

June 23, 2006

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.  
V7X 1L3

Dear Mr. Wood:

**RE: Follow Up Submission**

I am writing to follow up our meeting of June 1, 2006. First, let me thank you on behalf of the B.C. Civil Liberties Association and my colleagues on the BCCLA Policing Committee for your efforts in the review of the *Police Act*. Given our discussion, we are confident that your final report will be an important development in the evolution of the police complaint process in British Columbia.

We have two additional submissions to make in addition to providing you with a couple of documents that we promised to pass on. With respect to the latter, please find enclosed a copy of the RCMP's Rules Respecting Public Complaints Against the Royal Canadian Mounted Police (also known as the Commissioner's Standing Orders (Public Complaints)). These rules are made pursuant to section 45.38 of the *Royal Canadian Mounted Police Act*. Also enclosed is a submission by the BCCLA to Dirk Ryneveld, Q.C., B.C. Police Complaint Commissioner, with respect to our views as to whether there should be public hearings for the respondent police officers in the Stanley Park matter.

Those two housekeeping matters taken care of, the BCCLA has two further submissions to make to you regarding two substantive issues. First, we have some feedback for you with respect to proposals to create an integrated police investigation team comprising of police officers seconded from various municipal forces that would be responsible for investigating police complaints. Second, we have a further submission to make to your with respect to our proposal to permit the Police Complaint Commissioner to substitute his decision for that of a Disciplinary Authority.

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### *Integrated Police Investigation Team*

During our meeting, you raised the idea of creating an integrated municipal police investigation team. We have now considered this idea. Without further details (e.g. who would staff this team, who would lead it, what role would it play, etc.), it is difficult to give a detailed response. Nevertheless, on the level of principle, we continue to believe that this option would be plagued by the same pitfalls as the current system with respect to public confidence in the police. The public would most likely continue to perceive an institutional conflict (police investigating police) if not a direct organizational conflict. We believe that it is the public's ongoing skepticism that police can fairly investigate police, regardless of whether they investigate their own members or members' of another police agency, that continues to be one of the primary barriers to public confidence in the current complaint system under the *Police Act*. We reiterate our concern that this lack of confidence functions at two levels. First, the general public will lack confidence. Second, prospective or actual complainants will also lack confidence in a system that permits only police to investigate police. These individuals, as we now believe occurs frequently, will simply forego making a complaint.

In our letter to Dirk Ryneveld, Q.C. on this issue, we articulated several reasons that justify the need for a civilian agency to have the legal power and capacity to undertake complaint investigations. Some of those reasons provide further justification for our opposition to the idea of an integrated investigation team. First, we noted that the civilian authority's power to investigate complaints will provide a significant incentive for internal investigations to be done properly. Even with an integrated investigation team, we would expect some investigations to continue to be done internally. In our view, locating the authority to do independent investigations in a civilian agency, will create a more effective incentive for proper internal investigations than an integrated model.

Second, the Police Complaint Commissioner would have no other investigative option if he was not satisfied by an investigation by an integrated team. Indeed, he would have no where to turn to which is an untenable possibility in a complaint system.

Third, our concern regarding personalities driving outcomes would continue to hold if an integrated police investigation team was in place. Presumably, the Commissioner would not be in a position to choose police members nor choose the leader of the integrated team and so couldn't assure himself that he would have confidence in the members of the team. We believe that the Police Complaint Commissioner needs legal authority to ensure that he can control an investigation in order for there be to public confidence and *de facto* civilian review and oversight.

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Fourth, given the logistics and availability of police members to staff an integrated team, likely a large proportion of the members of the team would be seconded from the Vancouver Police Department (VPD). Thus, the advantages of avoiding a direct organizational conflict that is presented by the integrated team would not likely be realized given the number of complaints that would likely focus on the VPD.

Finally, bestowing a civilian with the legal authority and capacity to undertake professional conduct investigations is no longer a novel one. Indeed, Ontario's new Bill 103, *An Act to Establish an Independent Police Review Director and Create a New Public Complaint Process by Amending the Police Services Act*, will give the new Independent Police Review Director the legal authority to conduct his or her own civilian led investigations.

Furthermore, section 45 of Saskatchewan's *Police Act* was amended in 2005 to authorize the Saskatchewan Public Complaints Commission (a civilian body appointed by the Lieutenant Governor in Council on recommendations by the responsible minister) to assume responsibility for and control of any police conduct investigation when it believes that it is advisable to do so.

The time has come to make this innovation a reality in British Columbia.

