

SUBMISSIONS TO -

The Honourable John P. MacReth, Q.C.,  
Solicitor General of Ontario

RE -

Police Practices and the Morand Report

FROM -

Metropolitan Toronto Police Association  
and  
Metropolitan Toronto Chapter of the  
Canadian Civil Liberties Association

DELEGATION -

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Toronto

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This is a joint delegation of the Metro Toronto Police Association and the Metro Chapter, of the Canadian Civil Liberties Association. Our two organizations have come together in response to the findings of police misconduct which were contained in the recent report of the Morand Royal Commission. Inevitably, both constables and civilians will be disquieted by the Morand revelations.

In the case of police officers, there is a risk of demoralization. Many of the great majority of conscientious officers will feel that they have been tainted by association with the minority of wrong-doers. In the case of civilians, there is a risk of diminished confidence in the police. Many people will believe that the exposed wrong-doing represents merely the tip of a larger iceberg.

It is obvious that the situation cannot be left in this unsatisfactory state. It is incumbent now on the competent law-makers to take whatever action is necessary to restore and increase public respect and police morale. In this regard, our community is fortunate that both the Morand Commission and the earlier Maloney Review grappled with the delicate issue of police-civilian conflict. Both inquiries criticized the Metro Police Complaint Bureau, the agency in Toronto which currently handles civilian complaints against the police. Having found a number of investigations which the Bureau mishandled, Mr. Maloney and Mr. Justice Morand recommended the adoption of new complaint procedures. The "central aspect" of the recommended procedures, to use the words of Mr. Justice Morand, is "Independent investigation and review of police conduct".

The Metro Toronto Police Association and the Metro Chapter of the Canadian Civil Liberties Association have joined forces here to urge the implementation of this recommendation. Indeed, the members of this delegation would agree with these distinguished jurists about the need for such reform even if the experience with the present system had not been so unfavourable. In our opinion, the key defect in the present system is in-house review. So long as civilian complaints are handled entirely from within the police structure, neither the public nor the police will have sufficient confidence in the process.

From the standpoint of the public, the investigating officers will continue to be vulnerable to the suspicion that they are "covering up" for their colleagues. Their superiors who assess the investigation will continue to be vulnerable to the suspicion that they are protecting the good name of the police department. Thus, no matter how thoroughly the present Complaint Bureau were to perform in any given case, it is not likely to be perceived as impartial in conflicts between officers and outsiders. From the standpoint of the police, in-house review is vulnerable to the suspicion that internal jealousies and considerations of public relations could prevail over the interests of scrupulous fact-finding.

While we believe that the mechanism proposed by Mr. Maloney would represent a substantial improvement over the status quo, there are alternative models which could also commend themselves. Indeed, the major shortcoming of the Maloney model is the continuation of incumbent police officers in the role of complaint investigators. In our view, the defects in the present complaint system will not adequately be overcome until these investigations are removed completely from those who have duties to perform and interests to protect within the police department. In this connection, the Government might consider, for example, broadening the jurisdiction of the Ontario Ombudsman so as to include municipal police departments. While we are not necessarily wedded to the details of this or any other model, we are committed to the principle of independent investigation and review.

Our two organizations welcome the Solicitor General's announced intention to establish, Province-wide, such independent procedures for civilian complaints. We do hope that the Government will act quickly in this matter. After the disclosures of the past few weeks and months, prolonged delay could further erode the respect of the public and the morale of the police.

But no measure to improve the handling of civilian grievances will be complete without concomitant measures to improve the handling of police grievances. Civilians are more likely to receive fairer treatment by police when there is fair treatment of police. In our view, the police in this community have a number of legitimate grievances concerning the way they are treated. The interests of fair play require that an improved system for civilian complainants be supplemented by improved safeguards for aggrieved police officers.

In Ontario today, police officers do not have the minimum kind of job security enjoyed by most unionized employees. Constables are not entitled, as of right, to outside arbitration of their discipline and discharge grievances. If a police officer wishes to challenge the discipline which has been imposed upon him, he is virtually confined to appeals within the police structure - first to a municipal police commission or committee and ultimately to the Ontario Police Commission. In view of the O.P.C. role in police management, it can hardly be regarded as independent of police management. And the municipal commissions and committees, of course, are police management. Thus, where most unionized employees can appeal disciplinary action to independent arbitration, police officers are at the mercy of their employers and those who share their employers' interests.

