

# **Six Recommendations For Policing Reform**

Fall 2005

# ***1. Independent Civilian Investigations***

## **THE CURRENT SYSTEM:**

Under British Columbia's current *Police Act*, almost all investigations into police misconduct are conducted internally, by the same police department that employs the officer against whom the allegation of misconduct is made. If there is an allegation of criminal misconduct, it is the police of that department who have the sole authority to recommend criminal charges to the Crown.

## **THE PROBLEM:**

Internal investigations where police officers investigate their colleagues give observers the perception of bias, which conflicts with the long-held legal principle that "justice must not only be done, but be seen to be done." Not only are internal investigations perceived to be biased, they are biased. This does not mean that investigating officers are 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 municipal police forces, the largest of which is just over 1000 officers. Police simply cannot be expected to investigate their comrades, with whom they share long-term relationships and allegiances, objectively. There is a "blue code" between officers which undermines the public interest in police accountability.

Bias makes itself particularly apparent when the complainant is a marginalized person. Individuals who fit negative stereotypes through race, addiction, or poverty 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 responses of skepticism, contempt and intimidation from internal investigators.

The concept of effective civilian oversight relies upon thorough and objective investigations. If investigations fail to discover or disclose important evidence, due to low or conflicted motivation and institutional self-interest, then there is little that *post-facto* oversight will accomplish. Oversight relies upon information provided by police, and it cannot effectively address issues such as biased investigations or missing evidence. Without a sincere motivation to uncover misconduct, conflicted police investigators will discover many opportunities for partiality and omission. An absolutely trustworthy investigation process is a condition for effective civilian oversight, and only independent investigations can provide that.

## **PIVOT'S RECOMMENDATION:**

Independent, external investigations conducted by curious and critical eyes are required for an effective Police Complaint process. In recent years, Manitoba, Quebec, Ontario, and Saskatchewan have all implemented systems of external, civilian investigation. In several cases, these systems were established in response to a clear failure of the internal investigation process, and a pressing need to restore public faith in the accountability of police. British Columbia is at a similar juncture. However, British Columbia is in a position to learn from the experiences of other provinces, and develop a system of external investigative oversight that incorporates the most effective elements of other oversight systems. British Columbia is in a strong position to develop an independent process for police accountability that can effectively address issues of objectivity, fairness, and public confidence.

## ***2. Police Board Reform***

### **THE CURRENT SYSTEM:**

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, on the recommendation of the Attorney General in consultation with the Director of Police Services.<sup>1</sup>

### **THE PROBLEM:**

Except for the Mayor, membership on a municipal police board is awarded through a discretionary political appointment with no public input. There is no system in place for ensuring that police board members are accountable to or represent the interests of their local community. According to the Vancouver Police Board website, the board is selected to reflect the demographics of the local community. However, in the case of Vancouver, the board consists of the Mayor, one business woman, one lawyer, one chief executive officer, one corporate director, a chartered financial analyst, and a business executive. While this board is an accomplished group with impressive credentials, it does not reflect the demographics of its community.

The importance of accountability and community representation were cited by the 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...

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.<sup>2</sup>

In order for police board members to be in a position to be assertive and hold police departments accountable, they must have a mandate, and a community whose interests they represent as a foundation for any critical positions they take. It is not realistic to expect a political appointee, who in some cases may have received the position through a patronage appointment, to be assert themselves against the will and direction of the highly resourced police department that they oversee. It is not realistic to expect them to be sensitive and responsive to the needs of their community. They do not have a connection, and they do not have a mandate.

British Columbia is the only province in Canada where a majority of police board members are appointed by the provincial government. We have municipal schools boards and parks boards that are accountable to their communities through an electoral process. Municipal police boards should meet that same standard. Our local communities need strong voices on police boards. If policing services are to reflect the diverse needs of communities, residents must be engaged in the process of police governance in a meaningful way. The idea of accountable governance of public institutions is a core characteristic of Canada's constitutional democracy, and is no less, and in many ways much more, applicable to policing than to the many other government services available to the public.

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<sup>1</sup> *Police Act*, s. 23. see note 3.

<sup>2</sup> 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 )

### ***3. “Compassion” Training for Officers***

#### **THE CURRENT SYSTEM:**

New recruits to the Vancouver Police Department receive seven mandatory hours of diversity training, and are required to prepare and present a diversity project prior to graduation. Diversity training is not mandatory for existing police officers, though officers can choose to add diversity training to their portfolios by way of increment courses.

In contrast, the Winnipeg Police Department’s diversity training program includes 32 hours of Aboriginal Awareness training composed of 3 days of presentations and participation in a sweat lodge ceremony on the 4th day; 12 hours of diversity training, including presentations from Winnipeg’s largest cultural and minority groups (Filipino, Caribbean, Jewish, Gay/Lesbian); 2 hours of lecture on policy and the Human Rights Code that focuses on bias-based policing and racial profiling; and 2 hours of lecture on respectful workplace.

