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Towards More Effective Police Oversight

Presented to the City of Vancouver
Peace and Justice Committee
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By David Eby, Jen Metcalfe, John Richardson and Deven Singhal

"If the [Office of the Police Complaints Commissioner] is restricted to making decisions based solely on the investigation provided by the police, then in my view, the concept of civilian oversight is severely compromised."

Dirk Ryneveld, BC Police Complaints Commissioner

"Policing is first and foremost a service to the public; the more it is at odds with the composition and values of the public, the less well it works."

Max Yalden, Chief Commissioner of the Canadian Human Rights Commission

"The public is demanding accountability of the police. I do not think that the demands of the public are unreasonable...In any democratic society based on the rule of law and responsible government, it is fundamental that police independence be balanced with accountability."

Justice Wally Oppal, Commissioner of Inquiry on Policing in BC

Introduction

Policing in Canada and in democracies around the world is in the midst of a transformation. Police departments are becoming modern service organizations that answer not only to elected officials such as mayors and MLAs, but also directly to the individual citizens they serve. The best police departments are proving that respectful treatment of all citizens is consistent with, and in fact complementary to, effective police tactics against crime.

This report is an exploration of the current mechanisms used to ensure that Vancouver Police Department (VPD) officers act with integrity, professionalism and respect towards the communities they serve. Three areas are examined:

- a) Complaint investigation and resolution,
- b) Training and testing, and
- c) Governance.

In each area, this report identifies pressing reasons for change, gives examples of alternatives currently utilized by other jurisdictions, and provides specific recommendations.

This report was prepared by Pivot Legal Society, a non-profit organization dedicated to advancing the interests and improving the lives of marginalized persons through law reform, legal education and strategic legal action. Pivot Legal Society predominantly serves communities of Vancouver's Downtown Eastside.

Summary of Recommendations

Independent Civilian Investigations

1. That British Columbia expand the budget and powers of the Office of the Police Complaints Commission to enable it to conduct timely, thorough independent civilian investigations of public complaints against municipal police officers, with unrestricted access to all police evidence and witnesses necessary for the investigation.
2. That when such an investigation determines that a police officer has engaged in professional misconduct that is not criminal, the findings of the investigation should be referred directly to a police complaints tribunal for disciplinary action. The role of this tribunal should be styled after the Quebec Comité de déontologie policière, and its adjudicators should be selected by an *ad hoc* committee consisting of one former police officer, one former judge, one sitting member of the provincial government, one sitting member of the municipal government and a representative of the Ombudsman of BC.
3. That when such an investigation determines that a police officer has engaged in professional misconduct that is criminal, the findings of the investigation should be presented to a provincial court judge who will rule on an *ex parte*¹ basis whether a *prima facie*² case has been made for the laying of charges, the normal procedure for private prosecutions per *s. 507 of the Criminal Code of Canada*. If charges are approved, a special prosecutor should be retained by Crown Counsel to prosecute the case.

Sensitivity Training

4. That the Vancouver Police Department work with local community groups to develop a sensitivity training program aimed at educating Downtown Eastside officers about the realities of living as a drug addict, a sex-trade worker, or a homeless person, and benefits of harm reduction as a crime prevention and health protection technique. The program should educate officers about their options when dealing with marginalized persons, and encourage them to find alternatives to arrest that create opportunities for long-term change in such persons' behaviour or lifestyle.

Integrity Testing

5. That the Vancouver Police Department establish an integrity testing program in the Downtown Eastside aimed at reducing instances of misconduct by Vancouver Police Department officers in their interactions with marginalized persons.

Elected Police Board

6. That the City of Vancouver enter into discussions with the provincial government about ways to increase the level of local representation and accountability in our Police Board, and hold a municipal referendum on whether or not to have a directly elected police board.

¹ By hearing of one side only. *Ex Parte* hearings are used in private prosecutions to insure that a reasonable case is made out before charges are laid, after which the accused is guaranteed full procedural fairness.

² On the face of it. A *prima facie* case presents enough evidence for the crown to secure a conviction barring any defences or additional evidence presented by the defendant

I. Complaint Investigation/Resolution

The Status Quo

Society has given police officers various powers to enable and assist them in protecting the public and enforcing the law. Given the extent and breadth of these powers, society has also created mechanisms to guard against their potential misuse, by allowing members of the public to lodge complaints against police officers who have acted in a manner contrary to their office.

In British Columbia, the procedures for investigation and resolution of complaints against municipal police officers are largely defined in the *Police Act*.³ According to the *Police Act*, a complainant must make a complaint in writing on the appropriate form (Form 1) and include the complainant's name and address. A complaint must be submitted either to the Police Complaint Commission, the Discipline Authority (either the Police Chief or the municipal Police Board) or a senior constable of the police department on duty when the complaint is made.⁴ Once a complaint is properly submitted and categorized, the receiver of the complaint can: dismiss the complaint if it finds it "frivolous or vexatious";⁵ recommend informal resolution;⁶ or order an investigation.⁷

Under the current *Police Act*, investigations into police misconduct are generally conducted internally. That is, if a complaint is made against a Vancouver Police Department officer, that complaint will be investigated by the Internal Investigations Department of the VPD. Depending on the findings and recommendations of the internal investigators, the Discipline Authority, often the Chief Constable, has the power to take corrective action through disciplinary proceedings.⁸

The Police Complaints Commission is responsible for reviewing the decisions reached by the Discipline Authority after an internal investigation has been completed. The Police Complaint Commissioner also has the power to order another municipal Police Department, or the RCMP, to conduct an investigation.⁹ If the Police Complaints Commissioner disagrees with a

³ *Police Act*, RSBC 1996, Chapter 367.

⁴ *Police Act*, s. 52(2). See note 3.

⁵ *Police Act*, s. 54(1). See note 3.

