

Submissions to:

Hon. Arthur A. Wishart

Attorney General of Ontario

Police Practices in Ontario

from:

Canadian Civil Liberties Association

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General Counsel

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INTRODUCTION

The Canadian Civil Liberties Association consists of several hundred people across Canada. Our membership includes a wide variety of callings and interests - lawyers, writers, professors, businessmen, trade unionists, minority groups, television personalities, actors, etc.

We have been organized essentially to protect the freedom and dignity of the individual against unreasonable invasion by society. It is not difficult to appreciate the relationship between our aims and the subject of police practices. With all of their awesome power, the police are in the position to encroach most heavily on the liberties of the individual.

The ensuing submissions represent only those recommendations which could be assembled within the time allotted. We would hope, from time to time, to make additional representations on this important subject.

Police-Citizen Problems Today

Hardly a week goes by without a disturbing incident involving the police and the public. In early May of this year, a Portuguese youth was shot and killed by a police bullet. Within only a few weeks, another police constable is facing charges because he fired his gun in pursuit of a suspect. Every day, for the past several days, the newspapers have disclosed more details about the growing and unrestrained police use of wiretapping and electronic eavesdropping.

Regrettably, these recent incidents appear as the culmination of a long list of police-citizen problems. Consider the following headlines selected randomly from 1968 and 1969 issues of the Toronto Globe & Mail.

- "Police hogtied man in cruiser." (Jan. 25/68)
- "Accused detective says prisoner was only subdued." (June 12/69)
- "Police beat him up, debt collector says during assault trial." (June 1/69)
- "Says police beat him, salesman is acquitted of 'disturbing.'" (April 23/69)
- "Blacks charge police brutality, commission turns down meeting." (June 6/69)
- "Fired shot, constable faces charges." (June 11/69)
- "Fled police - Investigation ordered in shooting of youth." (Jan. 27/69)
- "Police fired, man shot." (Jan 3/69)
- "Detective fired twice in darkened house, burglary hearing told." (June 1/69)
- "Charge of negligence laid against policeman." (April 24/68)
- "Man shot dead fired first, policeman say." (June 19/68)
- "Shooting of boy, 15, is called accidental; constable reinstated." (April 17/68)
- "Man wounded by police fire near Belleville." (May 27/68)
- "Shot 3 times in police fight, man 27 charged." (May 29/68)
- "Police chase puts 2 men in hospital." (May 13/68)
- "Policeman 20, faces charges after shooting." (May 14/68)
- "Lack of evidence in beating case, police decide." (Sept. 11/68)
- "\$1,000 plus costs, youth settles suit against policeman." (May 7/68)
- "Hand on gun in chase called a usual procedure." (April 6/68)
- "Man says policeman fell over fence at park but shot was fired later." (June 4/68)

Moreover, we fear that the incidents reported in the press represent only a small proportion of the growing problem. In view of the fact that most people shrink from involvements with litigation and publicity, the greatest probability is that a large number of people are suffering similar problems in silence.

This accords with the experience of the Canadian Civil Liberties Association. Within the past few months, alone, a number of similar complaints have been referred to us by people who expressed a deep reluctance about taking action. We have already sent to you the affidavit of a young epileptic woman who,

following her arrest on a minor charge, was denied access to medication during an entire night of incarceration. The remaining reports in our possession range from allegations of severe beatings to abusive indignities. We plan to send you some additional material in the near future.

These recent developments reveal a growing deterioration in the relationship between the police and the public. We say this, not from a conviction that our police departments are bad, but rather in the realization that they are good. We have long believed that police departments in Ontario are among the best in North America. However, the incidence of misconduct continues to grow and the confidence of society continues to fall.

The enforcement of law and the administration of justice depend upon a high degree of police-public cooperation. Such cooperation will be increasingly difficult to achieve where a breakdown of communication takes place.

This is not to exaggerate the implications of recent events. Rather, it is to anticipate the emerging problems we must face. Once a trend is discernible, we are in a better position to act.

