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POLICE AND MILITARY HUMAN RIGHTS TRAINING  
ROUND TABLE WITH  
MEXICAN HUMAN RIGHTS COMMISSION

by

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## **POLICE AND MILITARY HUMAN RIGHTS TRAINING ROUND TABLE WITH MEXICAN HUMAN RIGHTS COMMISSION**

The Honorable Jean-Pierre Beaulne, Q.C.

In the 1789 Declaration of Human Rights, Article XII states:

A police force is essential to guarantee human rights and citizens' rights; this force is therefore established for the common good and not for the benefit of those to whom it has been entrusted.

These principles of the 1789 Declaration were adopted by resolution of the European Parliament almost two hundred years later, in 1979. In my mind these considerations are closely related to today's topic, Civilian Oversight of National Law Enforcement Authorities.

### **Civilian Oversight of Law Enforcement**

The topic is, in my view, becoming more and more important in the field of criminal justice and in the wider field of human rights. For law enforcement, and those who have been entrusted by democratic societies to be the enforcers, are at the root of freedom.

At IACOLE's 1995 Conference in Vancouver (September), Ms. Lucie Edwards, from Canada's Department of Foreign Affairs, spoke on the topic of the need for development of civilian oversight in emerging democracies. She noted the essential role disciplined law enforcement institutions must play in the process of building new democracies and, I may add, to continue the building process in our own democracy. Canada has supported the establishment of effective and accountable law enforcement institutions, and Ms. Edwards focused in particular on the role of UN Civilian Police Operations (CIVPOL) aimed at both reestablishing a climate of security and long-term capacity building in law enforcement, such as in Haiti.

I had occasion to be part of a recent mission to Brazil. One of its main problems is institutional violence of the police. It is hindering the democratic process, and the present leaders are conscious of this and are seeking help and counsel.

It is clear that the concept of the citizen police force is but a part of the rule of law, which requires that government should be subject to the law, rather than the law subject to government. The rule of law was the basis for the British Constitution which in turn was the foundation for Canada's constitutional development. The rule of law requires the law to be evenhanded between government and citizen with no exemption from the ordinary law of the state for agents of the government, including the police.

\* Chairman, Royal Canadian Mounted Police Public Complaints Commission. The Round Table took place on October 12, 1995.

## **Accountability**

The basic principle that underlies the concept of civilian oversight is that police forces must be clearly accountable to the public for their actions.

Accountability generally means “liable or bound to give an account.” Any discussion of accountability will, of necessity, raise the matter of control: control of the agency over the police force, and control of the statutory authority over both the agency and the police force.

It is often assumed that accountability will eventually lead to control. In my view, however, it is not inevitable that accountability must always imply control. It is probably the obligation element, the requirement to give an account, that is the source of the fear that accountability will lead to control.

## **Internal Discipline Proceedings**

Police forces in common law countries invariably have internal discipline procedures to enforce codes of discipline.

Through the internal discipline procedures, constables are accountable to and controlled by their superiors.

## **Citizen Complaint Procedures**

While the internal disciplinary process is essential to the proper functioning of a police force, it is the citizen complaint procedure which ensures that the police are accountable to the public and, therefore, controlled by the public.

There are nine classic principles of policing.<sup>1</sup> The second principle states that:

To recognize always that the power of the police to fulfill their functions is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect.<sup>2</sup>

It requires a system by which a full inquiry into a citizen’s complaint can be accomplished.

The citizen complaint process is also a mechanism to examine publicly the policies and procedures of the RCMP. The Commission does not embark upon examinations of RCMP policy without reference to the conduct of a member. However, where complaints about the conduct of members of the RCMP require consideration of its policies and procedures, it is clear that Parliament intended that the Commission do so and mandated the Commission to make findings and

recommendations about such policies and procedures as they relate to the complaint. As stated by Decary J.A.:

Recommendations by the Commission under Part VII [of the *RCMP Act*], while initially triggered by a specific complaint against the conduct of a given member, are member oriented, for sure, but they can also be, when circumstances permit, policy-oriented.<sup>3</sup>

The Commission is not making policy for the RCMP, since the latter is not bound to implement the Commission's recommendations. The management of the RCMP will, however, be answerable and accountable to the public for management decisions that are made with respect to the implementation or failure to implement the Commissions's recommendations. This public accountability is what Parliament was intending to achieve when it passed the amendments to the *RCMP Act* that created the Commission.

Full and complete inquiries by civilian oversight bodies will ensure the accountability of the police force to the community while, at the same time, hopefully avoiding the need in the future for the more costly and troublesome alternatives to such a process.

### **Events Leading up to the Creation of the RCMP Public Complaints Commission**

The history leading up to the establishment of the RCMP Public Complaints Commission clearly shows that the RCMP Public Complaints Commission was established in a remedial effort to cure a serious erosion of the public confidence in the Force. This lack of confidence had arisen because of considerable evidence of police misconduct which was not properly investigated by the Force. To resolve the problem, it was of fundamental importance that there be an independent body with powers to investigate alleged misconduct by the RCMP and how this misconduct was dealt with by the Force.<sup>4</sup>

### **Policy Issues**

In addressing the setting up of such an agency, there were three main policy issues for Parliament to consider, and I will examine how they were resolved as regards our own Commission:

First: Should such a civilian agency monitor the actions of the police, on its own, pursuant to legislative enactment, or should it await public complaints before acting? For our Commission process to work, there must be a complaint from a member of the public - the Act says *any* member of the public. However, the Chairman does have a monitoring role in that he may make a complaint if he considers that there are reasonable grounds to do so.