⁶ *Police Act*, s. 54.1(1). See note 3.

⁷ *Police Act*, s. 55(1). See note 3.

⁸ *Police Act*, s. 59 generally. See note 3.

⁹ *Police Act*, s. 55(1). See note 3.

disciplinary finding by the Chief, he may order a public hearing, or in serious cases, call for a public inquiry. The Solicitor General is responsible for ordering a public inquiry.¹⁰

The Office of the Police complaint Commissioner has an operating budget of \$985,000 for 2002/2003 (down 24% from 2000/2001) and employs 6 full-time staff. It closed 379 complaint files in 2002, and 366 complaint files in 2003.

A Formal Call for Independent Investigations

The need for the Office of the Police Complaint Commissioner to be able to conduct independent investigations was identified by Justice Wally Oppal, in his 1994 Commission of Inquiry Report "Closing the Gap: Policing and the Community." Oppal stated:

In order to ensure accountability, the office of the Commissioner must be vested with complete independence and the authority to conduct independent investigations if necessary."¹¹

The amendments to the *Police Act* that followed the Oppal Report did not incorporate Oppal's recommendation that the Police Complaint Commissioner be given the power to conduct independent investigations. As a result, the need for independent investigations remains a burning issue.

Under section 50(2)(h) of the *Police Act*, the Police Complaints Commissioner is required to:

Periodically conduct reviews of the complaint process and make any recommendations for improvement of that process in the annual report under section 51.1.¹²

In his 2003 Annual Report, Police Complaints Commissioner Dirk Ryneveld cited the need for an immediate amendment to the *Police Act*, allowing for independent investigations into allegations of police misconduct:

¹⁰ *Police Act*, s. 59.1. See note 3.

¹¹ The Honourable Mr. Justice Wallace T. Oppal, Commissioner of the Commission of Inquiry on Policing in British Columbia, *Closing the Gap Policing and the Community, The Report Volume I*, Letter of Transmittal at page xxviii.(31 July 1994/Vancouver)

¹² *Police Act*, s. 50(2)(h). See note 3.

One of the most significant issues raised during the past year is whether the Office of the Police complaint Commissioner (OPCC) has the right to conduct an independent investigation into a file, where it appears that the initial investigation was flawed, inadequate or misleading. If the OPCC is restricted to making decisions based solely on the investigation provided by the police, then in my view, the concept of civilian oversight is severely compromised.¹³

Ryneveld's call for independent investigations forms the backdrop of the first part of this report.

Bias in Internal Investigations

Black's Law Dictionary defines bias as:

Inclination; bent; prepossession; a preconceived opinion; a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction. To incline to one side. Condition of mind, which sways judgment and renders judge unable to exercise his functions impartially in particular case.¹⁴

In law, to be biased does not mean one is dishonest, ill-intentioned or incompetent. Police officers can be inclined towards supporting other police officers without being corrupt. Indeed, such an inclination is difficult to avoid. Shared acquaintances, training, values, and experiences create a sympathy of attitudes and interests between officers that makes impartiality a challenge, even with a high degree of self-awareness and the best of intentions. This is particularly the case where the community of officers is relatively small, as in the Vancouver Police Department with a membership of 1100 officers.

The unique pressures and professional demands upon police officers compound the challenge of impartiality. Police culture is a military culture that demands loyalty, allegiance, and a high priority on team values. These team-oriented values are critical for police officers who must often place their lives in the hands of their fellow officers in the course of their daily job duties. Furthermore, policing relies upon a hierarchical command structure that requires cohesive group action and is undermined by individualism or dissent. This emphasis on unanimity and allegiance to the group creates further challenges to "impartiality" when a fellow officer is placed in jeopardy, as through the police complaint process.

¹³ Dirk Ryneveld. *Police Complaints Commissioner 2003 Annual Report*. (Victoria:2003).

¹⁴ Black's Law Dictionary, 6th Ed., s.v. "bias".

The culture of shared values and mutual allegiance between police officers has both positive and negative aspects. On the one hand, it gives police officers the support and structure they need to place themselves regularly in harm's way in order to serve and protect the public. However, when there is an issue of police misconduct, this culture can harden into a "Blue Wall" that has led many with experience in the internal investigation process to the conviction that a police investigator's loyalty lies primarily with the police, and only secondly with the complainant.

This institutional bias is explored in *Police Culture and the 'Code of Silence'*.¹⁵ John Westwood, Ph. D., a 13-year veteran of the complaints process with the B.C. Civil Liberties Association, wrote:

I have no experience with internal investigations when the matter arises internally, but I have attended many interviews with civilian complainants. I have never met an internal investigator who is biased in favour of a civilian complainant, though I have met a few who apparently view their job as assuaging the complainant while taking the officer's statement at face value. Nor have I assisted in a complaint where the police witnesses support the complainant's account of events in opposition to the accused officer's account. However, when an officer's statement conflicts with a civilian complainant's, in the absence of strong evidence to the contrary the officer's account of the incident is normally accepted.

