

APSAC Conference 2009
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I would like to thank the conference organizers for the kind invitation to speak with you today. I appreciate this opportunity to join Russell Pearce and Dr. Louise Porter to speak to all of you here today on an issue of growing importance: effective oversight of the police – and what powers are required.

While my experience is a uniquely North American one – I have no doubt that many of our domestic issues are equally global ones- and I look forward to taking back with me your wisdom and shared perspectives on such an important topic – police corruption and misconduct.

We are here today to talk about transparency and accountability. These are concepts that have been around in one form or another for quite some time. Transparency in the field of justice is manifested in our open court system and you see accountability expressed through freely held elections of your government representatives. These concepts are not static however. Rather, they are self replicating and evolutionary. Most importantly they have found a home in the consciousness of western democracies.

Like other common law countries, Canada is a democracy where adherence to the “Rule of Law” is a key feature. I personally believe that policing is essential to public safety which in turn is a cornerstone upon which democracy is based. Police must therefore conform to the rule of law, and account for the use of the extraordinary powers with which they have been bestowed.

This afternoon I will briefly set the context by telling you about the Commission for Public Complaints against the Royal Canadian Mounted Police; the current policing and oversight climate in Canada; and some of the challenges we are facing as overseers. I will also describe how we have managed to persevere and effect change despite some of these challenges and finally I will share my thoughts on some areas where we can work together.

I'll get started with my PowerPoint presentation and I look forward to any questions you may have.

I would like to start with a bit of background on who we are and explain about the unique policing landscape we are responsible to oversee in the Canadian context.

Having had the opportunity to chat with some of you, I recognize that there exist many similarities between the Canadian and Australian landscape – but there are also some very unique differences. I would like to very briefly highlight some of these for you.

The CPC was created in 1988 as a quasi-judicial body acting as officers of the Parliament of Canada to provide both impartial and independent review of RCMP conduct.

It is important to point out that the CPC's mandate is solely limited to the conduct of RCMP members, that is, we are not a criminal investigative body. So unlike many of the organizations, some of you in this room represent, we are not active participants in the police

investigation; we do not manage police investigations nor do we conduct criminal investigations on our own. When I hear that a centralized agency for the interception of communications is being contemplated, our powers are no doubt... “lite” in comparison.

Add to all of this our unique jurisdictional challenges, and you begin to see the unique oversight role we play in relation to the conduct of 29,000 members of the Royal Canadian Mounted Police.

Let me explain...

This map is intended to give you a visual snapshot of not only the geographic (and often remote) nature of RCMP policing (as you can see by the Northern territories), but also to highlight some of the unique jurisdictional challenges associated with overseeing Canada’s national police force.

While the federal government is responsible for the creation of criminal law, under the Constitution, the provinces are actually the ones responsible for the administration of justice – which includes policing.

As you can see on the map, all areas highlighted in the red (to the left and right of the map, covering Canada’s Western and Eastern provinces) indicate where the RCMP is contracted to provide all four levels of policing:

- 1. Federal:** which enforces federal statutes and all laws made by, or under, the authority of the Canadian Parliament;
- 2. Provincial:** which enforces the Criminal Code and provincial statutes within each province;
- 3. Municipal:** which enforces Criminal Code, provincial statutes, and municipal by-laws; and
- 4. First Nations:** which enforces First Nations agreements for Aboriginal communities in place across Canada.

As you can see by the various colour combinations, the level of policing services offered in different regions varies greatly. And the blue in Central Canada shows that Ontario and Québec are the only two provinces which chose to operate their own provincial forces. Municipally, provinces have contracted the RCMP to act as municipal police force in 200 or so municipalities.

One of the key issues we face is how we reconcile our role as the federal body charged with review of RCMP conduct and the role of the provincial governments responsible for the administration of justice in the province.

While a 1981 Supreme Court of Canada decision clarified the constitutional federal responsibility for RCMP conduct issues a federal one constitutionally – these issues continue to arise – which I will get into in more detail later.

While it’s important to talk about the nuts and bolts of the RCMP and its structure, for you to truly understand the current Canadian landscape, it’s important to talk about the shift we are currently undergoing in relation to the public’s perception of policing in Canada.

Unlike the police in many other countries, the RCMP and the mountie has enjoyed an iconic status on the world’s stage – and it has, I would say, largely held the public trust. But this is now changing in very fundamental ways.