This is the premise upon which the ensuing submissions are based. An ounce of prevention today is preferable to a pound of cure tomorrow.

A number of trends in our community point to even greater difficulties in the police-citizen relationship for the years ahead. Canadian society, and particularly Ontario, are more heterogeneous than ever before. We have been fortunate to attract a wide variety of immigrants from all over the world. Larger numbers of Indians have migrated to our urban centres. However healthy and viable, cultural and ethnic diversity provide the breeding ground for social conflict. Large segments of our younger generations are openly challenging many of our most entrenched institutions. From student activists to hippie "drop-outs", they are expressing greater and deeper discontent. Surveys conducted by the Economic Council of Canada have dramatized the stark inequalities in this country.

These circumstances will enlarge the area of social conflict. Inevitably, increased social conflict will spawn the intervention of the police. The police must protect both the disgruntled minority and the smug majority. They will be called upon to persuade, cajole, mediate, and restrain more and many different kinds of people. The opportunity for police-citizen conflict will grow immeasurably.

All of this bolsters the wisdom of taking preventive action today.

The Existing Legal Machinery

Let us examine the existing legal machinery for coping with these difficulties. At present, redress against police misconduct can be secured through the courts of law and the boards of Police Commissioners. In our view, neither forum provides an adequate avenue for many aggrieved citizens.

Criminal prosecutions in court are handled by the same Crown Attorney who is in daily cooperation and association with the police. Because of this, many complainants will fear that prosecutions of police will not be as vigorously pursued as prosecutions by police. When the accused is a police officer, the aggrieved citizen would not expect fellow police officers to perform the kind of conscientious investigation that characterizes their other work. Indeed, about a year ago when a police officer was charged with an offence arising out of a shooting incident, his fellow officers put their investigating talents at the disposal of the defence - a meritorious service, in itself, but not generally available to accused people.

A criminal conviction requires proof beyond a reasonable doubt. This will be very difficult to achieve because the greatest number of incidents involving accusations of police wrongdoing take place in relatively secluded areas where the only corroborating witnesses are other police officers.

Nor does civil court action for damages appear as a very satisfactory avenue. Civil litigation is expensive, time-consuming, and emotionally taxing. Negotiations for settlement, examinations for discovery, innumerable motions, trials, and appeals could take years to produce results. Very few people have the resources to investigate the facts, engage competent counsel, withstand pressure by the police, and handle the many expenses which are inevitably involved.

While Police Commissions may process complaints more expeditiously, the concern is that they will handle them less impartially. Police Commissions are responsible for the daily administration of police departments. They are, therefore, concerned with the public image, the efficiency, the morale, and the legal liability of the police force. As a result, there is an inevitable conflict of interest. They must reconcile the need to vindicate the rights of the citizen with the obligation to protect the interests of the police.

So often in Police Commission practice, the police interest appears to prevail over the civilian interest. Consider, for example, the propensity to privacy. Very few Commission meetings are held in public. Regardless of the

public concerns involved, even hearings regarding citizen conflicts with the police are frequently held behind closed doors. Recent Toronto controversies, for example, have not inhibited Metro police officials from denying the public access to the latest shooting inquiry.

Thus, no matter how fairly Police Commissions may perform in a particular case, they will not be perceived as impartial. This of course lies at the heart of the police-citizen relationship. Citizen confidence in the police requires that the citizen believe in the impartiality of those who investigate his complaints.

Some Additional Legal Machinery

As we have indicated, the courts and the police commissions do not provide adequate channels for the resolution of police-citizen conflict. We believe that new legal machinery is required to deal with our growing number of problems. This machinery must function as expeditiously as the police commissions, as impartially as the courts, and more flexibly than both.

In this regard, we propose the establishment, throughout the province, of independent citizens advisory committees on police relations. In the interest of public acceptance, these committees should be composed of citizens representing a wide cross-section of community involvement and concerns. In the interests of public credibility, most committee members should have no connections with the police department or its administration. In the interests of effectiveness, the committees should be given a staff and budget adequate to perform their functions with independence and vigour.