Significantly, this Province 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 made and the rights removed, our society should ensure to police officers the minimal protections available to most unionized employees. Considerations of morale also require it. Accordingly, the Metro Toronto Police Association and the Metro Charter of the Canadian Civil Liberties Association recommend that police officers be given the right to independent arbitration of all their discipline and discharge grievances.

Frequently working constables are required by their superiors to furnish full and detailed reports regarding various aspects of their activities. While such a practice may not be generally impeachable, there are occasions when it is unfair to the officers concerned. Sometimes these reports are required of officers in situations where, unknown to themselves, they have been accused of some misconduct. Since the requirement to report in full could become a way of extracting self-incriminating evidence, the officer concerned should enjoy safeguards at least comparable to those which protect other unionized employees in similar situations.

At a minimum, the officer should first be told whether there are accusations against him and, if so, of what they essentially consist. This would enable his report to make the most effective possible defence at the earliest possible moment. Corroboration, for example, could be sought out while the events were still fresh. It is not difficult to anticipate how an early and competent defence could forestall

further and needless complications. Moreover, timely disclosure of accusations could spare the officer from needless intrusions and harassments. If he first knew the substance of the complaint, he could confine his response to the relevant issues.

Another safeguard which usually accompanies such coerced statements in the industrial sector is the right of the impugned employee to prior consultation with an agent or union representative. This safeguard recognizes that periodically innocent people tend to incriminate themselves through incompetent or inadequate presentations. Untrained or perhaps nervous, such people may be injudicious about what they emphasize, minimize, or overlook. The most effective possible defence at the earliest possible moment entails the most effective possible presentation. Accordingly, the officer's duty to reveal should be predicated on a prior right to consult.

Like most other unionized employees, police officers should be protected against the consequences of adverse notations on their files unless, at the relevant time, they had a full and fair opportunity to challenge such notations. We are advised that on many occasions, disciplinary tribunals have imposed harsh penalties with the aid of materials from an officer's record of which such officer was previously unaware. No public employer, least of all the employer of our police, should be able to compile and use a record which is open to self-serving, inaccurate, and prejudicial notations. The prerequisite to using material should be a timely opportunity to challenge it.

There is, however, one safeguard which police officers should have even though most other unionized employees cannot avail themselves of it. Since by the very nature of police work there is such exceptional vulnerability to accusations of a criminal nature, evidence which police officers must provide as a condition of their employment should be inadmissible against them in the event of a criminal prosecution. Whatever justification there might be for requiring and using policemen's reports in the context of employment discipline, there is no justification for such coerced material in the context of criminal prosecutions. In our view,

the current regulations on compulsory statements expose police officers to needless and unfair hazards. Accordingly, the Metro Toronto Police Association and the Metro Chapter of the Canadian Civil Liberties Association respectfully request the Government of Ontario to do whatever it can, including instructions to its crown attorneys and representations to the federal authorities, to prevent the use of these coerced statements from police officers in the prosecution of such officers.

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Summary of Recommendations

In our view, there must be essentially a two-fold response to the revelations of the Morand Royal Commission. Such response should be characterized by a new set of procedures for civilian complainants and a new set of safeguards for aggrieved police officers. The interests of public confidence, police morale, and fair play demand both.

Accordingly, the Metro Toronto Police Association and the Metro Chapter of the Canadian Civil Liberties Association respectfully request the Ontario Government to implement the following measures.

1. Establish new procedures for civilian complaints against the police having as their "central aspect the independent investigation and review of police conduct".
2. Provide for police officers the following safeguards -
  - a) as a condition of being required to furnish reports on their activities, they shall be given prior notice concerning the substance of any accusations against them, a reasonable opportunity for prior consultation with an agent or counsel, and a prohibition against the use of such statements in the event they are prosecuted
  - b) no adverse notation shall be used against an officer unless he has had a timely and reasonable opportunity to challenge it
  - c) there shall be a right to independent arbitration of all discipline and discharge grievances.