This is due, to some degree, on a number of high profile incidents which are resulting in heightened scrutiny and growing cynicism among Canadians.

While I could tell you about these incidents, I would prefer for you to see exactly what Canadians have been seeing:

1. The first video clip speaks to an allegation that the former RCMP Commissioner improperly interfered with the electoral process
2. The second clip (seen around the world) is the RCMP October 2007 attempt to subdue Mr. Robert Dziekanski with a taser at the Vancouver Int'l Airport
3. The third clip is a surprising turn of events at the Braidwood Inquiry (which was launched in May 2008) that calls into question the actions of the RCMP members involved in the tasing, further deepening public cynicism.
4. And finally, while not RCMP-specific, speaks to the mistrust the public has of police investigating themselves in high-profile cases.

Justice Sulhany's report released at the conclusion of this inquiry, and which was fully adopted by the government, recommended sweeping changes to governing legislation in that province- the creation of a new independent investigative body and the disbandment of the East St Paul police department.

I'm sure many of you have seen these types of things before (and worse) but the chronic rather than episodic cynicism by the public is now placing the issue of oversight squarely front of mind for Canadians.

The reality, of course, is that the police cannot function without the support of the public. In a system of responsible government, the police are ultimately accountable to civilian authority.

When considering these issues, it is helpful to look back to the modern roots of the police. In recognition of the challenge posed by the creation of a professional police force to the traditional relationship between police and the public we saw the articulation of Sir Robert Peel's nice principles of policing.

I would like to focus on one of these principles - that the police at all times, should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.

In a complex public safety world how does the average citizen acquire the knowledge and experience to determine whether police actions are balanced and appropriate?

The reality today is that citizens cannot adequately make that assessment and traditional institutions such as the courts and the media while having had some success in addressing the public's need for greater transparency, have proven to be insufficient. Consequently, we have observed the creation of civilian oversight bodies.

"Sunlight is the best disinfectant." These simple words of Justice Louis Brandeis remain as relevant today as ever, particularly at a time when the police and police oversight community find ourselves in the midst of a swirl of scrutiny.

Perhaps at no time in the last two or three decades has there been more public interest in the activities of the police and intelligence agencies and the organizations charged to oversee them.

Well before this current wave of public cynicism, the CPC could see the conditions were ripe for this to occur.

We recognized the points of risk and identified that if the RCMP's weak institutional accountability were allowed to continue and no new powers were introduced to address it, the inevitable result would be a further erosion of public trust – essentially resulting in a **“trust deficit”**.

The natural concern of the police has been further heightened as governments have responded to an evolving, complex and threatening public safety environment by providing the police with a broad range of investigative powers and the police have responded in kind with innovations such as joint task forces.

Conversely, in most cases Canadian police oversight bodies have simply not kept pace with the evolving nature of the police and billion dollar security budgets.

The CPC legislation, passed in 1988 has remained unchanged since that time.

Canada lags behind many comparable countries' legislation which has changed and been updated including Chicago (2007); United Kingdom (2002); Northern Ireland (2008); New Zealand (2008). As well as domestic provincial changes: Ontario (1988); Alberta (2007); Saskatchewan (2005); Manitoba (2008); British Columbia (2009).

In recognition of this growing trust deficit we proposed legislation for the federal government's consideration back in 2006.

Some of the key proposed powers needed include the ability to self-initiate a review and investigations. Conduct audits and report on follow up actions taken ; be able to summon and enforce witnesses; compel evidence and administer oaths. We also sought to enhance our ability to share information with like-mandated bodies and conduct joint investigations (which would reduce Canada's need to call full-on multi-million dollar Inquiries into issues where the CPC can't “follow the trail of information” i.e. Arar and Braidwood Inquiries).

Importantly, to address concerns about impartiality of when the police investigate themselves, the civilian authority needs to have some role in that investigation- whether that's carrying out the investigation itself, or monitoring or observing that investigation.

To further gain public confidence, the civilian authority must have full access to information relevant to its reviews as of right.

Fiscal realities also have to be considered because any organization will be set up for failure if it is not properly financially resourced.

Finally, oversight bodies must have the ability to report their findings in a public and fulsome way.