#### **THE PROBLEMS:**

The lack of time spent by Vancouver police officers in diversity and sensitivity training is problematic, given the exceptionally young age of the Vancouver Police force and the Department’s existing practice of sending their rookies to the Downtown Eastside - frequently pairing junior officers together. This practice, coupled with a largely marginalized population that calls the Downtown Eastside home, including a high concentration of sex-workers, drug addicts, homeless, individuals with disabilities, and people of Aboriginal descent, make it critical that the Vancouver Police Department give officers who work their contextually appropriate training and problem-solving tools.

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 fails to create the conditions for positive and empowering police relationships with community members is at odds with standards of professional police conduct and also with a health-based approach to addiction.

#### **PIVOT’S RECOMMENDATIONS:**

Special training is necessary for police working in the Downtown Eastside, training that educates officers about the realities of living as a drug addict, a sex-worker, or a homeless person, and the many sociological and economic factors that lead people to such situations. This training 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 a person’s behaviour or lifestyle.

With the Olympic Games on the horizon, and the eye of the international community settling on Vancouver, the Vancouver Police Department has the opportunity to be seen as a world leader in law enforcement. Ascending to this position will require initiatives that educate and train officers to be understanding, compassionate and tolerant. The move towards putting an end to the misunderstanding and bigotry that fuels bias and discriminatory policing is admirable in and of itself; however, it also holds the potential for creating fertile space where the public’s trust and confidence in policing can flourish.

## 4. Transparency

### THE CURRENT SYSTEM:

Gaining access to information in the hands of police is challenging and often adversarial process, and pro-active disclosure of information is rarely the standard. In the case of information arising out of a formal police complaint, the *Police Act* specifically states that the *Freedom of Information Act* does not apply. Under the current *Act*, people have no right to access information arising out of a complaint they have made, beyond a summary provided to them by the police department.

Information relating to police governance is also extremely difficult to access. Except for a short interval for public presentations and reports, Vancouver Police Board meetings are held almost exclusively in camera, as are their subcommittees. Although the *Police Act* provides for information to be withheld when to disclose it would compromise public safety or personal confidentiality, this power is over-used to prevent access to any information discussed at in camera meetings. In the age of communication departments and corporate egos, critical public attention is seen as an “attack.” Police react defensively to disclosures of information not favorable to them, yet, such disclosures are in the public interest. A similar sentiment is reflected in the *Office of the Information and Privacy Commissioner’s* 2004 -2005 Annual Report, where it is stated that “routine disclosure is expeditious, consistent with the goals of openness and accountability and less expensive.”

Transparency is a powerful mechanism in the service of accountability. The very cornerstone of transparency lies in the ability of the public to access information easily. When law enforcement is transparent, we can hold the police publicly accountable. Through openness, and disclosure of information, the public can engage in the exercise of police oversight. They can weigh what is expected of the police against the reality of actions the police have taken or not taken. This allows for problems to be addressed, such as the failure of police officers to comply with a departmental policy, or the failure of departmental policy to address police misconduct. In the wake of such findings, it also promotes dialogue and questioning, both integral in the democratic process. Thus, transparency is essential if police are to earn the trust of citizens and prevent corruption within their ranks.

### PIVOT’S RECOMMENDATIONS:

Information in the custody of the police that is of concern to the public should be made available to the public quickly, completely, and in an easily accessible form. People should have access to all information about the investigations and outcomes of their complaint, and this should be an automatic right enshrined in the *Police Act*. Moreover, unless there are exceptional circumstances, Police Board meetings should take place in an open forum, not *in camera*, with minutes of those meetings being made available to the public.

The starting point for any law enforcement agency regarding information should be one of pro-active disclosure. There is, in the words of British Columbia’s Police Complaints Commissioner, Dirk Ryneveld, the need to “strike the right balance,” and address legitimate policy concerns, particularly concerns about compromising an ongoing investigation. However, public access to information should be the standard practice. We need to create a freer flow of information between the police and the public they serve, and empower citizens to participate in overseeing and holding accountable the government institutions that work on their behalf.

## 5. Access

### **THE CURRENT SYSTEM:**

Under the existing system, making a police complaint can be a formidable task. All complaints must be made in writing. They must be faxed, mailed, or delivered in person to the police department involved or to the Office of the Police Complaints Commissioner. Complainants must have an address for correspondence and that address must stay the same for the duration of the process. Limitation periods must be observed, both in the making of the complaint and filing any appeal. This process assumes a level of education and functionality that, for many marginalized people, is unrealistic. Many residents of the Downtown Eastside have little formal education and they often lack the ability to competently read and write. Many residents are immigrants and do not have the necessary grasp of the English language needed to engage in the Complaints process. Finally, many are addicted, homeless, mentally ill, or faced with other personal challenges that made full and informed participation unlikely.