We seek to interpose the citizens advisory committee between the police commission and the public. When complaints and conflicts arise, the committee could act between the police interests and the citizen interests. Now, let us consider its functions and procedures.

Upon receiving a complaint from a citizen who claims to have been mistreated by the police, the citizens advisory committee, through its staff, would conduct, as expeditiously as possible, a thorough investigation into all of the facts. Once the complaint has been filed, the committee should be empowered to follow it through, with or without the complainant's support. This should minimize the attempts to pressure the complainant into withdrawal. Moreover, such an approach recognizes that not only the aggrieved citizen but also the entire public has an interest in the investigation of charges concerning police misconduct.

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 citizens advisory 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 behaviour 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 citizens' advisory committee would be to attempt conciliation of the dispute. This might take the form of an apology or the payment of a damage claim from the police department to the complainant. It is not difficult to imagine how such expeditious settlements could preserve intact the police-citizen relationship.

Significantly, in those jurisdictions which have already established similar machinery, the greatest number of complaints are resolved through mutually acceptable settlements. For example, of the 108 complaints processed during the fourth year of the Philadelphia Police Advisory Board, 96 were settled to the satisfaction of the complainant without a hearing. Again, we believe that the attempt to settle will be more successful where there is a mediator between the police and the citizen.

A third alternative resulting from the investigation would be finding of partial or total fault on the part of the accused police officer and a failure on the part of the committee to effect a satisfactory settlement. In response to this set of circumstances, we propose empowering the citizens' advisory committee to convene a hearing to inquire into the entire matter.

In view of the fact that, at this stage, the committee should have formed its own view of the case, the members of the board of inquiry should be independent both of the police department and the citizens' advisory committee. The role of the board of inquiry is to allow all parties to present their case in a public forum. Everyone concerned, including the complainant, the accused police officer, and the citizens' advisory 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 point out that, under our proposal, neither the citizens' advisory committee nor the board of inquiry would have the power to impose a binding decision. The citizens' advisory committee is confined to investigation and conciliation; the board of inquiry would be a fact-finding body only. 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 Commissions. We do not seek to divest Police Commissions of their responsibility to administer police departments. We seek only to create a fact-finding mechanism which will enjoy greater public confidence.

As an additional measure to strengthen these processes, we would recommend that the citizens' advisory committees have a right of access to jails, police stations, and police vehicles. These are the places which give rise to the most serious allegations of police misconduct. Again, we do not seek for the citizens' advisory committees a power to control or interfere with police activities. We seek only an effective opportunity to observe these activities. The mere knowledge on the part of the police that they could be observed at any time by such independent witnesses would act quite often as a deterrent to the commission of misconduct and impropriety.

Of course, no one expects the adoption of such machinery to be a panacea for all police-citizen conflict. But we do expect it to be a big help. Significantly, in some of the American jurisdictions which have established similar arrangements, even police officials who were expected to be resistant, have approved the system. Commenting on the Philadelphia Police Advisory Board, Thomas J. Gibbons, police commissioner of the city of Philadelphia made the following statement:

"...from my point of view as Commissioner, I think the Board has not only aided me, but has aided the police department."

In 1965, Rochester's former Public Safety Commissioner, Harner Sibley, Jr., said that the Review Board in that city had played a valuable role in easing fears of police mistreatment.

The Non-Police Powers of Police Commissions

Bearing in mind the primacy, both actual and perceived, of the police point of view in commission practice, we believe another cause of breakdown in the police-citizen relationship grows out of the wide statutory powers of the Police Commissions. Many of these powers have very little connection with the administration of the police. This sets the stage for all kinds of gratuitous conflict between the public and the police.

One such area is the licensing power. Under the Municipal Act today, Police Commissions exercise a wide range of power to grant and withhold licences for a variety of commercial and business activities. From taxi driving to circus operating, a Police Commission license is necessary. Inevitably, conflicts will arise. A license will be denied or revoked. The scapegoat will be the police.