Investigative Independence

In the Vancouver Police Department, the problem of bias is deepened by the administrative structures in place to oversee internal investigations. Under the current chain of command, there is little separation between the Vancouver Police Internal Investigation Department and the Discipline Authority. Except in rare instances, both are administered and overseen by the Chief Constable. In other words, the Chief Constable both conducts the investigation to determine if misconduct has occurred, and then sets the penalty if he believes there is misconduct. This dual role conflicts with a fundamental principle of our legal system: the separation of the Executive (who investigate the crime) and the Judiciary (who make findings of

¹⁵ John Westwood, *Police Culture and the "Code of Silence"*. July 2001. Formerly accessible on the Office of the Complaints Commissioner website, www.opcc.bc.ca.

guilt). Judicial independence has been characterized as "perhaps the most essential characteristic of a free society."¹⁶

In addition to acting as Discipline Authority, the Chief Constable fills another role that further undermines the independence of internal investigations. The Chief Constable is also the head of the VPD Communications Department, in charge of media and public relations. The needs of Communications and Internal Investigations are often in conflict. In order to be free of undue pressures, internal investigators require a politically neutral environment that is unconcerned whether the results of investigations reflect poorly or well on the department. However, as a spokesman and head of Communications, the Chief is required to project a positive public image of the department through the media, to promote its communications agenda, and generally to defend the department against critics. The conflict inherent in this dual role was underlined in remarks made by Chief Jamie Graham to CKNW Radio, shortly after Pivot Legal Society released its report *To Serve and Protect*, which documented 50 affidavits alleging misconduct by officers in the Downtown Eastside:

They (Pivot) did a nice, high-end glossy report with a series of innuendo and criticism of us in a wide variety of cases, and actually went as far as without any naming anybody simply threw out there the fact that we kidnap and we injure and we torture people. I've never heard anything so preposterous in my life. So, but its out there. And I can't fight it when there are no names attached to it.¹⁷

It is consistent with the Chief's role as head publicist for the VPD to denigrate uncomplimentary affidavit evidence as "innuendo" and "preposterous." Moreover, as the spokesperson responsible for defending the reputation of the department, his frustration at being unable to "fight" such evidence, when the victims are afraid to give their names to police, is understandable. However, such an attitude is inconsistent with Chief Constable's role as head of the Internal Investigations Department, mandated to investigate allegations of police misconduct objectively and fairly. As a result, when Pivot submitted the names of the victims to the Office of the Police Complaints Commissioner, the Commissioner agreed with Pivot Legal Society's submission that the Chief Constable was biased, and ordered an external RCMP

¹⁶ Sam J. Ervin, Jr., *Separation of Powers: Judicial Independence*, 35 LAW & CONTEMP. PROBS. 108, 121 (1970).

¹⁷ CKNW News interview with Bill Good, February 13, 2003

investigation into the affidavits. However, while this bias was public and overt in the case of the 50 affidavits, it is no less pervasive in other, less high-profile cases.

Marginalized Persons

Many individuals who participate in the current complaints process will experience the biasing factors described above. However, these factors are particularly acute when the complainant is a marginalized person. Individuals who fit the stereotypes of drug addicts, homeless people, or sex-trade workers immediately arouse the skepticism and hostility of police who are conditioned by their experience and training to be in a conflict relationship with such persons. Marginalized individuals who have related their experiences with the complaint process to Pivot Legal Society have reported intimidation, skepticism, contempt and hostility by internal investigators.

Some may say that marginalized persons warrant this distrust and enmity. However, it is a basic principle of justice that anyone who has been the victim of police misconduct is entitled to a fair investigation, regardless of their perceived social status or even criminal record.

The lack of trust between marginalized persons and the police undermines the current complaint process in another, related way. Marginalized persons who have been the victim of police misconduct do not trust police to do a fair investigation, and often fear retaliation by police if they do make a complaint. Pragmatic survivors generally, such individuals have too often felt the harsh edge of law enforcement to want to participate in a system administered by police. As a result, few step forward to make complaints, and those that do rarely emerge with the feeling that they have been treated fairly.

The Reasonable Apprehension of Bias

In administrative law, the triggering factor for a determination that a decision is compromised by bias is not whether the decision-maker has been partial in his or her reasoning, which is difficult to prove. Rather, the triggering factor is whether the statements and relationships of the decision-maker create a “reasonable apprehension of bias” in the eyes of an informed observer. The test for ascertaining whether “a reasonable apprehension of bias” exists in a given case was set out by de Grandpré J., in *Committee for Justice and Liberty v. National Energy Board*¹⁸:

¹⁸ [1978] 1 S.C.R. 369, at p. 394

... the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information... [T]hat test is "what would an informed person, viewing the matter realistically and practically -- and having thought the matter through -- conclude. *Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.*" (emphasis added)

The reason for this test goes back to the ancient principle in law that "Justice must not only be done, but must be seen to be done." Even if the correct result is achieved, if parties have reason to believe that the decision maker is biased, then the resulting discontent and resistance will undermine respect for the administration of justice. A robust system of accountability must not only be accurate in its findings, but must also be perceived by the public to be impartial and objective in reaching those findings.

Pivot Legal Society's position is that British Columbia's current police complaint system is flawed, due to its reliance upon internal investigations and the reasonable apprehension by informed observers that bias influences the outcomes of those investigations.

Evidence of Bias: Case Studies

The last several years have seen a number of high-profile incidents involving police misconduct that highlight the shortcomings of the current system of internal investigations.

Jeffrey Berg: On October 22, 2000, Jeffery Berg was apprehended in an alley by a member of the Vancouver Police Department, and later died as the result of a fatal traumatic brain aneurysm. A police spokesperson maintained that Mr. Berg was violent, that a scuffle ensued and as a result Mr. Berg "collapsed."

An autopsy concluded the cause of death was an aneurysm brought on by a blow to the neck. Mr. Berg's sister, Ms. Julie Berg, lodged a complaint with the office of the Police Complaints Commissioner. On December 19, 2002, the Vancouver Police Department determined, after a 26-month internal investigation, that there was no evidence to support allegations of misconduct by the officer.

The VPD internal investigation relied solely upon the statement of the officer involved. Believing the internal investigation to be biased and inadequate, Ms. Berg hired a private investigator to canvass the neighbourhood to find people who might have seen the incident. That private investigator found witnesses who disputed the police version of events. Two independent witnesses stated that they saw the lone police officer repeatedly kick and strike an unresisting Mr. Berg in the neck and head as he lay on the ground. In August 13 of 2004, after hearing some four weeks of testimony, a five-person coroner's jury has classified Jeff Berg's death in police custody as a homicide.

