruined any relations between the two forces.

Yet it must be recognized that the decision to involve the O.P.P. represented progress. Most often, allegations of impropriety against Ontario police officers are investigated by their own departments. In these cases, the authorities obviously believed that internal investigations could not even begin to address the profound outrage which the shooting had produced in the black community. Since the best that was seen as possible was an O.P.P. investigation, there is a significant risk that much of this anger will linger.

Moreover, even if grievances involving the police are generally not as dramatic as these, it is important to appreciate the corrosively unsatisfactory nature of the existing remedial machinery. Only Metropolitan Toronto has any kind of on-going arrangements for involving outsiders in

the processing of civilian complaints against the police. But, even in Metro, the actual investigations are usually done internally. Moreover, the independent operation in Toronto is concerned generally with employment discipline, not with criminal prosecution. The situation everywhere else in the Province is simply primitive.

A glance at various Ontario newspapers during the past few years conveys a sense of how substantial a problem there is.

* In March of 1986, the Kitchener-Waterloo Record reported the decision of the Waterloo regional police commission "that there was no wrongdoing or misconduct" on the part of an officer who had been accused of assaulting a citizen and causing his nose to bleed. The case contained unresolved discrepancies. The Staff Sergeant at the station who took the complaint just after the incident noted a certain amount of blood on the complainant's nose, hand, and pant legs. The two officers at the scene said that they didn't strike the complainant and a third officer said he didn't see any blood. Obviously this didn't square with the intake sergeant's report. The inspector who oversees the handling of civilian complaints was quoted as saying "the officer had another reason for the nose bleed and that is all I want to say".

* In January of 1987, the Ottawa Citizen reported a decision by the Ottawa police to dismiss a complaint against two of their patrolmen for using excessive force when they arrested

a man who refused to get off a bus after not paying the fare. The significance of this case is that the complaint was filed, not by the alleged victim of the police assault, but by a disinterested witness who happened to see the incident. According to the witness, the arrested man had stopped struggling when one of the officers threw him into a bus seat in hand cuffs and started punching him.

* In July of 1986, the Toronto Star reported a decision by the O.P.P. clearing two of their Minden officers of having used unreasonable force in arresting a Stouffville man for impaired driving. The complainant alleged that the two officers had grabbed him in the main room of the Minden detachment without provocation and had "pounded" his head against the cement floor. Despite the fact that he had spent four days at the Scarborough Centenary Hospital after his family physician recommended an examination by a neurosurgeon, the O.P.P. superintendent concluded that the police had "used only as much force as was necessary" in the circumstances.

* In October of 1987, the Sault Ste. Marie Star reported a decision by the O.P.P. to dismiss the complaints of two Edmonton men of East Indian origin. According to the complainants, O.P.P. officers had kicked and strip-searched them after stopping their van. The complaints included allegations of racial slurs. It appears that the O.P.P. had stopped the van in error, thinking it was one that

belonged to people suspected of an armed robbery in Thunder Bay.

* In January of 1988, the Sault Ste. Marie Star also reported that the O.P.P. had decided not to take disciplinary action against four of their Hornpayne officers who, according to a judge, had violated the constitutional rights of people under arrest. The arrest had been made in connection with the killing of a horse owned by one of the police officers. During the course of their pre-trial detention, some of the six arrested people were reportedly threatened with jail or loss of employment if they refused to give statements about the killing. There was evidence that one of the arrested men was slapped, strip-searched, and left in his underwear in a hallway for twenty minutes. When the accused came to trial, the judge stayed the proceedings, holding that "there has been a violation of those fundamental principles of justice which underline [sic] the community's sense of fair play and decency...I would categorize the violation of the Charter rights...as serious". Despite these findings by the presiding judge, the O.P.P. officer representing the professional standards branch, declared, "there isn't any need for discipline".

Toward Fairer Adjudication

Significantly, the foregoing cases represent only a handful of the complaints about police that have surfaced in the

media during the past few years. It is also very likely that the matters reported in the press represent only a handful of all the complaints that are made. And the complaints that are made probably represent only a handful of the complaints that exist. Many, if not most, people are reluctant to invoke the legal processes against the police and only a few who do are prepared for publicity.