Second: Should the agency be authorized by law to conduct investigations itself, or should investigations into complaints by the public be carried out by the police, with the external agency only reviewing the results of these investigations? I appreciate that there is an ongoing controversy as to whether the police should investigate themselves. In his recent *Report on Policing in British Columbia*,

Judge Oppal did ask the question: "Who should investigate the complaint?" He writes:

It is said that only civilian investigators will be truly impartial. However, other citizen groups have told us that the police ought to be allowed to continue investigating themselves, as long as there is sufficient civilian oversight or civilian review to ensure that the investigations are conducted fairly and impartially....The B.C. Civil Liberties Association has taken the position that police should continue to investigate themselves.

In the end, Judge Oppal opted for the investigation to be conducted by the police. Both previous federal commissions of inquiry, the Marin and the McDonald Commissions, had also concluded that there were good reasons for allowing the responsibility for conducting internal investigations to remain with the police.

Parliament, therefore, directed that the primary task of investigating complaints be left with the RCMP. However, it granted wide powers to conduct investigations to the Commission Chairman. They are:

- 1) After completing its initial investigation, the RCMP must send its report to the complainant and to the member complained against, setting out its conclusions. If the complainant is not satisfied with the disposition, he/she has the right to request a review of such disposition by the Commission. The Commissioner must then forward all relevant investigative material to the Commission. If the Chairman is not satisfied with the investigation, he may *either* request the Commissioner to further investigate *or*, and this is interesting, he may direct the Commission's own investigators to further investigate or even call a public hearing to do so.
- 2) At any time, the Chairman, where he considers it advisable in the public interest, whether the complaint has been made by a member of the public or by himself, may direct the Commission investigators to conduct the investigation or institute a public hearing to do so. He may do this even where a complainant has not made a request for review of the complaint's disposition by the RCMP.

Third: Should the external agency have authority to make binding decisions, or make recommendations? The Commission has an adjudicative function, particularly when it conducts public hearings. The Chairman's role, however, is in the nature of a federal ombudsman for police matters as they relate to the RCMP. Some ombudsmen do concern themselves with police matters: for example, approximately 45 percent of Marten Oosting's work as Ombudsman of the Netherlands involves overseeing the police. In that type of process, disciplinary matters and governance of the police force are left with the Chief of Police. This can be contrasted, for example, with the Ontario and Quebec models, where the Complaints Commissioner may refer complaints to a separate administrative tribunal or *Comité de déontologie*, which has the jurisdiction to impose disciplinary sanctions.

Our Commission makes findings and recommendations that are forwarded to the Solicitor General, who has direction over the RCMP, and to the Commissioner, who has control and management

of the RCMP. If the Commissioner disagrees with the findings and/or recommendations, he must advise the Chairman and the Solicitor General of his reasons for doing so. And, as Mr. Justice MacGuigan stated in the Federal Court of Appeal:

The last word belongs to the Chairman who must make a final report in writing to the Solicitor General, the Commissioner and to the parties.<sup>5</sup>

And, I may add, as the Act directs:

such report setting out such findings and recommendations with respect to the complaint as the Commission Chairman sees fit.

From our analysis, these findings and recommendations have a great impact. The Commission has examined a sample of 150 reports where the Commission made recommendations. We found that the Commissioner agreed with 88 percent and disagreed with 12 percent. The Commissioner sends a yearly report to the Solicitor General, with a copy to the Commission, a report advising the Minister of the action taken by the RCMP on these recommendations.

We must remember, and this is the bottom line, that the purpose of these recommendations is to prevent the recurrence of the actions that led to the complaints by members of the public and thus contribute to the betterment of the RCMP.

### **Independence**

Even though its name could suggest otherwise, some even describe it as the RCMP's Public Complaints Commission, which I must emphatically state it is not, the Commission is distinct and separate from the RCMP.

As the then Solicitor General stated in the House of Commons on September 11, 1985:

Bill C-65 proposes the creation of the Public Complaints Commission, an independent and impartial authority, which would be outside the structure of the RCMP.

### **The RCMP**

The RCMP is Canada's federal police force. It also acts as the provincial police in all provinces except Ontario and Quebec. It polices the Yukon and the Northwest Territories. In its provincial and territorial role, the RCMP polices hundreds of small communities. In addition, nearly 200 municipalities, several with large populations, are policed by the RCMP under special agreements. The nature and extent of its presence and, therefore, contacts and relationships with the public, vary in different parts of the country.

It is therefore quite evident that the Commission's constituency, geographically and operationally, is quite large. In the provinces and for the municipalities that have contractual relationships with the RCMP, which is a federal organization, it is our Commission, and not the provincial public complaints commissions, that has jurisdiction to receive, investigate and review complaints.

### **The Commission's Mandate**

The Commission's mandate, as set up by the Canadian Parliament in 1986, provides a means for the external and independent review, investigation and public hearings of conduct, in the performance of any duty or function under the *RCMP Act*, of any member of the RCMP, or other person appointed or employed under the authority of the said Act.

## Endnotes

1. C. Reith, *The Blind Eye of History - A Study of the Origins of the Present Police Era* (Feber, Feber Ltd., 1952), Chapter X.
2. *Ibid.*
3. *Colvin v. Inskster and Jensen* [1994] 3 F.C. 562.
4. From a presentation by D. J. Sorochan, Q.C., at the 1995 IACOLE World Conference, Vancouver, British Columbia, at 10.
5. *Attorney General of Canada v. RCMP Public Complaints Commission* [1991] F.C. 529 at 558.