A public hearing into Mr. Berg's death is scheduled to begin in September 2004. Mr. Berg's death is currently also being re-investigated by the RCMP.

Frank Paul: In the early hours of December 6, 1998, Mr. Frank Paul's body was discovered dead in an alley in the Downtown Eastside. Initially, Vancouver Police told the Paul family that Mr. Paul had been the victim of a "hit-and-run." They did not inform the family that, the evening prior to his death, Mr. Paul had been in police custody for being intoxicated in a public place. After spending some hours in jail, Mr. Paul had been placed in a police wagon and dumped in an alley in the Downtown Eastside. The temperature was near zero, and he was later found where he had been left, dead of hypothermia.

The Vancouver Police Department conducted an internal investigation into Mr. Paul's death. The officers involved told internal investigators that they thought Mr. Paul was able to care for himself when they ordered him dropped off. A two-day suspension was imposed on the first officer for discreditable conduct, and a one-day suspension on the other for neglect of duty.

The whole story had not yet emerged, however. An internal jailhouse video was later released, that showed police dragging Mr. Paul's unconscious body out of an elevator. Jailhouse guards who had not been interviewed by internal investigators came forward and stated that Mr. Paul could not walk when he left the jail, and had to be dragged and lifted into the police wagon. Upon reviewing this evidence, on January 16, 2004 Police Complaint Commissioner Dirk Ryneveld called upon the Solicitor General to hold a public inquiry into the death. The Solicitor General, a former police officer, has so far refused.

Guns N' Roses: During the riot that occurred following the cancellation of a Guns N' Roses concert on November 7, 2002, concert-goers Robert Parent and Detlef Schroeder alleged that they were attacked by police as they attempted to leave the stadium. Videotapes of the attack showed a Constable Forester running towards Mr. Parent and striking him in the mouth with his baton, knocking out six teeth. Another video showed Constable Forester and another officer kicking and striking a prone Mr. Schroeder with their batons, breaking one of his ribs.

The victims laid police complaints. The subsequent internal investigation found that two officers had used reasonable force. The victims appealed, and the Police Complaint Commissioner ordered a public hearing, stating that in his view the use of force by the officers was both unnecessary and excessive. The adjudicator at the public hearing accepted Constable Forester's testimony that he had "unintentionally" hit Mr. Parent in the face. However, both officers were found guilty of using excessive force in the attack on Mr. Schroeder.

Thomas Stevenson: On the evening of December 7, 2002, Thomas Stevenson was shot six times by two members of the Vancouver Police Department after he refused to get out of a locked stolen car on East Pender Street. He sustained bullet wounds to his hands, chest and one arm and was pronounced dead at the scene. Dozens of additional VPD members arrived and one of them retrieved a toy plastic gun from Stevenson's lap. At 1:30am that night, VPD homicide investigators met with the Vancouver Police Union president and the VPD media relations officer to formulate a public position on the incident. The next morning, the VPD announced the death and released private personal information about Stevenson to the media, including his criminal record.

An internal investigation was conducted into the killing, and no misconduct was found. However, it later emerged in the Coroner's Inquiry into the death that the internal investigators had never interviewed Sgt. Clive Milligan or Const. Darren Foster, the two officers who fired at Mr. Stevenson, or any of the police officers who attended the scene. No attempt was made to reconstruct the scene, although forensic evidence later showed that Mr. Stevenson's wounds were consistent with him holding out his arms when he was shot. Soon after the incident, Sgt. Milligan, who had been involved in a prior fatality, was transferred to Internal Affairs. He now teaches the department's use-of-force class.

The Coroner's Inquiry Jury recommended that the Solicitor General implement a special investigations unit, independent of the police, to investigate circumstances involving police that result in serious injury, assault or death.

Riot at the Hyatt: In December 1998 a large crowd of protestors gathered at the Hyatt Regency Hotel in Vancouver, where Prime Minister Jean Chretien was hosting a Liberal fundraising dinner. At one point in the demonstration, a group of protestors breached the police restricted zone. Many protestors and some police officers were injured in the resulting melee. Twenty-one protestors lodged police complaints, alleging excessive force. An internal investigation was ordered.

One year later, the VPD provided the results of their investigation to the Police Complaint Commission. They found no evidence of misconduct by any officers. However, the internal investigation had failed to actually identify any of the officers involved, or to address whether the level of force used was justifiable. Then Police Complaint Commissioner Don Morrison found the investigation to be inadequate, and ordered a public hearing. However, the Vancouver Police Department challenged his authority to do so, arguing that since the supervising officer was not identified in the report, the Commissioner could not name him or anyone else as defendants. Three years of expensive legal battles followed between the Police Department and the Office of the Police Complaint Commissioner over the Commissioner's jurisdiction to order a public hearing.

On February 27, 2003 Police Complaint Commissioner Ryneveld dropped attempts to order a public hearing, and ordered the New Westminster Police Department to conduct a new, external investigation. According to VPD Chief Jamie Graham, that investigation found that the use of police force was justified, although it made a number of critical findings about the riot procedures used by Vancouver Police. All complaints were subsequently dismissed. To date, neither the complainants nor their lawyer have been allowed the opportunity to read the external investigators' report.

Alternatives to Internal Investigations

There are several alternatives to internal investigations currently in place in other Canadian provinces. Ontario, Manitoba, Saskatchewan and Quebec all have independent (non-police)

investigative bodies to respond to complaints of police misconduct.¹⁹ New Brunswick, Nova Scotia, and Newfoundland rely upon independent civilian investigations when internal investigations are unsatisfactory. British Columbia and Alberta are the only two provinces that rely exclusively upon police to investigate complaints about police misconduct.

A table summarizing the basic information on police oversight bodies across Canada can be found at Appendix A.