Even if an individual successfully files a complaint, the road to justice still poses a great many hurdles. The police and their legal counsel – funded publicly or by their union - bring significant resources and pressure to bear on cases of potential jeopardy to their officers, and to the general application of the *Police Act*. Unless the Police Complaints Commissioner's office is prepared to be an equally strong advocate for the rights of complainants, which would conflict with the neutral role of the Office, there is an imbalance. Only complainants with counsel are able to match even approximately the resources of police departments, and low-income people are generally unable to play an effective role in the Police Complaints process.

Marginalized persons - those who are homeless, disabled, drug addicted, mentally ill, or impoverished - are the most vulnerable to police misconduct. Therefore, ensuring that the police complaints process addresses practical impediments to its access for such persons is critical to ensuring a fair and accountable system of law enforcement. A Police Complaints process that does not actively direct its energy towards those most likely to be impacted by police misconduct risks failing in its basic mission. How marginalized persons are affected by those responsible for maintaining law and order is a barometer not only of our policing system, but of our society generally. Making certain that the rights of marginalized populations are protected is an insurance policy for the rights of everyone.

### **PIVOT'S RECOMMENDATIONS:**

There needs to be pro-active accommodation of the rights of low-income persons to participate in the complaints process. Marginalized persons need a complaints process that: is geographically accessible; staffed by people who can work in a supportive and non-judgmental way; is oral and interview based rather than written and form based; and protects and asserts complainants' rights proactively with reduced need for effective advocacy or follow-up on the complainant's part. Store-fronts set-up in marginalized communities, such as the Downtown Eastside, can serve to fulfill many of the objectives enumerated above. These spaces could remove many of the barriers to accessibility that participants in the existing complaints process now encounter. At the same time, this storefront presence would help re-build trust between local residents and police.

In addition to these improvements, greater attention should be given to providing better public education and outreach to encourage participation in the complaints process. Individuals must know that the complaints process is available to them, and, in turn, they must be encouraged to make a complaint if they feel they have experienced or witnessed police misconduct.

## ***6. Integrity Testing***

### **THE CURRENT SYSTEM:**

The current process for ensuring that police conduct themselves in a professional and ethical way is a reactive one, driven by formal complaints. It relies upon the willingness of individuals affected by misconduct to step forward and engage in a process that is time-intensive, uncertain, and exposes them to the risk – real or simply perceived – of police retaliation. This reactive process has, in an increasing number of jurisdictions, been supplemented by a pro-active process of addressing patterns of police misconduct.

The New York Police Department has been practicing an intensive program of pro-active monitoring of police conduct called “integrity testing” since 1994. In much the same way as “bait car” programs, 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. All tests are carefully planned to avoid entrapment, and ensure that no officer is “enticed” into committing an act of misconduct.

The New York Police Department program has been extremely successful. When integrity tests are administered to “targeted” officers, that is, officers who have had unproven allegations made against them for similar incidents, about 20% fail the test, are prosecuted, and removed from the force. On the flip side, officers who perform in an exemplary manner in random integrity tests are brought before the board and are offered 'choice' assignments or transfers that could lead to promotions into more senior positions. Over time, this program has led to a significant shift towards a culture of professionalism and accountability within the organization. For example, reports of attempted bribes of officers have jumped significantly.

The core idea behind integrity testing was summed up in a speech given by Chief of the New York Police Department in which he affirmed that, “the idea behind secretive integrity testing is to establish an ‘aura of omni-presence’... in that police could reasonably think any interaction with a member of the public (including criminal suspects) could be test by the agency.” Such an atmosphere is a forceful deterrent for corrupt or abusive officers, and poses no threat to those officers who operate with honesty and integrity.

The integrity testing model has since been duplicated in a number of other American jurisdictions. In 2004, the Toronto Police Department established its own program of integrity testing.

### **PIVOT’S RECOMMENDATIONS:**

Police have a power and authority that no other organized groups in Canadian society possesses. Ensuring that they maintain the confidence and trust of the in their ethics and professionalism is crucial to preserving and upholding the integrity of the whole democratic system.

An effective approach to ensuring police professionalism must be holistic in scope. In order to be as effective as possible, we need to address patterns of corruption and misconduct in both a pro-active and reactive manner. Integrity tests add a valuable tool by focusing on the prevention of the problem, rather than simply the treatment of it. Addressing and preventing police misconduct before it happens has far-reaching positive effects. The most important effects are in safeguarding the reputation and integrity of law enforcement, while protecting members of the public - especially those who are vulnerable to police abuse. If trust and confidence are never broken, they never need to be re-built.