SUBMISSIONS TO---------- ------ Task Force on Policing in Ontario

FROM ---------- Canadian Civil Liberties Association

DELEGATION ---------- J.S. Midanik Q.C. (Past President) A. Alan Borovoy (General Counsel)

Professor Donald Smiley
(Vice President)

Ian Scott
(Director)

Toronto September 21, 1973

INTRODUCTION

The Canadian Civil Liberties Association is a national organization with a cross-country membership of more than 3000 individuals, 7 affiliated chapters and more than 50 associated groups which, themselves, represent several thousand people. Our membership roster includes a wide variety of callings and interests lawyers writers, housewives, trade unionists, minority groups media performers business executives, etc.

Among the objectives which inspire the activities of our organization is the desire to promote legal protections against the unreasonable invasions by society of the freedom and dignity of the individual. It is not difficult to appreciate the relationship between these objectives and the subject of policing. With all of their awesome power, the police are in a position to encroach heavily upon the liberties of the individual.

We regret that we were unable to appear during the earlier hearings of this Task Force and are, therefore, very appreciative of the arrangements that have been made for this meeting. Unfortunately, since it proved impossible to notify us of the date for the hearing until Monday of this week, the ensuing submissions do not deal with as many issues as we would have wished.

In the coming years, there will be an inevitable increase in contact and conflict between the police and various sectors of the public.

In the first place, as our society has become more urbanized and our population centres more congested, we have experienced a growth in the rate of crime.

In the second place, Ontario is becoming more heterogeneous every day. We have been fortunate to be attracting a wide variety of immigrants from all over the world.

In the third place, great numbers of people are undergoing intense politicization. New pressure groups are mobilizing to represent hitherto voiceless interests - women, welfare recipients, students, immigrants, tenants, etc. Indeed, a major study reported that, within a few years, more than 200 new citizen groups had emerged in Canada - many of them active in Ontario.

Although heterogeneity and politicization are healthy developments, they, nevertheless, enhance the prospects of social conflict. And increased social conflict, even healthy conflict, will require the increased mediation of the law. The survival of viable democratic institutions will depend, to a great extent, on how fairly the law performs its restraining and refereeing functions.

In practical terms, the law will most often be personified by its enforcers, the police. For most people, their chief contact with the law will be through the police. Thus, people's respect for the law will be primarily a function of their respect for the police.

How, then, to maintain and enhance public respect for the police during an era of increased social turbulence?

An examination of this issue necessitates, in turn, an inquiry into the community's expectations of the police. Democratic societies require their police, simultaneously, to protect the interests of public order and the rights of personal freedom. Paradox is unavoidable. Order demands the imposition of restraints; freedom demands immunity from restraints. Yet, freedom is impossible without order and order is undesireable without freedom. The police of democratic societies are at the centre of perpetual paradox.

Traditionally, democratic societies have resolved this paradox by requiring of the police that they use no more force than is reasonably necessary to ensure observance of the law. For the sake of upholding the law, the employment of force is inevitable. But for the sake of protecting our freedom, the force so employed should be minimal.

Throughout the Canadian Bill of Rights and Criminal Code, one will find several provisions which repeat this principle. Moreover, those two federal statutes contain a number of additional safeguards, designed to protect the citizen from undue police encroachment.

The central concern of this brief is that this aspect of the police function suffers too much neglect among some of the major police departments in Ontario. While our police are constantly improving upon their ability to apprehend offenders, they are paying too little attention to the objective of their own self-restraint. There are too many indications of police insensitivity to the legal rights of those with whom they come into conflict.

If this "one dimensionalism" continues unabated, there is a very real danger that, in the era of increased police-citizen conflict, there will be a substantial erosion of community respect for our law and its observance. We voice these apprehensions, not out of a belief that our police departments are bad, but rather in the conviction that they are good. We have long believed that police departments in Ontario are among the best in North America. But, in the coming years it will be necessary that they be even better, that they be more responsive to the paradoxical requirements of their role in a free society.

THE POLICE
AND
THE RIGHTS OF CRIMINAL SUSPECTS

Of all the members of the community with whom the police come into contact and conflict, the criminal suspect raises some of the most acute problems. In law, the suspect is presumed innocent. But in fact, the laying of a charge implies a belief in his guilt. Indeed, the experience of arrest and prosecution are so painful that no democratic society would wish its police to proceed against anyone whom they thought to be innocent. Herein lies the paradox. Simultaneously, the police must presume that the suspect is innocent and believe that he is guilty.