Manitoba - The Law Enforcement Review Agency (LERA)

The Manitoba Law Enforcement Review Agency (LERA) is an independent, non-police agency established in 1985 under *The Law Enforcement Review Act* to investigate public complaints about police. LERA deals only with complaints about municipal police arising out of the execution of duties. It does not investigate criminal matters, which are referred to the Crown Attorney's office. The Commissioner of LERA is appointed by the Lieutenant Governor in Council.

LERA investigates all police complaints. The LERA Commissioner first screens the complaint to ensure that it is not frivolous, and that further action is warranted. The Commissioner may then try to resolve the complaint through informal mediation. If the complaint is not resolved, and if there is no admission of wrongdoing by the respondent officer, the Commissioner must refer the complaint to a provincial judge for disposition at a public hearing. Public hearings under *The Law Enforcement Review Act* are conducted as administrative tribunals adjudicated by provincial judges. In this context, judges exercise powers under the *LERA Act* as persons designated for this purpose and not as a court.²⁰ Penalties that may be imposed by the provincial judge on the respondent officer are administrative only, and include dismissal, permission to resign, reduction in rank and suspension without pay.

LERA is an agency of the Manitoba Department of Justice, Criminal Justice Division. It is staffed by a Commissioner, an office manager, and two investigators. In 2002, LERA concluded 81 cases, with an average time to close investigation of 4 months. LERA's annual budget is \$280,000.

¹⁹ C.C.S.M. c. L75.

Ontario – Special Investigations Unit (SIU)

The Ontario SIU's jurisdiction is outlined in section 113 of the Ontario *Police Services Act*, which provides that the Director of the SIU may, and shall at the request of the Attorney General or Solicitor General, initiate investigations where serious injuries (including allegations of sexual assault) or deaths occur in situations involving police officers. When, as the result of an SIU investigation, the Director concludes that there are reasonable grounds to believe that police have committed an offence, the Director will lay charges and refer the matter to the Crown Attorney for prosecution.

Police services across the province are obligated, pursuant to regulations²¹ enacted under the *Ontario Police Services Act*, to notify the SIU immediately of serious injuries or deaths that occur in circumstances involving one or more of their police officers. However, incidents investigated by the SIU are not limited to those reported by a police service. The SIU routinely investigates incidents reported by injured persons and/or their representatives, the media and other government agencies.

Upon notification, the SIU conducts its investigation independent of police. This includes identifying and interviewing witnesses and experts; forensic identification; documentary reviews; and reconstruction, particularly in the area of motor vehicle incidents. It has been the SIU's historical experience that their perceived independence from police services is absolutely essential to securing the cooperation of both police and non-police witnesses.²²

The SIU employs 55 civilian investigators (non-police officers), of which 10 are full-time investigators with the remainder deployed on an as-needed basis. The SIU also has its own forensic identification section, led by 2 full-time forensic identification supervisors. Other employees include an executive director, a communications manager, legal counsel, a training coordinator, 3 investigative supervisors and various administrative staff. SIU's budget is approximately \$5.2 million annually.

Quebec – Police Ethics Commissioner/ Comité de déontologie policière

²⁰ Description of LERA taken from "CACOLE: Compendium of Civilian Oversight Agencies in Canada – 2002", pp 10-12.

²¹ OR 673/98

²² Description of the SIU taken from "CACOLE: Compendium of Civilian Oversight Agencies in Canada – 2002", pp 14-17.

Under Quebec's *Police Act*,²³ the Police Ethics Commissioner's principal and exclusive function is to receive and investigate any complaint filed by any person concerning the conduct of a police officer or special constable in the performance of her duties that may constitute a breach of the Code of Ethics of Québec Police Officers. The Police Ethics Commissioner has the power to conduct independent investigations where there are allegations of serious injury or death. The Commissioner has the ability to investigate the conduct of a police officer and to demand a criminal investigation in addition to the ethical investigation if he deems it necessary.

The Comité de déontologie policière is the administrative tribunal that sees to the integrity of the relations between police officers and the public. It is separate and independent from the Police Ethics Commissioner. The committee has the mandate to hold and sit at hearings to determine if a police officer has committed a breach of the Code of Ethics of Québec Police Officers. The Province appoints the 6 members of the committee for a period of five years.

The Province appoints the Commissioner for a period of five years. The Police Ethics Commission employs nine attorneys, ten investigators and three conciliators.²⁴

Saskatchewan – Police Complaints Investigator

The Saskatchewan Police Complaints Investigator (PCI) is a civilian appointed by the government to ensure that both the public and police receive a fair and thorough investigation of a complaint against the police. The PCI has the power to receive information about the accused police officer in any manner that the investigator deems appropriate. The PCI may request files in the possession of police services and interview and take statements from the accused officer. Proceedings are public, but decisions are not published.

The PCI investigated 134 files in 2001-2002 with an average investigative time frame of under 180 days. It is staffed by a director and administrative assistance. It has a budget of \$167,000 annually.

Recommendation

It is time for British Columbia to integrate independent investigations into our Police Complaint process. Pivot recommends:

²³ RSQ chapter 12/2000.

1. That British Columbia expand the budget and powers of the Office of the Police Complaints Commission to enable it to conduct timely, thorough independent civilian investigations of public complaints against municipal police officers, with unrestricted access to all police evidence and witnesses necessary for the investigation.
2. That when such an investigation determines that a police officer has engaged in professional misconduct that is not criminal, the findings of the investigation should be referred directly to a police complaints tribunal for disciplinary action. The role of the tribunal should be styled after the Quebec Comité de déontologie policière, and its adjudicators should be selected by an *ad hoc* committee consisting of one former police officer, one former judge, one sitting member of the provincial government, one sitting member of the municipal government and a representative of the ombudsman of BC.
3. That when such an investigation determines that a police officer has engaged in professional misconduct that is criminal, the findings of the investigation should be presented to a provincial court judge who will rule on an *ex parte*²⁵ basis whether a *prima facie*²⁶ case has been made for the laying of charges, the normal procedure for private prosecutions per s. 507 of the *Criminal Code of Canada*. If charges are approved, a special prosecutor should be retained by Crown Counsel to prosecute the case.

