



## **B.C. Civil Liberties Association and Pivot Legal Society call for Civilian Investigation of Police Misconduct**

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Vancouver – The B.C. Civil Liberties Association (“BCCLA”) and Pivot Legal Society (“Pivot”) call for the legislature to introduce civilian investigation of police misconduct in British Columbia as soon as possible, following the release of former Judge Josiah Wood, Q.C.’s audit of 294 police complaints in the province.

“The product of the investigative audit is found in Appendix C of the report. The audit provides reliable evidence that police are unable to investigate themselves”, says Jason Gratl, president of the BCCLA. “We now have more than anecdotes to justify legislative reform.”

The audit found that:

- 1 in 3 investigations of allegations of excessive use of force by police had major errors and omissions that may have led to incorrect results, and 0 of 94 complaints of excessive use of force were substantiated by police investigators
- there have been systemic attempts to undermine the complaints process, including police failure to forward 46 files to Crown Counsel for criminal prosecution despite the circumstances warranting prosecutorial involvement
- the tendency for problems to exist in investigations is more prevalent in more serious complaints.

“The audit confirms what we’ve been saying for years; people trust the complaints system until they’ve experienced it,” says David Eby, a lawyer with the Pivot Legal Society. “Citizens expect a higher standard of investigation for more serious complaints; it is clear from this audit that police investigations of police are unreliable for serious complaints. There is clearly rot in the accountability system for B.C.’s municipal forces.”

The audit was proposed by the BCCLA in 2005 and implemented in the wake of the investigation of 50 police complaints filed by Pivot and documented in Pivot’s 2002 report *To Serve and Protect*. Independent civilian investigation models exist in Ontario, Manitoba, Saskatchewan and Quebec where trained civilian investigators are responsible for interviewing and collecting evidence surrounding allegations of police misconduct.

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## **Media Backgrounder: Police Complaint Audit**

- Audit of a randomly selected sample of 294 lodged police complaint files that were closed between June 2003 and June 2005 taken from 11 independent municipal police departments in British Columbia. 74% of these audited complaints were from Vancouver (143) and Victoria (73).
- No in-custody death complaint files audited
- 192 interviews were conducted of police representatives (86), complainants (29) and other stakeholders.

### **Material defects in investigations of excessive force**

1. There were material defects in the investigation of 33 excess force complaints. This represents one-third of the total number of the excess force complaints audited, and a full two-thirds of all materially deficient investigations. (p. 51 main review, para 178 and p. 44 main review, para 182)
2. “[A]lmost one third of the complaints... involved allegations of excessive force. In none of the files we reviewed, however, was a single excessive force allegation found to have been substantiated.” (Appendix C, page 41 [“C-41”])
3. “[T]here were a troubling number of complaints (47) involving allegations of relatively serious police misconduct that were not investigated as criminal complaints and were not sent to Crown counsel for consideration of possible charges” (C-46; see also C-37, C-49 and C-50)
4. “In some of these [use of force] cases ... the conclusion of the investigation seemed to coincide with the end of the six month limitation period that would ordinarily apply to summary conviction offences [preventing complainants from bringing assault charges against police]. This could reasonably give the impression that the police had intentionally delayed the ... investigation...” (C-46)
5. “in more than 20 excessive force cases... the findings, conclusions or recommendations...were either unreasonable or inappropriate or, based on the material on file, we could not confirm their reasonableness or appropriateness.” (C-41) “this was reflected in the DA decisions, some of which... went against the weight of evidence on file” (C-41)

### **Routine police violation of Canadian law**

6. “complaint files from a number of Departments... demonstrated an unawareness of, or an inability or unwillingness to abide by, the legal and constitutional limits of police powers of search and seizure...[I]n most, if not all, of these cases, no attempt was made...to follow the other requirements under...the Criminal Code. In virtually all such cases, complaints were routinely dismissed without any or any significant investigation...” (C-45)
7. A number of complaints from one Department involved the practice of ‘breaching,’ i.e. arresting and transporting an individual, purportedly on the basis of an ‘apprehended breach of the peace.’ The auditors found this practice was more often based on a suspicion that the individual was a drug dealer or was “other wise ‘undesirable.’” Furthermore, none of files contained any question or comment on the legality or constitutionality of this practice, even though it “squarely arose” in several of the complaints reviewed. (C-44)
8. “There were Departments that appeared to ignore certain clear requirements under the Police Act...In most cases, these problems persisted for some years, which suggests that the Discipline Authority was unaware of the statutory requirements, unaware that the Department was not meeting the requirements, or consciously chose to ignore the statutory requirements.” (C-49)

### **Problems with police self-investigation generally**

9. “there were a number of unsubstantiated complaints in [both excessive force and] other categories in which the findings, conclusions or recommendations...were either clearly unreasonable or inappropriate”

(C-54)

10. "... there were emails or memos on file implying that the Investigators had set out to disprove or dismiss the allegations in the complaint rather than conducting full and fair investigations." (C-32)
11. In some instances, the summary dismissal provision "seemed to be used as a justification for partial investigations, selectively focused on dismissing complaints." (C-21) "In the case of many complaints... summary dismissal was inappropriate and a full investigation ought to have been carried out." (C-23)
12. In total, only 8% of complaints were substantiated and only 3% resulted in formal discipline. (C-54)
13. "Although s. 52(5) of the Police Act requires a person receiving a complaint to assist the Complainant in completing a record of the complaint... few of the records... we reviewed documented any significant efforts by complaint takers to assist" (C-16)
14. "In one Department almost all non-lodged complaint files contained a... letter acknowledging receipt of the complaint and... stating [it] would be dealt with under the Police Act but in most cases there was no evidence this was actually done" (C-17)
15. "Many files contained a criminal background investigation of the Complainant, which was often the first step undertaken by the Investigator... Comparable information, about Respondent Officer's discipline history, was not reflected in the file." (C-37)
16. "In some Departments, Respondents were provided with copies of all statements or other evidence... prior to being required to submit a duty report." (C-40)

#### **Problems with internal Discipline Authorities (Chiefs of Police)**

17. "Our concerns arose primarily as a result of incomplete or inadequate investigations. This, in turn, was reflected in the Discipline Authorities' decisions, some of which were flawed because they were based on inadequate investigations and others of which seemed to go against the weight of the evidence on file." (C-41)
18. "An issue common to most Departments was a failure to address, analyze or discuss the grounds for arrest or for search.... the Discipline Authority often missed or ignored the fact that the initial arrest or search may have been unlawful or unauthorized, making any subsequent use of force unacceptable..." (C-50)
19. In several cases, the Discipline Authority reduced proposed disciplinary measures even though the default was "too serious to qualify for a pre-hearing conference and the ultimate discipline agreed upon was unreasonably lenient." (C-15)