In its wisdom, the law has enacted a number of safeguards to assist in the resolution of this paradox. One of the most vital of these safeguards is the Bill of Rights provision that arrested persons may retain and instruct counsel without delay. This safeguard reflects the law's recognition that psychologically the police desire to convict the accused may interfere with their duty to protect him. An arrested person has a legal right to be released as quickly as the public interest will permit. And he has a legal right to refrain from answering questions. But the longer the police can hold him in the intimidating atmosphere of pre-trial custody and the more questions they can put to him, the greater the likelihood he will say something incriminating that will assist in his ultimate conviction.

The right of immediate resort to counsel is the law's antidote to police temptation. Since the lawyer's primary commitment is to the interests of the accused, the lawyer can be more relied upon than the police to safeguard the rights of the accused. By himself, the accused may be too ignorant to know or too afraid to assert his custodial rights.

But this can create a vicious circle. Without the affirmative co-operation of the police, the prisoner may be rendered unable to communicate with counsel. If the accused is too ignorant to know about his rights to early release and to silence, he may be equally ignorant about his right to counsel. If he is too afraid to assert these other rights, he may be equally afraid to assert his right to counsel. Moreoever, even if he spoke up and demanded to consult with counsel, how is he to succeed unless, at the very least, the police allowed him access to a telephone?

Indeed, it is the experience of the Canadian Civil Liberties Association that there has been a substantial lack of the requisite police co-operation. A survey which we conducted of 162 randomly selected arrested persons in seven Ontario cities during the fall of 1972, revealed that, although as many as 69% of them were interrogated by the police in custody, not one of them consulted a lawyer prior to the interrogation. According to our interviewees, the police advised only 35 or 22% of their right to consult counsel. Significant also is the claim that only 26% of the arrested persons who requested it, were granted immediate telephone privileges. The other accused who requested access to the telephone reported that they experienced either outright denials or lengthy delays. In the result, 72% of those questioned said they made statements to the police, 70% of which were self-incriminating.

In response to these disclosures, the Ontario Legal Aid Plan inaugurated, during the winter of 1973, an emergency legal aid service in the city of Toronto. The service provided that between the hours of 5 p.m. and 8 a.m., publicly paid lawyers would be available for telephone consultation with arrested persons. The idea was to test this service on a pilot basis in Toronto and, if it proved successful, to extend it to other centres throughout the province.

During the summer of 1973, the Canadian Civil Liberties Association interviewed some 70 randomly chosen persons who, since the inception of this service, had been arrested in Toronto between the hours of 5 p.m. and 8 a.m. Of this group, 51 or 73% told us that they were questioned by the police while in custody. Again, they reported that not one of the prisoners under interrogation consulted with counsel before the interrogation. Indeed, only 10 of the arrested persons we interviewed claimed to know that the emergency legal service existed. Incredibly, of our entire sample of 70 prisoners, only 6 or 9% claimed that the police bothered to tell them about the service. And of the few who were so informed, 4 of them said that they did not receive this advice until after the interrogation. Only 3 prisoners said they requested the right to speak to the night duty lawyer. And 2 of these 3 told us that the police denied the request.

What we have here are striking illustrations of how non-co-operation by the police is undermining both the federal Bill of Rights and the Ontario Legal Aid Plan. Indeed, the number and impact of custodial confessions are such that in many cases,

the eventual involvement of lawyers will be reduced to ritualistic significance. Faced with incriminating statements that are admissible as evidence, many lawyers advise their clients simply to plead guilty in court. Thus, the effective trial for a great many people is not the model envisioned by the Bill of Rights - a public hearing conducted, with the assistance of counsel, by an impartial judge. It is a private interrogation conducted, in the absence of counsel, by the very partial police.

The police are in the crucial position. Their conduct determines whether custodial legal safeguards will be upheld or ignored.

Experience demonstrates that legal safeguards are not self-executing. In too many cases, the police objective of securing a conviction overcomes their duty to observe legal safeguards. This is just the kind of situation that can erode community respect for the police and the law. So long as the police appear so inattentive to legal standards where police interests are concerned, members of the public will be encouraged to be similarly inattentive where their interests are concerned. Double standards cannot long endure in democratic societies.

This situation calls for government action.

The Ontario Government should instruct all police departments and police officers to inform arrested persons in clear terms of their relevant legal rights at the earliest practicable moment after the arrest is effected. This would include their right to counsel, legal aid, and emergency legal consultation. The idea is to universalize and legitimate the assertion of the right to counsel. Prisoners will be less intimidated about seeking contact with counsel if those in authority, the police, advise them that it is proper to do so.

In order to make this measure workable, the Government must also instruct police departments and police officers to take all reasonable steps for the effectuation of communication between accused and counsel at the earliest practicable opportunity following arrest. There is no point in having and knowing of immediate consultation if access to communication is denied or delayed. This implies immediate access to the telephone in an area sufficiently private where the conversation cannot be overheard. It may mean also the allocation of a private room for counsel and accused to meet personally if they choose to do so.