About a year ago an unfortunate controversy took place in the city of Windsor. The Windsor Police Commission denied a carnival permit, for the first time in forty years, to the Negro convenors of the annual Emancipation Day Celebrations. The decision was based upon the Commission's fear that a gathering of Negroes in Windsor would attract a host of race rioters from Detroit.

The problem was compounded by the peculiar dualism of the Police Commission. As a licensing body, its primary role is to regulate commercial and business activity. As a Police Commission, its primary role is to enforce the criminal law. The concern here is that this body might have abused the exercise of its business power in order to make easier the exercise of its police power. In fact, many people at the time, argued that the only proper role of the Police Commission in that situation, was to protect the carnival convenors in their lawful trade and calling.

When we merge these functions, we create a situation of public confusion and suspicion. Indeed, the decision of the Windsor Police Commission provoked a storm of community protest.

Clearly, the police-citizen relationship would be better served by removing the licensing powers from the Police commissions. The police are in a sufficiently delicate position that they should not be made more vulnerable through the exercise by the commissions of powers so irrelevant to the police function.

There is another range of power more closely allied to the police function which, in our view, police commissions should also not exercise. We refer to the power to prescribe the time and route of street parades and demonstrations.

This, of course, is directly related to the obligations of the police to maintain order and regulate the flow of traffic. Unfortunately, however, when we add the power of decision to the duty of enforcement, we thrust the police once again into needless social controversy. Unavoidably, there are conflicts of interest between those who wish to conduct parades and those who must regulate the flow of traffic. The demonstrator seeks access to the largest possible audience. If he ties up traffic or creates congestion, so much the better for conveying his message. The Police Commission, on the other hand, seeks an orderly flow of traffic. If it can avoid large conglotations of people, so much the easier on the police officers.

Unhappily, our legislation provides that the police commissions shall resolve these conflicts. Police Commissions are given the power to determine where and when for demonstrations. Again, we run the risk that the police will be perceived as making those decisions which render the police function more easy to execute, regardless of the other interests involved.

The parade by-law of the Metropolitan Toronto Police Commission provides an interesting case in point. Under Section 12, no parade is permitted on any street "of a chiefly...business or merchantile character" during hours when the street is "ordinarily subject to great congestion of traffic". What the Metropolitan Toronto Police Commission has decided is that virtually whenever there is a conflict between a demonstrator's interest in maximum access to people and the police interest in easing the flow of traffic, the police interest will prevail. Significantly, one of the few exceptions permitted in the by-law can be invoked only by the Chairman of the Police Commission and Chief of Police. They can grant a busy street parade permit if they consider an application to be "under unusual circumstances of municipal, provincial or federal importance". Thus, the police can make an exception if the police consider the demonstration important enough.

From the standpoint of police-citizen relations, this power appears to put the police in the invidious position of being able arbitrarily, to weaken

so basic a right as effective freedom of assembly in the streets.

Accordingly, we would recommend that the power to prescribe the time and route of street parades and demonstrations be taken out of the hands of Police Commissions. Without question, Police Commissions should be consulted for their opinions about the effects of impending demonstrations on the flow of traffic. But they should not have the right to make decisions on such matters. Whoever else should make the decisions in particular cases, the criteria for determining time and route should be formulated by an elected body.

By limiting the powers of police commissions to police functions, we would both, ensure fairer procedures and protect the police from needless public criticism. This would mark another step in the improvement of the police-citizen relationship.

Improving the Performance of the Constable

In our efforts to improve the relationship between the police and the public, there is no substitute for quality performance on the part of the police. In this regard, we think improvements can be made in a number of areas.

The first area of concern is police selection. It is common knowledge that police work often attracts candidates with severe emotional problems. To such people, the duties of a police officer afford an opportunity to vent their hostilities with the sanction of uniform and law. Every police force, no matter how admirable its record, has such misfits on its roster.

There should be a greater effort to eliminate such people in the initial screening process. In this regard, we recommend the adoption of adequate psychological tests for all police recruits. This technique is being used on a growing scale in American centres. Proper selection procedures would eliminate a considerable number of problems.