Before leaving this topic, we would like to reiterate our response to one comment you made during our meeting. You relayed the concern that if the Police Complaint Commissioner had the authority to investigate, then questions would arise as to who would be responsible for reviewing the Commissioner's investigation.

This seems to us a weak argument and one that ignores the structural guarantees built into the Office of the Police Complaint Commissioner that are meant to encourage public confidence in the office. First, the Commissioner is an independent Officer of the Legislature selected by an all-party committee of the legislature. The Commissioner has a duty to report to the Legislative Assembly as a whole, not just the responsible minister. The Commissioner is a civilian. In any system of review, the "buck" must stop somewhere. Under our present system, the Police Complaint Commissioner is given significant final authority to determine the outcome of a complaint. Providing the Office of the Police Complaint Commissioner with investigative authority is a logical and timely evolution in the complaint process.

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*Authority for the Police Complaint Commissioner to Substitute Decisions*

As expressed in our May 12, 2006 letter to Dirk Ryneveld, Q.C., the BCCLA believes that the Police Complaint Commissioner must be given broader authority to ensure that professional conduct standards are respected. We reproduce an excerpt from that letter that is on point:

*In the almost eight years since the creation of the current Part 9 of the Police Act governing the police complaint process, there have been approximately 12 public hearings ordered by the Commissioner. If the BCCLA had been asked in 1998 whether we would be satisfied with twelve public hearings in eight years, we would have responded with an emphatic "No."*

*Public hearings have become complicated, time consuming and expensive procedures. Unsurprisingly, respondent officers are almost always represented by legal counsel, a right the BCCLA would argue to protect. The Commissioner is unlikely to order a public hearing in the public interest except in only the most serious of allegations of misconduct due to the cost and time required to undertake a public hearing. Yet, he may believe that a Discipline Authority has erred with respect to the conclusion regarding conduct or in the sanctions imposed against an officer who has committed misconduct.*

*The BCCLA does not perceive a simple remedy to make public hearings more efficient, less time consuming and inexpensive. Partly due to their very public nature and the degree of media attention these hearings attract, we would expect them to continue to be expensive and time consuming.*

*Instead, we believe that the Commissioner should have a new authority to substitute his own decision for a decision of a Discipline Authority both with respect to a conclusion as to whether an officer has breached professional standards and the appropriateness of discipline/corrective measures. Such authority should only be exercised when a public hearing is not appropriate in the circumstances ...*

Here, we are cognizant that under the current system in Part 9, the Discipline Authority (DA) has exclusive jurisdiction to make these decisions only subject to an order for a public hearing by the Commissioner. We are well aware that a change in this policy will likely bring resistance from municipal Chiefs of Police. We also believe that there are sound principled reasons for giving chiefs the primary responsibility for making disciplinary decisions. For those reasons, a review of a DA's authority should be subject to deference by the Commissioner.

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So how would a review process work? First, any interested party (complainant, respondent or Commissioner on his or her own initiative) could initiate a review. Second, the Commissioner would review the evidentiary record as it exists based on the investigation report. Parties would be entitled to make written submissions which the Commissioner would consider. Standard fresh evidence rules would apply. Third, the standard of review would be based on an error of law or principle or misapprehension of the evidence. This standard would be the same as for a bail review hearing in the Supreme Court of British Columbia. Fourth, the Commissioner's decision should also be subject to judicial review.

Practically speaking, we believe that permitting interested parties to request a review would be an incremental change in the process given the Commissioner's current practice to review all discipline decisions regardless of whether a request has been made for a public hearing.

That said, we recognize that a more formal review contemplated by our proposal will add to the Commissioner's responsibilities. We believe though this is justified given the experience of the Office of the Police Complaint Commissioner since 1998 and the need for greater options for civilian oversight than just a public hearing.

In summary, our objective is to ensure that when a Discipline Authority makes a discipline decision, that decision is based on a proper understanding of the law and the *Code of Professional Conduct* (or other applicable standards) and a reasonable application of the facts to the law and the standards for professional conduct. Though the Discipline Authority should bear the primary responsibility for this decision in the first instance, there should be a more complete check on that authority beyond the current option of ordering a public hearing to ensure that there is *real civilian* review and oversight of police in British Columbia. Given the limited option of the public hearing, we believe that the system is currently compromised in this regard.

In closing, we would be happy to discuss these submissions further with you. We look forward to your report.

Yours sincerely,

Murray Mollard,  
Executive Director

cc: Dirk Ryneveld, Q.C., Police Complaint Commissioner  
Encl.