We have had enough experience to know, however, that the imposition of instructions from above are not always translated into reality down below. The implementation by some police officers may be half-hearted: the response by some accused may be non-assertive. As a way of minimizing such problems, the Government should instruct police, in the absence of imminent and overwhelming peril, to desist from all custodial interrogation until the consultation with counsel has occurred or, in the alternative, until the accused has specifically waived his right to consultation.

The custodial interrogation and the incriminating statement represents the most prevalent and prejudicial consequence of the failure to consult immediately with counsel. It represents also what so often motivates the police to "cut corners" in their arrest and investigative procedures.

Thus it might help if the police were placed under a specific duty to facilitate consultation as a condition of their right to conduct the interrogation. Such measures, together with an expanded programme of night duty counsel, could alter the appearance of police insensitivity.

Of course, the adoption of such measures might result in fewer confessions. This realization gives rise to a consideration of the implications for law enforcement. To what extent would fewer confessions undermine crime resolution? How dependent is the control of crime on the results of the jailhouse interrogation?

The American experience may provide some useful insights into this problem. For a number of years, the Americans have lived with a legal rule which makes custodial access to counsel a condition of admitting custodial confessions in court. Although this rule has led in many places to a reduction in the confession rate, competent surveys disclose no significant reductions in the conviction or crime solution rate. Moreover, as the Yale Law Journal observed, the practical experience under the new rule has persuaded a number of top level U.S. law enforcement experts that "the value of confessions has been grossly exaggerated". The officials expressing such views include former U.S. Attorney General Ramsey Clark, former U.S. Attorney General Nicholas Katzenbach, and California Attorney General Thomas C. Lynch.

A similar opinion has been expressed by a group of Canadian experts. A comparative survey on how a number of countries handle the problem of custodial confessions led

the Canadian Committee on Corrections to remark that excessive reliance on jailhouse questioning may "actually be detrimental to law enforcement by removing the incentive to develop more imaginative and effective investigation techniques...".

Thus, it is not at all clear that the enforcement of law is the beneficiary of custodial interrogation. But it is quite clear that the presumption of innocence is its victim. The easier it is to make accused people talk, the greater might be the number of arrests on inadequate evidence. The police will be increasingly tempted to arrest on mere suspicion in the hope that the interrogation will produce the missing links in their case. Surely, however, our legal tradition seeks to protect innocent people not only against criminal convictions, but also against criminal prosecutions. Prosecution, itself, is a frightening ordeal. As much as possible, the objective is to spare innocent people this ordeal. That is why police should have substantial evidence before they arrest and prosecute.

Interrogations made easy undermine this objective. If the interrogation is necessary to make the case, it is better not to make the arrest. On the other hand, the less necessary the interrogation is to the case, the less risky it is to dispense with it.

Even at that, however, it is not the police interrogation per se to which we have taken exception. It is the custodial interrogation without the effective opportunity for legal advice. In view of all these considerations, we believe that the recommendation we have made would strike a fair balance between the goal of personal liberty and the goal of legal enforcement. Moreover, it would assist the police in resolving the perplexing paradox which is involved in their objective to convict and their duty to protect the criminal suspect under arrest.

THE POLICE
AND
THE RIGHTS OF DEMONSTRATORS

Increasingly, the street demonstration has become an important vehicle for social protestors to promote the reforms they seek. Within the past decade alone, hundreds of thousands of North Americans have taken to the streets on behalf of various social causes. Their successes have been sufficiently frequent to warrant the prediction that demonstrations are likely to continue and proliferate.

There are many good reasons to anticipate such a trend. Demonstrations and parades both express and mobilize support for a cause. They convey to the authorities something of the size and concern of the cause's constituency. While opinion polls simply count the numerical support for a given proposition, demonstrations help to measure the intensity of the feelings behind it. Moreover, they especially provide for the have-nots of society an inexpensive avenue through which they can effectively participate in the social processes. Small wonder, then, that the Canadian Bill of Rights accords to "freedom of assembly" the status of a "fundamental freedom.

But in the control and regulation of street demonstrations, the police are faced again with competing objectives. Simultaneously, the police must prevent a breach of peace, conduct the flow of traffic, and protect the rights of demonstrators.

In the interests of optimum effectiveness, a demonstration will seek to convey the maximum in numerical support and intensity of feelings. The participants will, therefore, strive also to be as conspicuous as possible. But the larger, more intense, and more conspicuous a demonstration is, the greater the risk of adverse effects on other community interests. Under such circumstances it will be much harder to preserve peace, control traffic, and conduct commerce.

Like everyone else, the police operate under a temptation to exercise whatever powers they have so as to ease the burdens upon themselves. Insofar as demonstrations are concerned, the totality of police functions will be easier to perform when the demonstrations are small, not very intense, and relatively removed from main arteries and large crowds. In other words, the weaker the demonstration, the easier to discharge the duties of the police. Inevitably, then, there exists some measure of conflict between police responsibilities and demonstrators' aspirations.