For selection purposes, we must be concerned not only with psychological factors, but also with intellectual ones. At present, we require only a Grade 10 education from our police recruits. If we wish to improve police performance by a shift in emphasis from brawn to brain we must recognize the importance of attracting candidates with a higher intellectual achievement record. For some years, the Police Association has been requesting a minimum education requirement of Grade 13. This seems far more compatible with the needs of present-day society. If it is impractical to make an immediate transition from a Grade 10 to a Grade 13 requirement, we should at least begin the process of gradual transition. We should initiate a program of steadily increasing the educational requirements until a more acceptable level is reached.

Another component in police performance is the character of the training which the officer receives. There appears to be very little emphasis on human rights and civil liberties issues. Police trainees should be especially sensitized to the rights of those with whom they come into conflict. Efforts should be made to increase their understanding of inter-group difference. They should be exposed to the diverse culture patterns which exist in our community. They should be made aware of the special problems of the socially vulnerable segments of our population - the poor, the immigrants, the Indians, the hippies, etc.

Our community is rich in resources which, until now, have rarely been used in police training. We have several universities and community colleges all with flourishing departments in the social sciences. This is the home base of the Ontario Human Rights Commission, our key experts in race relations. We have a number of large ethnic groups with sophisticated organizations and leadership. There are agencies specializing in community development and the problems of the poor. All of these resources should be involved in the training of the police.

Moreover, the bulk of police training should not be confined to the pre-service stage; it should be an ongoing part of the police constable's life. Every new social development should be accompanied by new in-service training courses.

Another factor which could seriously affect police performance is police morale. We believe that the police in this province have a number of legitimate grievances concerning the way they are treated on the job. Frankly, we consider their behaviour, in the main, exemplary in view of the conditions they must tolerate. It will be virtually impossible, however, to attract a greater number of higher calibre police officers under these circumstances.

In Ontario today, police officers do not have the minimum kind of job security enjoyed by most industrial employees. They are not entitled, as of right, to impartial arbitration of discipline and discharge grievances. 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 Commission structure. Where most industrial employees can appeal disciplinary action to impartial arbitration, police officers are at the mercy of their employers.

At this very moment, Constable Syd Brown, the president of the Metropolitan Toronto Police Association, is facing charges that he behaved in a manner unbecoming a police officer. The charge is based upon his posing for a photograph in uniform with the tin cup of a beggar. Even though he was acting in his capacity as spokesman for a union, and not as a police constable, he is now facing possible dismissal from the Force. The Police department has announced that his case will be processed in private by his superior officers, without recourse to a public hearing or impartial arbitration.

Moreover, although police officers may appeal to impartial arbitration with respect to other problems, police arbitration awards are not enforceable, as expeditiously as industrial arbitration awards. An industrial arbitration award can be deposited with the court and enforced almost immediately as an order of the

court. The police arbitration award requires a cumbersome procedure for its enforcement. In this respect, we shall reproduce a few comments from a recent submission of the Metropolitan Toronto Police Association.

"No attempt was, or has been made by the Commission to implement that portion of the Lane Award dealing with shifts and days off. At meetings with the Police Commission following the Lane Award, we urged the Commission to implement the Award in its entirety. The Commission took the position that, based upon the recommendations of the Chief of Police, they could not and would not implement that portion of the Lane Award....these men have no other recourse open to them beyond initial bargaining except to compulsory arbitration. Then when they do receive a favourable award, an award that is binding upon both parties according to the Police Act of Ontario, they are told that the Commission or someone else does not wish to abide by that particular award. Is it any wonder that the members of the Metro Police Force have lost all faith in the collective bargaining processes open to them. When you consider that the Lane Award has yet to be fully implemented--it is amazing to say the least, that there is any morale at all, never mind a low morale existing throughout the police force today."