When I consider the powers held by other bodies in Canada (such as the Privacy Commissioner), I have asked myself “is there some reason why they possess the range of

powers they have and the CPC doesn't? Is there a need to shelter the RCMP from this degree of oversight for fear that it would somehow negatively impact upon its ability to fulfill its important public safety function?"

To answer that question, it is useful to look at civilian oversight of the police function in other western democracies, in particular those that flow out of the British common law tradition.

Take for example here in Australia where police corruption and royal commissions have driven the creation of oversight bodies, many that have the power to mount technical operations, develop human sources, and hold public hearings prior to criminal proceedings.

Across the Commonwealth we see a magnitude of legislative changes that have been adopted over the past twenty years. In all cases the creation of the police oversight bodies and the legislative changes that enhanced the scope of powers, translated into benefits for the state of policing and the citizens.

Is there any suggestion that the police services here in Australia have somehow been weakened in their ability to effectively discharge their responsibilities? Based upon what I will admit is a limited exposure, and I would like to hear from you in this regard, I see no evidence that this is so.

Fiscal realities also have to be considered because any organization will be set up for failure if it is not properly financially resourced.

Despite lacking some of the fundamental powers that I believe are necessary, we have nonetheless been successful at effecting change in a number of significant areas.

By conducting serious, unbiased research and analysis, you can drive changes to policing policies. This in turn can change training regimens which in turn will modify police behaviours.

In my opinion, police services, like all self-regulating bodies are finding it increasingly difficult to maintain public confidence. Their justifications for their actions are increasingly viewed as biased and self serving. Today, the public wants and the police need a knowledgeable, impartial arbiter who can dispassionately investigate the facts and render a credible finding as to the appropriateness of the officer's conduct. Simply put, an arbiter, who can offer constructive, remedial recommendations to improve performance.

It is with respect to larger systemic issues that I believe civilian oversight bodies are able to make a significant contribution. A contribution that helps bridge the divide between an increasingly professionalized police function and the general public that they serve and which would give meaning to the principle that the police are the public and the public are the police.

The work our Commission conducted in respect of the Conducted Energy Weapon (or Taser) is worthy of mention as a great example of the role we can play in advancing a number of the Peel Principles, despite lacking the power to demand mandatory compliance.

In a 2006 report we found that the CEW was used in a matter akin to a cattle prod to move a 50 year old Aboriginal woman along.

The failure of all police officials involved in that incident- including the officer whose conduct was called into question, his immediate supervisor, the police complaints investigator and the senior officer who ruled on the merits of the complaint, to express any concern regarding the use of the CEW in these circumstances indicated to me that there was a larger systemic issue at play. One that was rooted in the philosophical approach within the police organization to use of the CEW.

In our report we made a number of recommendations. We strongly recommended that training be changed with Taser International being no longer involved, reporting be beefed up and that the Taser be placed higher up on the use of force continuum.

As many here know, police services are reluctant to make major changes in response to individual cases. There is a natural tendency to view them as exceptions rather than as examples of a larger trend.

In 2007 after the tragic events at the Vancouver Airport where Robert Dziekanski died- the subject of the video I showed earlier, the Minister asked us to look more broadly at the use of the Taser, sure enough after looking at more than 4000 deployments, we found a number of systemic problems and made 22 recommendations for change. We pointed out that the Taser was subject to usage creep. It had moved from what was initially thought of as an alternative to lethal force to a come-along device. Operational policy shift had taken place without any substantive research or analysis. There was no reliable data being collected by the police and certainly no public input.

I am pleased to report that significant changes have taken place within the RCMP following the issuance of our reports.

1. CEW Report:

30% decrease in reported use of CEW the year following the report

Greater appreciation of risks with use of the weapon resulting in an increased threat of using the CEW – but a decrease in the actual use of CEW.

Report also helped to: strengthen the reporting for the use of the weapon, and recertification on the CEW decreased from three years to one year.

Other areas of impact include the following:

2. Review of the Record: Which is a comprehensive analysis of the entire complaint process from stem to stern had a tangible impact on policies.

Following the report (which found issues with the RCMP informally resolving improper use of force allegations), the CPC now requests clear justification to explain why & how use of force complaint was resolved informally. This request reduces the likelihood of members proceeding with an informal resolution due to the expectation of an accounting for their actions.