Incredibly, many municipal parade by-laws in this province confer upon a police authority - commission and/or chief - the effective power to resolve this conflict.

Many of these by-laws provide that a police authority shall determine the time and route of parades and demonstrations. But, as indicated, the discretion to determine time and route is no routine matter. It can effect the potency of a demonstration. Indeed, to whatever extent demonstrations can be relegated to remote areas during quiet periods, they can be deprived of followers, spectators, timeliness, and media coverage. Thus, while the police cannot outlaw the fundamental freedom of assembly, they can effectively weaken its exercise.

In Metro Toronto, the centre of most of Ontario's largest demonstrations, the Police Commission, itself, has enacted a parade by-law. Under Section 12 of the Metro by-law, no parade is permitted on any street "of a chiefly...business or mercantile character" during hours when the street is"ordinarily subject to great congestion of traffic". What the Toronto Police Commission has decided is that virtually whenever there is a conflict between a demonstrator's interest in maximizing impact and the police interest in maintaining order, 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 the Chief of Police. They can grant a busy street parade permit if they consider that an application has been made "under unusual circumstances of municipal, provincial, or federal importance". Thus, the police can make an exception if the police consider that the demonstration is important enough.

During the past few months, we have had some opportunity to observe the application of this exception. A group opposed to the Viet Nam war applied for a permit to conduct a Yonge Street parade on Saturday, January 20th to coincide with demonstrations throughout the world on the occasion of U.S. President Nixon's second inauguration. The demonstrators planned to march north on Yonge Street from Queen Street to College Street. The Police Commission refused the Yonge Street portion of the request. Yet, a few months later, the busy street prohibition was waived in favour of the Mystic Order of the Veiled Prophets of the Enchanted Realm. This group was permitted to march down Yonge Street (from Wellesley to Queen) at 2:30 p.m. on Friday, June 15th. Curiously, the Metro police authorities must have considered social ritual to contain more "unusual...importance" for Canadians than the Viet Nam war.

The possession by the police of the power to determine the time and place of demonstrations cannot help but undermine the police-citizen relationship. This power appears

to put the police in the invidious position of being able arbitrarily to weaken the exercise of so basic a right as effective freedom of assembly in the streets. With the inevitable increase we can expect in applications for demonstration permits, the police authorities will appear increasingly less fair in the eyes of social dissenters.

Of course social protestors cannot be given automatic access to any street at any time. But the power to enact by-laws on such matters is essentially a legislative power. As such, it appropriately belongs to a completely elected body rather than to a substantially appointed one. Indeed, on this basis, the Task Force should question the propriety of police commissions having the wide range of by-law powers which they currently enjoy.

Moreover, the power to grant, withold, and set conditions for particular parade permits should also be removed from police authorities. This power too would be better given to a local political authority. In view of the conflict of interest between police and demonstrators, the existence of such power in a police body is akin to making the police umpires of their own ball game. Without question, police authorities should be consulted for their opinions about the effects of impending demonstrations on other community interests. But they should not be able to make decisions on the granting and conditions of such permits. Their role should be limited to the traditional police function of enforcing the laws that are duly enacted and the decisions that are duly rendered by the other authorities more appropriate for such purposes.

The removal from the police of these powers would provide for citizens, fairer procedures, and for the police, some relief from needless public controversy.

In examining the relationship between police and demonstrators, we must consider not only the explicit police powers granted by parade by-laws, but also their implicit powers to maintain the public peace. Here again, we have had some indication of the police propensity to compromise too readily the interests of demonstrators.

During the rather bitter strike waged in Toronto last year by the United Steelworkers of America against Oldon Industries Ltd., 3 cases of the many involving police intervention were particularly drawn to the attention of the Canadian Civil Liberties Association. The Steelworkers Strike Director was arrested by the police on a charge of common assault. He was spirited away to the police station and brought before a

court later in the day. During the course of the hearing into his pre trial release from custody, the Crown Attorney, presumably representing the police point of view, recommended that the union leader's release be made subject to a restriction that he stay away from the vicinity of the strike-bound plant. The court acceded to the request and issued the requisite restraining order. Significantly, the substance of the charge was that this union leader had allegedly spit at someone.

By contrast, two opponents of the strike, arrested at around the same period, were released by the officer in-charge with no comparable restrictions on their pre-trial movements. Yet the substance of the allegations against the strike opponents was substantially more serious than the allegation against the strike leader. In the case of one of the strike opponents, the complainant, a striking employee, claims that he was required to wear crutches for a month as a result of the accused's alleged assault on him. In the case of the other strike opponent the allegation was that he had deliberately driven his car toward a striker's car so as to force the striker to drive off the road.