In case after case, police have investigated police and either cleared them of wrongdoing or found something less serious than had been alleged. Imagine the impact on the complainants and the public! Despite independent evidence, conflicts in police testimony, admitted police errors, and judicial admonitions, police investigation failed to produce the discipline of police. But, even if the foregoing decisions were entirely correct, this system also fails to serve the legitimate interests of the police themselves. When complaints are dismissed, the impugned officers are deprived of the chance to be cleared in a publicly credible manner. And, as indicated, when action is taken on a complaint, many officers will see the situation as one where the investigators and decision-makers have bent over backwards to avoid a charge of bias.

No one who has not personally investigated these situations, or at least read the investigative reports, is in a position to pronounce definitively on any of the findings. What we can all do, however, is impugn the tainted appearance that

has been created.

This situation is simply unacceptable. The viability of democratic societies requires a high level of confidence in the integrity of our law enforcement. Such confidence cannot coexist with the exercise of self-interested investigation. Accordingly, the Canadian Civil Liberties Association urges the creation of an agency, independent of government and all police departments, to handle civilian complaints against the police throughout all of Ontario. This agency must have a role in both disciplinary and criminal proceedings. It must also perform the front-line investigations.

Nor should this be a matter of municipal option. We note the government's reference to municipal option as the "second stage" of a presumed "three-stage" process. This concept represents more mythology than reality. Ontario never embarked on an irrevocable staged process with respect to the police complaints system. A staged approach was simply viewed as one possible way to proceed. But neither history nor logic irreparably commits Ontario to select municipal option in 1989. Indeed, it is obviously unfair to allow the happenstance of where an incident occurs to determine how far fundamental rights may be enjoyed. In any event, there are urgent public policy reasons to adopt immediately an Ontario-wide arrangement for independent investigation. There have been far too many

unsatisfactorily resolved complaints and there are now far too many tensions to justify the indulgence of municipal options.

Since the province is charged with the administration of justice, it is important that the government of the province ensure fair play for all of the province's citizens. There must never again be a situation in which only police are available to process allegations against police.

Nor will it be appropriate for the Ontario Police Commission to handle complaints involving the O.P.P.. The Commission's role as management consultant to Ontario police departments, divests it of the requisite appearance of neutrality as between civilian and police interests. The proposed division of the Commission's functions will not suffice to alter its image as an essentially police institution. Today's tensions require the establishment of an investigative and review agency which is structurally independent of all police administration.

Toward Fairer Employment Practices

The racial component of the situation requires a special effort to accelerate the hiring of visible minorities in Ontario police departments. While a certain amount of progress has been made in Toronto, there is a discernible shortage of non-white police officers elsewhere.

Consider, for example, a 1986 survey of the more than

four thousand O.P.P. officers. Apart from one hundred and thirty-one native persons, the survey disclosed no other visible minorities. This is not necessarily to accuse anyone of committing deliberate discrimination. It is simply to observe that the abatement of current community tensions requires more non-white participation in Ontario policing. This means that it is not even enough merely to desist from discrimination. Our police departments must intensify their affirmative efforts to secure more non-white involvement.

In this connection, we call upon the Government to create a special advisory committee whose first assignment would be the provision of advice and ideas to Ontario's many police departments on how to attract a larger number of qualified and potentially qualified candidates from among the visible minorities. Its second assignment would involve monitoring and public reporting on the success of the consequent recruitment efforts. The committee should include people who enjoy the confidence and respect of the target constituencies, the police, and the public. Indeed, its personnel should be drawn from these very groups. We believe that the early creation of a body with such a mandate would go a long way toward demonstrating the kind of good faith the situation so obviously requires.

Summary_of_Recommendations

In summary, the Canadian Civil Liberties Association calls upon the Attorney General to initiate, where he has the jurisdiction, and recommend, where others have the jurisdiction, the following measures:

1. the creation of an agency, independent of all police commissions, police departments, and governments, to handle civilian complaints against the O.P.P. and all municipal police.
2. the provision that this agency should both investigate and review complaints with a view to initiating, in appropriate cases, employment discipline and/or criminal prosecution against respondent police officers.
3. the provision that this agency should function in every municipality on a mandatory, non-optional basis.
4. the creation of an advisory committee with a mandate to provide advice and ideas for increasing the number of non-white police officers in Ontario.
5. the provision that this committee would monitor and report on the implementation of its advice and ideas.