Significantly, we have removed from the police the most potent instrument of self-help, the right to strike. Elementary equity requires that, in view of the demands we make and the rights we remove, we ensure to police officers the minimal protections which most industrial employees enjoy. Police morale and police performance also require it. Accordingly, we recommend that police officers be given the right of impartial arbitration, independent of police departments and police commissions, for all disputes arising out of discipline and collective bargaining, and that the awards of the arbitration boards be enforceable as orders of the courts.

Improving the Philosophy of the Department

It is essential not only to upgrade the performance of the individual constable but also to examine the orientation of the entire department.

Consider the controversies of the last few weeks.

Despite the stated opposition of no less an authority than the Attorney General of this Province, one police department has defiantly declared that it will continue to stock the controversial mace.

In their recent appearance before a Parliamentary Committee, the Canadian Association of Chiefs of Police requested a virtually unlimited right to wiretap. Under questioning, they protested that control over police wiretapping reveals distrust of the police.

Evidence has come to light that at least one chief of police, without any ministerial or judicial supervision, has resorted to a substantial amount of electronic eavesdropping. For some time, this chief of police maintained an incredible refusal to disclose information about this practice to a Parliamentary Committee expressly established to deal with the subject.

Curiously, our police have recently employed search warrants to recover wiretapping equipment from the Bell Telephone Company. One wonders how search warrants could be secured unless a crime is suspected or committed.

All of this demonstrates the remarkable insularity of our police administration. Their police officials, in question, are men of great integrity and proved competence. No doubt, they believed in the rightness of what they were doing.

What we must, therefore, examine is the philosophical orientation of our police departments. What are the dominant ethical values that shape police behaviour and policy? The overriding goal is to catch the crooks. As necessary as this is, we should now be convinced that it is not sufficient.

Police departments must be geared not only to catch the crooks but also to protect our rights. From the Commission office to the paddy wagon, the objective must be to promote a civil liberties orientation. Police must be taught and encouraged to respect the democratic processes. They must be imbued with a reverence for the rights even of our adversaries, the criminals.

Our system will work best when our police officials actually believe in these values. Accordingly, we submit that the policy of the Government should be actively to promote such a philosophy among our police personnel.

There are many opportunities for doing this. We have already mentioned improved police training programs. We suggest also that the members of police commissions be chosen, in part, with a view to their philosophical commitments. We should make a point of selecting people who combine administrative competence with a libertarian orientation.

Also helpful to police education are the activities of our elected officials. In this connection, we especially acknowledge some of the words and

deeds which have recently emanated from the Attorney General's office. Among these contributions, we note the repudiation of mace, the speedy investigation of the Nobrega matter, and the call for cooperation with the Parliamentary Committee on wiretapping. Every time this office expresses its concern for the liberty of the subject, a certain amount of public education takes place. Inevitably, some police personnel will be favourably influenced. Accordingly, we urge a continuation and intensification of this approach. Our highest elected officials should seek every opportunity to use their positions for public education. This is in the finest traditions of democratic statesmanship.

SUMMARY OF RECOMMENDATIONS

We recommend that the Government of Ontario,

1. Provide for the establishment, throughout the Province, of independent citizens' advisory committees on police relations, with staff, budget, and legal power to
 - (a) Investigate and attempt to conciliate all citizen complaints of misconduct against the police. (This would include a right of access to jails, police stations, and police vehicles).
 - (b) Establish, where necessary, boards of inquiry, independent of both the citizens advisory committee and the police commission to conduct full and fair public hearings and make findings of fact with respect to unsettled complaints. (The police commissions would retain the power to make whatever decisions they deem appropriate, after receiving the board of inquiry report.)
2. Confine ~~the~~ powers of Police Commissions to the administration of police activities.
3. Require that the selection and training of police officers include
 - a. psychological testing
 - b. higher intellectual attainment
 - c. greater emphasis on civil liberties and human rights issues in pre-service and in-service programs.
4. Provide that police constables may resort to impartial arbitration on all disputes involving discipline and collective bargaining and that arbitration awards be enforceable expeditiously as orders of the court.
5. Promote a positive civil liberties orientation throughout our police departments.

Respectfully Submitted,

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