This situation conveys the appearance of double standard justice in the handling of strikes by Toronto law enforcement authorities. Of course, this is only one case. In numbers of other strike situations, both in Toronto and elsewhere in the province, the police are reported to have conducted themselves with exemplary fairness and restraint. But despite such praiseworthy conduct in some labour disputes, this area of police activity has been subjected recently to a growing barrage of criticism from a number of important sectors of the community. Though conflicting reports make it difficult to discern consistent trends, we are satisfied that there is enough of a problem to warrant addressing ourselves to deeper considerations of police strike policy.

In this connection, our attention was drawn recently to the Metropolitan Toronto Police manual on procedures in strikes and lockouts. (See Submission of the Ontario Federation of Labour to the Task Force on Policing in Ontario, p.9) A perusal of this police document reveals some rather disconcerting value judgments. Although the manual warns the police to "keep an absolutely impartial attitude", it deals with the strike situation as though breaches of the peace are precipitated only by strikers. The manual instructs police officers in the cautions they should give to each side. To the union, the police are instructed to "point out the boundaries of private property

and caution against trespassing". To management, the officers are advised to "instruct them that, should they have any complaints regarding the pickets they should inform the police".

Significantly, nothing in the manual is designed to warn the pickets about how to cope with breaches of the peace against them.

In capital letters, the manual contains the words: "NO MASS PICKETING". In this connection, the police are instructed to "establish a maximum number of pickets at each entrance (no more than 6 would usually be required...)"

This instruction reveals an improper police predisposition. Nowhere does the law prohibit mass picketing per se. Why, then, should the police presume to prohibit what the law permits?

It is true that mass picketing creates a risk of unlawful conduct - assaults, obstructions, etc. But, despite the dangers, the duty of the police is to protect all lawful conduct, including mass picketing. The police may and should take steps to prevent the culmination of the risks involved. They might deploy a contingent sufficiently large to keep strikers and non strikers apart. They might insist that the pickets keep moving and stand aside to permit ingress and egress. But, generally speaking, even if it would make their jobs easier, it is not for the police to curtail the number of pickets.

The manual says further "pickets may talk to anyone crossing the picket line, but their conversation must be in an explanatory sense". This misconceives the point of legitimate picket lines. Picket lines are not exercises in polite discussion. They are instruments of social pressure. The idea is to visit the collective contempt of the strikers on those who would cross their picket line. The object is to make the non striker feel the weight of social ostracism every time he enters the impugned premises. The pickets may not employ physical violence but they may certainly exert social pressure. A picket line, shorn of numbers and bound by the canons of Emily Post, would necessarily weaken the pickets' ability to heap such pressures on their adversaries.

In our view, there are only two occasions in which the police would be justified in interfering with the number and conduct of pickets:

1. In the face of a specific court order to that effect
2. When such interference is the only reasonable method available for apprehending offenders or for preventing offences that appear imminent.

Apart from such situations, the role of the police is to protect, as best they can, all of the lawful interests involved, including the right of access to property, the public peace, and the integrity of the picket line. But, even in such situations, the police should interfere with the contesting parties no more than is reasonably necessary to uphold the law.

From all this, it appears that, at least in our largest municipality, the police involvement in strikes is being oriented primarily to the goal of restraining the pickets. There seems to be little countervailing concern with protecting the pickets. It is in order therefore, to recommend, province-wide, a new set of police instructions to redress the imbalance.

These instructions should incorporate all of the foregoing considerations, i.e. they should advise the strikers as well as management how to protect themselves against unlawful conduct - they should instruct the police to desist from interfering with the parties unless the above conditions apply. Most important, the manual should remind the police that, in law, all parties, strikers as well as management, have a perfect right, short of unlawful acts, to wage their conflict as vigorously as they can. The role of the police is to be as even-handed as possible in the protection of this right.

We submit that the adoption of such guide lines would clothe the police with a more substantial reputation for fairness. And that would contribute immeasurably to the public's respect for them.

THE POLICE
AND
THE RIGHTS OF CITIZEN COMPLAINANTS

Periodically, the press carries stories in which the police are accused of using excessive force. Sometimes, even outright brutality is alleged. Few matters could undermine public confidence in the police as severely as a reputation for undue violence.

In order to get some idea regarding the frequency of such incidents, we have conducted a number of surveys among randomly selected samples of accused persons. Here is what we found.

In January of 1970, in a five-city survey across Canada of 293 accused persons, 74 or 25% told us they had been physically hurt by the police during their period in pre-trial custody. In our fall 1972 survey involving 7 Ontario cities, of 162 arrested persons, 41 or 25% said they had suffered physical abuse at the hands of the police. In our summer 1973 survey in the City of Toronto, of a sample of 85 arrested persons (including 70 arrested at night and 15 by day), 25 or 29% reported that the police had committed assaults upon them.