3. Complaints Reports:

In addition, we have had some success at changing behaviours with respect to the use of head restraints; the inappropriate involvement of the police in civil disputes and issues related to prisoners.

We are increasingly turning our attention to concerns about in custody deaths and trying to identify systemic issues related thereto.

You may ask yourself whether these changes in police policy, training and data collection would have occurred but for the role of the civilian oversight body. Historically, the lines of debate concerning the merits of some of the matters I just spoke about were fairly firmly established and championed by three distinct communities – on one side, you had NGOs like Amnesty International, on the other you had manufacturers and other interested parties who relied upon successes in court for instance buttress their positions and thirdly you had the police community which found itself stuck in the middle.

The police were increasingly confused by the arguments and counter arguments which portrayed the debate and underlined the general assumption that the police were simply not being offered a balanced, impartial and knowledgeable assessment. That's where civilian oversight bodies can step in.

I did want to focus very briefly on two last things to close out my presentation. First, our common goals and second, how we can best work together to attain them.

Despite the fact that many of us here today represent disparate parts of the world (some colder than others!), we all share a common desire to help establish a respectful dialogue between the public and the police - all the while ensuring transparency and accountability in the process.

The Marin Royal Commission – called in the 70s to examine RCMP conduct - envisioned a “People’s Watchman” – A person who could focus the light of publicity on concerns as to injustices and needed change. Justice Marin wanted to see a person who “can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds.” That is our goal.

Importantly, I also believe our success - and that of the agencies we oversee - is defined in large part by how well we adopt a customer-service mentality. By agreeing to focus on how we can best meet the needs of our public – real progress is possible.

And I think we would all agree that a balance must be struck between the powers of the body being reviewed and those of the reviewer. As our Canadian Auditor General pointed out in her 2003 Report, we must work to “ensure that agencies exercising intrusive powers are subject to the level of external review and disclosure proportionate to the level of intrusion”.

So if we can agree on these shared goals, how then can we best attain them?

Despite the fact that I have spoken in some detail about key legislative changes required – effective review extends FAR beyond legislation alone. Moreover, I didn't want this

presentation to somehow convey the message that if you don't have the legislation you simply sit and watch as the world passed you by.

I believe it equally lies in effective integration.

We need to ask ourselves, how can we, to the extent possible, share strategic priorities? conduct joint research? maximize the flow of intelligence?

We need to start asking ourselves the very questions police services around the world have been asking for some time now.

As I mentioned earlier, transnational organized crime, money laundering, crimes on the Internet, and global terrorism have led to an increased level of police integration.

I would argue that as review bodies, our level of integration must attempt to match that of the police services we are charged with overseeing.

And so, in conclusion, I believe we should continue to build on our current level of integration and harmonization for mutual benefit.

This can be accomplished in a number of ways. Through shared learnings as well as undertaking joint research to address larger, systemic issues.

- For instance, consider that with the work we have done, coupled with Justice Braidwood's recently released report, over 8000 deployments of the Taser have been systematically assessed and analyzed. Surely, these reports should help shape the public debate here and elsewhere where concerns over the Taser are being raised.
- As some of you know, we will soon be releasing our report into our review of the Police investigating Police. During our investigation, we sought public submissions from domestic and international partners, which included some of you here today:
 - Including the **South Australia Police**; **New Zealand Police** and the **Police Integrity Commission of New South Wales**. We are grateful for all of your comments and experience – which helped to inform our report and recommendations.

These public submissions were a great start, but I think we can go further to stay active and engaged. Future collaborative research topics could include mental health or in-custody death, for example. We must recognize that agreed-upon international findings and recommendations would have greater legitimacy and likelihood of acceptance by the powers that be.

So, in answer to the question of what powers civilian authorities need to effectively oversee the police – my response is that robust legislation alone is **not** enough. Review bodies must be creative, willing to push the envelope with respect to their mandates, be nimble enough to be responsive to public expectations and be willing to work with others to achieve common goals.

I would like to conclude by quoting Lawrence J. Peter, author of the Peter Principle, who observed that a "Bureaucracy defends the status quo long past the time when the quo has lost its status." I would hope that the contribution of discussions like the ones here today will

help inform a debate that will move us from inadequate civilian review to a model of appropriate, effective and meaningful oversight.

In this way, we can observe our mantra of “building confidence in policing for citizens”.

Thank you.