Such a system, incorporating the successful experiences of the independent civilian investigation bodies in other provinces, would be a powerful instrument for helping restore public confidence and participation in the Police Complaints process.

²⁴ Description of the Police Ethics Commissioner taken from “CACOLE: Compendium of Civilian Oversight Agencies in Canada – 2002”, pp. 21-25.

²⁵ By hearing of one side only. *Ex Parte* hearings are used in private prosecutions to insure that a reasonable case is made out before charges are laid, after which the accused is guaranteed full procedural fairness.

²⁶ On the face of it. A *prima facie* case presents enough evidence for the crown to secure a conviction barring any defences or additional evidence presented by the defendant

II. Training and Testing

Over the past several years, there has been growing evidence of a pattern of serious misconduct towards marginalized persons, in particular around the Downtown Eastside, by Vancouver Police Department officers. Along with the incidents involving Jeffrey Berg, Frank Paul, and Thomas Stevenson detailed above, other prominent incidents include:

Stanley Park Six: On January 14, 2003, six Vancouver Police officers took three alleged drug dealers from Granville Street to an isolated area in Stanley park and subjected them, one by one, to beatings that included shoves, punches and strikes with a police baton. The beatings were accompanied by threats and insults. After being reported by a fellow officer, the six officers were charged with a total of 33 offences, including assault, assault with a weapon and attempting to obstruct justice after a year of paid leave. Four of the officers were later convicted of assault, and two were fired.

Pivot 50 Complaints: Pivot Legal Society collected 50 sworn affidavits from marginalized residents of Vancouver's Downtown Eastside over a 9-month research term. The affidavits document allegations of misconduct by VPD officers, ranging from illegal searches and seizures to beatings of handcuffed prisoners. In July of 2003, the Police Complaints Commissioner ordered the RCMP to conduct an external investigation into the 50 complaints. The seven-member RCMP investigation team is scheduled to make their report to the Police Complaint Commissioner in the fall of 2004.

Pivot believes that, in addition to improving police complaint mechanisms, a new approach towards policing in the Downtown Eastside must occur. The City of Vancouver and its provincial and federal partners have moved away from viewing drug addiction as a criminal issue and towards viewing it as a health problem. Harm reduction is one of the four pillars of Vancouver's Drug Strategy, including safe injection sites and participation in the North American Opiate Medication Initiative (NAOMI) to provide clean, pharmaceutical heroin to drug users in an attempt to stabilize their lives and improve their health. An approach to policing that continues to harass and abuse drug addicts is at odds, not only with standards of professional police conduct, but also with a health-based approach to addiction.

Vancouver needs a vision of policing that is integrated with and supportive of this new approach. Special training is necessary for police working in the Downtown Eastside in order to facilitate such a change. Police in the DTES must adopt a new approach towards their relationship with such persons, one compatible with the understanding that drug addicts, sex-trade workers and other marginalized persons are entitled to and in need of the services and protection of the police, perhaps more so than any other population. Policing in the Downtown Eastside needs to be about more than orderly sidewalks; it also needs to be about serving the residents of that community.

Sensitivity training

Sensitivity training for police officers is commonplace in the United States, especially with respect to race relations. Sensitivity training consists of a series of workshops that teach officers about the realities of living as a minority or marginalized person. When conducted properly, sensitivity training can be instrumental in promoting fair treatment of marginalized groups.

Case Study: The Fort Lauderdale Police Department

Since 1999, the Fort Lauderdale Police Department has spearheaded an innovative homeless outreach program as a proactive approach to dealing with homelessness in the City. Instead of "bum sweeps" and arrests, police officers are trained to provide aid and referrals to displaced persons. According to Assistant Police Chief Bob Pusins, who oversees the program, it has been particularly beneficial to provide special training to officers with respect to the homeless:

A three-hour training called 'Homelessness 101' has helped to change the cultural outlook on the homeless population. Officers have become more sensitive to the needs and rights of homeless people...We recognize that an arrest for a minor or nuisance violation will not provide a long-term change in the behavior or lifestyle of a homeless person. What we really need to do is provide an opportunity for someone to break out of the cycle of homelessness. To provide that opportunity, our police officers are encouraged to refer a homeless person to the HAC (Homelessness Assistance Center) when appropriate in lieu of arrest. This approach addresses the

immediate problem and provides the opportunity for a long-term solution towards independence." ²⁷

The Fort Lauderdale Police Department developed the course together with the Broward Coalition for the Homeless. The Fort Lauderdale Homeless Outreach Program, which is funded by a \$50,000 Local Law Enforcement Block Grant, is comprised of police teams and a volunteer who once lived on the streets. The primary duty of the teams is to comb the city in search of homeless men and women and refer them to the Broward County Central Homeless Assistance Centre (BCCHA), where they receive assistance in social services, educational and employment programs, as well as a place to sleep and eat.

Reaction from community advocates and social workers to police participation in the outreach program has been enthusiastic. Ezra Krieg, Resource Development Director of the BCCHAC, is a strong supporter:

The Police Department has been fabulous. The officers have really shown compassion and the ability to change and utilize a resource in the community. They had an option of helping somebody instead of just moving them along. They now look at the homeless as people who are in trouble instead of people who are trouble.

Recommendation:

Pivot recommends:

4. That the Vancouver Police Department work with local community groups to develop a sensitivity training program aimed at educating Downtown Eastside officers about the realities of living as a drug addict, a sex-trade worker, or a homeless person, and benefits of harm reduction as a crime prevention and health protection technique. The program should educate officers about their options when dealing with marginalized persons, and encourage them to find alternatives to arrest that create opportunities for long-term change in such persons' behaviour or lifestyle.