Of course, this is a one-sided story. We have here only the representations, perceptions, and recollections of the people under arrest. However, this material is submitted not as the final word on the extent of police abuse. It is submitted, rather, as an indication that police abuse is a recurring rather than a completely isolated phenomenon. To quote the words of an Ottawa Journal editorial, commenting on our 1970 survey,

> '...yet when all allowances are made, the study remains profoundly disquieting. Even if the C.C.L.A. study is only half right, reform is needed."

One of the significant aspects of this troublesome issue is that in the greatest number of cases there has been and will be no attempt to conduct an impartial inquiry into the facts. With very few exceptions, the courts that try the charges against these accused people hear none of these allegations. Generally, the pre-trial conduct of police officers and jail attendants is irrelevant to the issue the courts have to determine, namely the guilt or innocence of the accused. Thus, usually the only way to obtain an impartial inquiry into these matters is for the accused, himself, to initiate some action.

We have questioned accused people about this too.

We have found that the overwhelming number of people who complain about police attacks resolutely refuse to take any action for the redress of their grievances.

In our 1970 survey, of 59 grievors whom we were able to interview about this, only 7 or 12% proposed to do anything by way of retaliation. In our 1972 survey, of 41 arrested persons who alleged that the police had assaulted them, only 3 or 7% said that they intended to take retaliatory action. In our 1973 survey, only 3 or 12% of the 25 complainants indicated that they would be seeking redress.

In all cases, we questioned the reluctant complainants as to why they refused to take action. On all three occasions, the overwhelming number insisted that it would do no good.

In our opinion, there would appear to be some basis for the scepticism expressed by these complainants. At present, redress against police misconduct can be secured primarily through the courts of law and the boards of police commissioners.

Criminal prosecutions in court are handled by the same Crown Attorney who is in daily co-operation 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 complainant would not expect fellow officers to perform the kind of conscientious investigation that characterizes their other work. Moreover, a criminal conviction against a police officer requires the same standard of proof as a conviction against anyone else - proof beyond a reasonable doubt. In the case of police officers, 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 fellow 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 counsel, withstand pressure by the police, and handle the many expenses which are inevitably involved.

While the boards of police commissioners 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, efficiency, morale, and 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 citizens with the need to protect the interests of the police. Thus, no matter how fairly police commissions may perform in particular cases, they will not be perceived as impartial.

To its credit, the Metropolitan Toronto Police Commission, on at least one important occasion, has acknowledged this dilemma. In the fall of 1972, when the Ukrainian Canadian Committee complained about police misconduct in the handling of the Ukrainians' demonstration against Soviet Premier Kosygin, the Police Commission requested the Ontario Attorney General to establish an independent public inquiry. The Commissioners are reported to have said that they would not appear sufficiently impartial for such a task.

Indeed, if a police commission lacks an adequate appearance of impartiality when the complaints of Ukrainian citizens are concerned, how will they secure the requisite appearance of impartiality when the complaints of other citizens are concerned?

We believe that new legal machinery is required to deal with the disturbing problem of citizen grievances against the police. 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 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 connections with the police department or its administration. In the interests of effectiveness, the committee should be given a staff and budget adequate to perform their functions with independence and vigor.

We seek to impose the independent citizens committee between the police commissions 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 independent citizens' 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 would 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 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 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 independent citizens' 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. 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 to inquire 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 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 commissions. But the police commissions would make their decisions under the influence of an independent inquiry. We do not seek to divest the 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 independent citizens' committee 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' committee 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.

With the growth of police-citizen contact and conflict, we can expect an increase in the number and intensity of grievances against the police. It is important, therefore, that we establish the kind of grievance machinery which will enjoy public respect. Such machinery would accrue to the benefit of the police-citizen relationship in all its aspects.

COMPETENCE, MORALE, AND ORIENTATION

Throughout this brief we have addressed ourselves to the paradoxical demands that democratic societies impose upon their police departments. Simultaneously, our society insists upon the vigorous pursuit of offenders and the scrupulous defence of their rights. To that end, we have recommended a number of measures, the observance of which might make less difficult the never-ending challenge of resolving this paradox in its countless manifestations.

Be that as it may, however, there is no substitute for the recruitment and training of a highly competent police force. The minimization of physical force puts a premium on the development of intellectual skills.

At present, only a grade 10 formal education is required of our police recruits. If our community wishes to improve police performance by a shift in emphasis from brawn to brain, it must recognize the importance of attracting candidates with a higher record of intellectual achievement. For some years, the Police Association has been requesting a minimum educational requirement of high school graduation. This seems more compatible with the demanding nature of police functions. To whatever extent it is impractical to make an immediate transition from grade 10 to high school graduation, we should begin, at least, the process of gradual transition. We should initiate a programme of steadily increasing the educational requirements until a more acceptable level is reached.

