



January 5, 2007

Josiah Wood, Q.C., Review Team Chair
Section 42 Review of the Police Act
c/o Blake Cassels & Graydon
PO Box 49314, Stn Bentall Centre
Vancouver, B.C.
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Dear Mr. Wood:

RE: BCCLA and Pivot Response to Draft Report

On behalf of B.C. Civil Liberties Association and Pivot, we are writing this letter to provide you with a response to your draft report. Our response is brief due to the limited time we have had to digest your report. It will focus on what we continue to see as the key issue you need to address in your report: who shall investigate complaints against the police.

Before articulating our substantive response, let me convey our appreciation for the considerable effort and thought that you have so obviously put into your review of the complaint system. There are many strong and positive recommendations you propose for reform that would enhance public confidence in the police through more robust independent civilian oversight. For example, we are particularly supportive of your recommendations regarding third party complainants and disclosure of investigative reports to complainants.

You are to be congratulated for your work.

That said, we are ultimately disappointed with your recommendations with respect to enhancing the powers of the Police Complaint Commissioner.

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The most telling finding that you have made based on the Investigative Audit results is your conclusion in paragraph 182:

"These results demonstrate that, while Division 4 of Part IX provides an adequate process for the investigation, resolution and oversight of less serious public trust complaints, there is an unacceptably high risk that the more serious public trust complaints will not either be investigated thoroughly or concluded appropriately."

A statistically significant number of files that were reviewed indicate serious flaws in the investigation of complaints. Even more disconcerting, the files involving these flaws involved serious public trust default allegations (paragraph 123), 69% of which involved allegations of excessive force. It is exactly these kind of serious allegations that are the litmus test of whether the police can investigate themselves effectively. On this measure, we see the audit results as pointing to serious deficiencies in the system that significantly erode confidence in the police's ability to investigate complaints.

As you note, the question becomes how to deal with this problem effectively.

In our respectful view, the audit results support law reform to equip the Office of the Police Complaint Commissioner (OPCC) with direct investigative powers *in addition to* enhancing the OPCC's pro-active file monitoring powers as you recommend.

Let us explain our concerns about why we believe that your recommendations do not go far enough to address the serious problems identified by the Investigative Audit.

First, public confidence in the complaint process will be most greatly enhanced by providing an independent civilian oversight authority with the power to undertake investigations itself. We believe that this is an irrefutable statement. While other, lesser reforms may enhance public confidence to some degree, they can not go as far as an independent civilian investigative power. Quite clearly, the trend to greater investigative power vested in oversight authorities is reflected in other jurisdictions that you canvassed in paragraph 184 of your draft report.

Given the results of the audit, we believe that there will be significant public pressure to address in a thorough way the serious problems your review has identified.

Second, with respect to cost, there is no doubt that providing the Office of the Police Complaint Commissioner with investigative authority will add to the cost of the OPCC, probably significantly. But if you wish to reject this option due to cost, we believe that it would be important for you to provide an actual cost estimate for this added resource.

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We also note that presumably there will be some financial savings for municipal police departments who would no longer have the burden of allocating as many officers for investigations.

In contrast, with respect to your estimate for new OPCC resources to actively monitor files, we are concerned that you have underestimated the human resources to undertake this task effectively. OPCC staff will need to be completely familiar with all the evidence on key files. They will need to undertake an analysis of the way in which the police are investigating complaints *on a real time basis* to make your recommendation effective. Thus, OPCC staff will need to have their own investigative expertise in order to effectively flag problems as they arise, be able to correspond intelligently with police investigators and make recommendations to the Police Complaint Commissioner to remedy flaws that are identified. Indeed, to be effective in this monitoring model, the OPCC will need to hire staff with investigative expertise to undertake such work. In sum, we believe that more than two new staff will need to be hired and that new staff will need to be more than just analysts but have investigative skills as well. If so, why not just provide the OPCC with the authority to undertake some investigations themselves?

Notwithstanding this discussion of costs, there is a real question about whether it would be better for you to identify the cost issue, outline options and then let the government make informed choices after appropriate deliberation and public debate. The allocation of scarce resources is ultimately always a political question.

Third, with respect to the issue of which files would be investigated by the OPCC, as you note, this would fall to the discretion of the Police Complaint Commissioner as it does in the other jurisdictions you have canvassed. We worry that your objection to this – that the OPCC would become “an independent complaint processing unit” – will not be sufficiently compelling to justify rejecting this option. To the extent that public confidence will be enhanced by the OPCC undertaking particular investigations rather than the police, that is a laudable outcome. Moreover, the police will likely continue to undertake many investigations themselves.

Fourth, we continue to hold the view that in-custody deaths should always be investigated by the OPCC. The stakes are simply too high to leave this to the police, even using an external police department. In this regard, it is unfortunate that the Investigative Audit did not review any of the police files involving in-custody deaths. We believe this is a significant gap the audit and the review.

Finally, we raise an important issue about your mandate. In paragraph 43 you write that you view your task as one in which you must “balance as much as possible the view of the all the stakeholders in this process.” While stakeholders such as the BCCLA, Pivot and others will have strong views about how the process should work, we query whether your role is one in which

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you need to strike a balance between opposing views. Rather, we suggest that you should be free to make recommendations that would best serve the principle of public confidence in the integrity of the police. If that means choosing one stakeholder's views over another's, then so be it.

In that vein, we completely endorse your articulation of the following principle as one which should guide the design of an effective complaint system:

"What must be kept in mind, in the debate between the many different perspectives on this issue, is that without public confidence in the integrity of the police, their authority is undermined and their independence threatened. It is to the maintenance of public confidence in the integrity of the police, that strong effective oversight of the current complaint process is so essential"

In conclusion, we continue to believe that the OPCC should have the authority to conduct investigations. This belief is based on principle but now, given the Investigative Audit results conducted as part of your review, we firmly believe that there is sound empirical evidence to support such reform.

We urge you to amend your recommendations to include investigative authority for the OPCC in your final report.

Yours sincerely,



Murray Mollard
Executive Director
B.C. Civil Liberties Association



John Richardson
Executive Director
Pivot Legal Society