²⁷ Allison Hibbert. "Police come to the aid of the homeless", *Police Chief Magazine*, May 2000. Reprinted on the FLPD website: <http://ci.ftlaud.fl.us/police/homeless2.html>, accessed July 24, 2004.

Integrity testing

Integrity testing is another method gaining popularity as a method to combat police misconduct. An integrity test creates a realistic condition or situation designed to generate a natural reaction by an individual or individuals so that their conduct, behavior and professional standards can be assessed. Much in the same way that the VPD's bait car program reduces the incidence of auto theft, an effective integrity testing program can help reduce the instances of misconduct in relation to marginalized persons by VPD officers.

Case Study: The New York Police Department

The New York City Police Department (NYPD) has been practicing an intensive program of integrity testing since 1994.²⁸ NYPD's integrity tests are realistic, staged scenarios designed by the Internal Affairs Bureau to target specific acts of police corruption, such as the theft of drugs and/or cash from a street level drug dealer.

The integrity test scenarios are as realistic as possible, and are developed based upon extensive intelligence collection and analysis. The tests are carefully monitored and recorded using audio and video electronic surveillance as well as the placement of numerous "witnesses" at or near the scene. All officers are aware that the program exists and that their own conduct may be subjected, from time to time, to such tests (although they are not told about the actual number of such tests, which has produced a sense that they are far more frequent than they are in practice).

Integrity tests are administered on both a targeted and a random basis. That is, certain tests are directed or "targeted" at specific officers who are suspected, usually based upon one or more allegations from members of the public, criminals or even other officers, of having committed corrupt acts. In addition, certain tests are directed against officers selected at random based upon the knowledge that they are engaged in work that is susceptible to certain acts of theft or corruption. All of the tests are carefully planned to avoid entrapment, and no officer is "enticed" into committing an act of corruption. The scenario merely creates realistic circumstances in which an officer might choose to engage in a corrupt act.

The rate of failure (i.e., when the subject engages in a corrupt act) in the "targeted" tests is significant. About 20 per cent of the officers tested on this basis fail the test, are prosecuted and

removed from the force. This would seem to validate both the reliability of carefully analyzed public complaints and allegations of police corruption and the efficacy of the specific integrity tests employed. By contrast with the comparatively high number who fail the "targeted" test, only about one per cent of the officers who are subjected to "random" tests fail. This seems to support the long held view of senior NYPD management that the vast majority of its officers are not corrupt.

More than one thousand five hundred (1500) integrity tests are administered each year among a force of 40,000 officers. The data produced by these tests provides reliable, empirical evidence of the rate of corruption among NYPD officers. The results have been both useful and instructive. "The introduction of the system has seen the reporting of attempts to bribe officers soar," according to a report by Transparency International, an anti-corruption organization. "Where previously offers of bribes may have been laughed off and not taken seriously, they now seem to be reported. No officer can now know whether or not the offer made to him or her is an 'integrity test,' it is better to be safe and report the incident than risk treating it as an irrelevance – let alone accept it."

In addition to providing valuable empirical evidence about the rate of corruption among police officers, integrity testing has produced very useful lessons about the strengths and weaknesses of the supervision and control of police officers in the field. Such lessons are used to develop better training and more effective policies, to insure that police services are provided effectively and honestly.

Recommendation:

5. That the Vancouver Police Department establish an integrity testing program in the Downtown Eastside aimed at reducing instances of misconduct by Vancouver Police Department officers in their interactions with marginalized persons.

²⁸ Description of NYPD Integrity Testing taken from the Transparency International Sourcebook 2000. <http://www.transparency.org/sourcebook/20.html>, accessed July 24, 2004.

III. Governance

Under the British Columbia *Police Act*, municipal police boards are composed of the local Mayor, one person appointed by City Council, and not more than five persons appointed by the provincial cabinet, upon the recommendation of the Attorney General in consultation with the Director of Police Services.²⁹

Police Boards in British Columbia perform four main governance functions. They are the employers of sworn and civilian staff (with their primary employer function being the hiring of the Chief Constable), they set policy and direction, they oversee the finances of the police department, and they oversee complaints against the department of a policy and service nature.

There is, however, a fundamental problem with this system of police governance. Despite the growing movement towards greater community direction in policing, our police board structure does not reflect the democratic principles of representation or accountability.

According to the Vancouver Police Board website, the board is selected to reflect the demographics of the local community. Currently, there are two lawyers, three business executives and one non-profit director on the Board³⁰. While the credentials of Police Board members are impressive, it is misleading to say that they are representative of the Vancouver community. Moreover, the current Police Board structure lacks accountability. With five seats dedicated to appointments by the provincial government, there is no mechanism in place to ensure that the members of that Board are responsive to the concerns of the local community.

The importance of accountability and community representation were cited by Honourable Justice Wally Oppal in his Commission of Inquiry report on policing, in which he stated:

We have some concerns about the appointment methods and effectiveness of police boards. There is a perception that appointments to these boards are made on a political basis. Many boards lack purpose and direction. We have seen boards that appear to be under the direction of police chiefs. Many board members feel it is their function to be advocates for the police department. These problems are common to boards across Canada.

²⁹ *Police Act*, s. 23. see note 3.

The role of a board is very important in the governance of police. The board is the employer of the police and collectively represents the community at large. Perhaps the most critical function it performs relates to the hiring of a police chief. Yet board members receive very little guidance and assistance in the performance of this task.