But high school graduation should be regarded only as a minimum requirement. The complex character of police responsibilities requires that the education of police officers never cease. Department policies should be designed to encourage the continuing improvement of the officer's academic and intellectual qualifications. Programmes should be developed wherein officers are subsidized to go to school. Moreover, in recognition of their having achieved higher educational levels, they should be awarded pay increases and promotion credits.

One of the skills which must be made more readily accessible to police departments is fluency in the many languages spoken throughout the community. In the investigation of offences, the provision of protections, and the handling of conflict, effective communication is obviously essential. In our present pluralistic milieu, unilingual facilities will not suffice. To the many immigrants and native Indians, unfamiliar

with our language and our customs, contact with the police can be a needlessly intimidating ordeal. But if encounters with these people could be conducted in their native tongues, the police could become a resource to be used, instead of simply a force to be feared. Accordingly, we suggest that police departments establish, within their structures, a readily available multi-lingual interpreter service. This could be done by recruiting more police officers who speak different languages, and by bringing in expert non-police personnel for such assignments.

Indeed, another way of improving upon the general competence level of police activity is to make greater use of non-police experts. Some outside experts might even be hired as full-time employees for certain branches of our police departments. For example, there have been periodic suggestions that accountants might be usefully employed in the fraud squads and lab technicians in the laboratories. Subject to the adoption of safeguards to protect the normal processes of promotion for regular police personnel, the growing use of non-police experts could enhance both the calibre of investigations and even the state of department morale. Surely, it would better serve the interests of regular police personnel for them to be relieved of what are essentially non-police functions.

This brings us to a broader consideration of the issue of police morale. Morale, of course, is a factor which can seriously affect police performance. We believe that the police in this province have a number of legitimate grievances concerning the way they are treated on the job. We fear that, under such circumstances, it will become increasingly difficult to recruit and retain greater numbers of high calibre people for this vital public service.

A number of Ontario police departments subject their officers to excessive restrictions regarding their personal deportment. While no one can seriously quarrel with the need for some measure of discipline and decorum, one can and should question some of the extremes that are involved. For example, during the summer of 1973, in the midst of 90 degree weather, a police officer was charged with insubordination for removing his cap in a department automobile. Indeed, some departments specifically require their officers to wear long sleeves, caps, and ties even in the sweltering heat of Ontario summers. It is difficult to conceive how less constricting attire would undermine police performance. On the contrary, we believe that greater

consideration for the officer would promote greater conscientiousness on his part. Police regulations should be modernized throughout the province. The regulations to be imposed should extend no further than what is reasonably required for efficient performance.

These excessive regulations point up the existence of a serious inequity in the handling of police grievances. What avenues of redress are available for the hapless officer who was caught without his cap? How can he challenge the charge of "insubordination"?

In Ontario today, police officers do not have the minimum kind of job security enjoyed by unionized 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 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, 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 unionized industrial employees enjoy. Police morale and 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 their employment status.

In order to perform their paradoxical functions, our police departments must pay heed not only to their level of competence and morale, but also to their philosophical orientation.

As much of the foregoing material reveals, the dominant objective of our police is the prevention of crime and the apprehension of offenders. As important as this objective is, it is not sufficient. It must be supplemented by a concern with the protection of people's rights, including the rights of suspected, potential, and actual offenders.

Our police officers will be better equipped to perform their competing roles if they actually believe in such values. Accordingly, we submit that the policy of the Government should involve the active promotion, among our police personnel, of the values inherent in the Bill of Rights and our fundamental freedoms.

Perhaps the best opportunity for the implementation of such a policy lies in the police training programme. At present, this programme seems to contain relatively little emphasis on human rights and civil liberties. This should be changed. Efforts should be made to increase the police officers' understanding of inter-group differences. They should be exposed to the diverse culture patterns which exist in our community. They should be made sympathetically aware of the special problems of the socially vulnerable segments of our population - the poor, the immigrants, the Indians, etc. And police trainees should be especially sensitized to the rights of those with whom their interests often appear to conflict - suspects, demonstrators, pickets, etc.

Our community is rich in resources which, until now, have been only sporadically used in police training. We have several universities and community colleges, all with flourishing departments in the social sciences. Ontario is the home base of the Canadian governmental experts on race relations - the Ontario Human Rights Commission. We have a number of large ethnic groups with sophisticated organizations and personnel. There are agencies specializing in community development and problems of the poor. All of these resources should be more 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 officer's life. Every new social development should be accompanied by new in-service training courses.

In addition to formal training, police departments should arrange, on an on-going basis, seminars and discussion groups where police and the representatives of various interest groups can meet informally to discuss the resolution of thier differences. Face-to-face contact is a potent antidote to insensitivity. In this connection, we suggest that members of the police commissions and candidates for promotion within police departments be chosen, in part, on the basis of their social sensitivity and their demonstrated concern for civil liberties.

In short, from the commission office to the paddy wagon, the objective must be to employ all the resources at our disposal to promote reverence and respect for the libertarian values in our tradition and law. Without such an orientation in the police, our most ingenious rules, safeguards, and policies will serve us little. With such an orientation in the police, our democratic structures will have acquired a vital capacity to face their impending challenges.

SUMMARY OF RECOMMENDATIONS

The Canadian Civil Liberties Association requests the Ontario Task Force on Policing to recommend to the Ontario Government the following measures

1. Instruct all police departments and police officers to inform accused people in clear terms, at the earliest practicable opportunity following arrest, of their relevant legal rights including their right to counsel, legal aid, and emergency legal consultation.

2 Instruct all police departments and police officers to take reasonable steps for the effectuation of communication between the accused and counsel (including immediate telephone privileges in a situation of privacy), at the earliest practicable opportunity following arrest.

3. Instruct all police departments and police officers that in the absence of imminent and overwhelming peril, they should conduct no custodial interrogations unless:
   (a) the accused has consulted counsel, or
   (b) the accused has waived his right to counsel

4. Remove from police authorities the power to determine the times and routes of parades and demonstrations.

5. Issue to police departments and police officers, throughout Ontario, new written instructions regarding the handling of strikes and picket lines. In addition to containing a reminder that all parties have a right to wage their conflict as vigorously as possible, such instructions should require that the police
   (a) advise the strikers as well as management how to protect themselves against unlawful conduct and
   (b) desist from interfering with the parties, unless there is a court order, or unless such interference is the only reasonable method available to apprehend offenders or prevent offences that appear imminent.

6. Create a new independent citizens' committee 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) and
   (b) establish, where necessary, boards of inquiry independent of both the citizens' committee and the police commissions 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.)

7 Encourage in the police a higher level of intellectual competence by
   (a) requiring that recruits be at least high school graduates,
   (b) providing subsidies, pay increases, and promotion credits to police officers who take additional courses and attain higher educational levels,
   (c) making greater use of non-police expertise, and
   (d) providing for a multi-lingual interpreter service.

8. Improve the morale of police personnel by
   (a) limiting regulations to what is reasonably necessary for efficient performance, and
   (b) providing that police officers may resort to impartial arbitration in all disputes involving their employment status.

9. Promote a positive human rights and civil liberties orientation throughout our police departments by
   (a) greater emphasis on such issues in pre-service and in service training programmes,
   (b) conducting on an on-going basis, seminars and discussion groups involving police and representatives of various interest groups, and
   (c) including such concerns in personnel and promotions policies.

Respectfully Submitted

CANADIAN CIVIL LIBERTIES ASSOCIATION

FOOTNOTES

1. Canadian Civil Liberties Education Trust, Due Process Safeguards and Canadian Criminal Justice - A One Month Inquiry; published October 1971.

2. R.S.C. 1970, c.2 (2nd Supp.)

3. Of 34 statements made, 23 claimed they were voluntary and 11 involuntary.

4. Miranda v. Arizona, 384 U.S. 436 at 458 (1966).

5. Driver, "Confessions and the Social Psychology of Coercion", 82 Harvard Law Review 42 (1968), at pp. 58-59.

6. Miranda v. Arizona (Supra, note 11). The United States Supreme Court held that any statement obtained from a suspect as a result of a police interrogation was not admissible in evidence against him unless the following safeguards were complied with:

   1. The suspect must first be told that he has the right to remain silent, and that anything he says may be given in evidence against him at his trial.

   2. The suspect must also be told that he has the right to obtain the assistance of counsel, and that, if he cannot afford to retain counsel of his choice, counsel will be appointed for him. Furthermore, he may not be interrogated in the absence of counsel unless he has given a clear and intelligent waiver of this right, and that such a waiver may be withdrawn at any time during interrogation, at which point the interrogation must cease until counsel is present or until the waiver is renewed.

7. Seeburger and Wettich, "Miranda in Pittsburgh: A Statistical Study" 29 Univ. Pittsb. L. Rev. (1968); "Interrogations in New Haven: the Impact of Miranda ", 76 Yale L.J. 1519 (1967).

8. 76 Yale L.J. 1519 at 1579

9. New York Times, May 18, 1966, p. 27; New York Times May 1, 1967, p. 24; U.S. News and World Report, June 27, 1966, p.32.

10. Report of the Canadian Committee on Corrections, March 1969, p. 143, n.

11. R.S.C. 1970, Appendix III, S.2(c) (ii).