Police boards must be aware of their community's needs and priorities in the areas of public safety and policing. They should and must hold the police chief accountable for policing in their communities. They must critically assess the performance of the both the chiefs and the department. This is seldom done.³¹

The current Police Board model lacks financial as well as democratic accountability. The Vancouver Police Department is the single largest expense in the City of Vancouver's annual budget, and yet the City has no independent ability to reduce or modify that budget. Under section 27 of the *Police Act*, the City must financially support the Vancouver Police Department budget once the Police Board has certified it, even when other worthy municipal programs must be cut or sacrificed. Although the City may appeal specific items in a police budget to the Director of Police Services (who, with the Attorney General, appointed the Police Board), the City has no ability to place any limits on police spending.

In addition to the approved budget, Vancouver taxpayers are financially responsible for paying legal costs and damages when lawsuits are lodged against Vancouver Police officers for misconduct or negligence. Despite this fiscal liability, Vancouver taxpayers and voters have no role in the creation of policing policies that might reduce or curtail such damage claims.

The Oppal Commission report recommended changes to the process for choosing members of police boards in order to ensure a greater degree of accountability and local representation. That report recommended that the majority of police board directors be appointed by local city councils, with a minority appointed by the provincial government. Although this is a step in the right direction with many arguments to recommend it, it is still falls short of full democratic accountability.

³⁰ "Vancouver Police Board", <<http://www.city.vancouver.bc.ca/police/policeBoard/index.html>>, accessed June 28, 2004.

³¹ The Honourable Mr. Justice Wallace T. Oppal, Commissioner of the Commission of Inquiry on Policing in British Columbia, *Closing the Gap Policing and the Community, The Report Volume I*, Letter of Transmittal at page vi-vii.(31 July 1994/Vancouver)

The most accountable and representative alternative to the current Board appointment mechanism is to establish a locally elected Police Board. Currently, Vancouver has an elected School Board and an elected Parks Board. An elected Police Board would create a greater sense of closeness and interaction between the board and the public. Election campaigns would foster dialogue and shed light on the challenges and alternatives present in various policing activities. Finally, elected Board members would be independent, not beholden to the patronage or favour of particular provincial or municipal governments.

Recommendation

The Vancouver Police Board needs greater representation from and accountability to its local residents and taxpayers. Pivot recommends that:

6. That the City of Vancouver enter into discussions with the provincial government about ways to increase the level of local representation and accountability in our Police Board, and hold a municipal referendum on whether or not to have a directly elected police board.

About Pivot:

Founded in the fall of 2000, Pivot Legal Society is an advocate for systemic legal change on behalf of marginalized people, such as the homeless, drug addicts, and sex trade workers.

Pivot's mandate is simple: to advance the interests and improve the lives of marginalized persons through the use of law reform, legal education, and strategic legal action. The basic concept underlying both Pivot's name and its mandate is that a pressure point of social change is to be found at the edge of legal and social boundaries. By aggressively advancing the interests and defending the legal entitlements of the most disenfranchised persons in society, Pivot aims for a "trickle up" effect of respect and acceptance that will ultimately benefit all.

APPENDIX A

A Comparison of Police Oversight Bodies Across Canada

Comparison of Police Oversight Bodies Across Canada (2002)

Province	Organization	Complaint Investigators	Prov'l Pop'n (2001)	Budget	Budget per Provincial Citizen	Number of Staff	Accountable to:
BC	Office of the Police Complaints Commissioner	Internal/Other police depts by intervention of the Commissioner	3.91 Million	\$1.1 Million*	\$0.28	6	BC Legislature
ALTA	Edmonton Complaints Commission	Internal	N/A	\$284,000*		2	Edmonton Municipal Council
ALTA	Calgary Police Commission	Internal	N/A		N/A	3	Calgary City Council and Provincial DOJ
MAN	Law Enforcement Review	Independent civilian	1.12 Million	\$280,000	\$0.25	3	Minister of Justice
SASK	Police Complaints	Independent civilian	978,000	\$167,000	\$0.17	2	Minister of Justice
ONT	Special Investigations Unit	Independent civilian	11.4 Million	\$5.2 Million	\$0.46	25 FT, 45 PT	Attorney General
QUE	Police Ethics Commissioner	Independent civilian	7.24 Million			24	Gouvernement de
NB	The New Brunswick Police Commission	Internal/ Independent civilian by intervention of Commissioner	729,500	\$155,000*	\$0.21	2 FT, 3 Commissioners	Budget: Dept of Finance, Jurisdiction: Dept of Public Safety
NS	Nova Scotia Police Commission	Internal/ Independent civilian for appeals	908,000	\$293,000*	\$0.32	3 FT, 3 Contract investigators	Minister of Justice
NFLD	The Royal Newfoundland Constabulary Public Complaints Commission	Internal/ Independent civilian for appeals	512,900	\$220,000*	\$0.43	3 FT, contract investigators as needed	House of Assembly
PEI	No police oversight agency						
Federal	Military Police Complaints Commission	Internal (Provost Marshall). Independent civilian if the Chairperson finds it in the public interest	N/A	\$4.0 Million*	N/A	25	Parliament
Federal	Commission for Public Complaints Against the RCMP	Internal/ independent investigations if the Chair find it in the public interest	N/A	\$4.4 Million*	N/A	34	Parliament (Solicitor General)

* Note: Does not include cost to police departments for internal investigations.

Review Boards

ALTA	Law Enforcement Review Board	None (Appeal board)	2.97 Million	\$183,100	\$0.06	6 (Part time Board)	Solicitor General
QUE	Comité de déontologie policière	None (Administrative Tribunal)	7.24 Million			6 (Part time Board)	Gouvernement de Quebec
Federal	RCMP External Review Committee	None (quasi-judicial agency)	N/A	\$780,000	N/A	5	Parliament (Solicitor General)
ONT	Ontario Civilian Commission on Police Services	None (quasi-judicial agency)	11.4 Million	\$1.7 Million	\$0.15	11	Minister of Public Safety and Security