

Independence in Civilian-Led Investigations of Police

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Special Acknowledgements

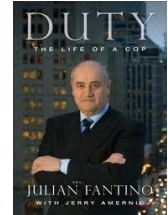
- Dr. Irwin Cohen, Director, School of Criminology and Criminal Justice
University of the Fraser Valley
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- Mr. Clifton Purvis, Executive Director, ASIRT
- Ms. Kelsi Barkway, Former Policy Analyst, ASIRT
- Canadian Association for Civilian Oversight of Law Enforcement

Research Question

How can civilian-led oversight agencies with the mandate to investigate the police, i.e. ASIRT-type models and/or public complaint bodies with a capacity to conduct their own investigations, be better structured to ensure the greatest independence from the police and the government?

Perception – A Major Factor

- Former Toronto Police Chief Julian Fantino (2007), speaking of an allegation of police corruption: ***“I had absolute confidence in the ability of the Toronto Police Service. I decided to go to the RCMP. This was more for optics and perception than anything else.”***
- The Commission for Public Complaints Against the RCMP found in a 2009 study that, ***“Overall, RCMP member conduct was deemed highly appropriate in 100% of the cases reviewed. The CPC found that the RCMP investigators charged with the task of investigating another member acted professionally and free from bias.”***



Pre-Research Observations / Questions

- No two agencies in Canada appear to be structured the same (in terms of being structured to have the greatest independence).
- We live in a practical world. How do we balance independence and investigative competence?
- Are civilian-led oversight agencies controlled by their budgets?
- Should civilian-led oversight agencies report to a Minister or directly to the Legislature or Parliament?
- Not all civilian-led oversight agencies have the ability to self-initiate investigations.
- Should the public be able to make complaints directly to a civilian-led oversight agency?

The Issue Today

The issue in Canada today is no longer whether civilian-led oversight agencies should be independent, but how best to achieve and protect this independence.

Methodology

- Qualitative research with experts in the Commonwealth countries of Canada, Australia, New Zealand, and the United Kingdom of Great Britain and Northern Ireland (**Summer 2012**).
- **Civilian-led oversight agency heads, or their delegates (13)**
- **Civil liberties groups, or like agencies (4)**
- **Persons with a Special Knowledge (6)**

Research Results

- 10 themes or best practices identified.
- High degree of consensus amongst all participant groups regarding key themes.
- No one agency adheres to all ten themes or recommendations.
- No agency could be identified as having the best model.
- All agencies incorporate at least some of the 10 best practices or themes identified.

No Prior Police Employment

Theme # 1: The head of a civilian-led oversight agency should never have worked as a police officer.

Fixed Terms of 5 – 7 Years

Theme #2: The head of a civilian-led oversight agency should be employed for a non-renewable fixed term of 5-7 years.

Fixed Terms of 5 – 7 Years

“If you have short terms for the head of the IIO or for the head of ASIRT or so on, a one year term, a two year term, that person will constantly be thinking about do they want reappointment. Are they going to be reapplying for appointment? And also that will result in campaigning by police forces against heads that they don’t like, in favour of heads that they do like. The longer the terms are the more likely it is that that person is going to experience independence.” – Executive Director, British Columbia Civil Liberties Association, Canada.

Report to the Legislature or to Parliament

Theme #3: The head of a civilian-led oversight agency should report to an all-party committee of the Legislature or to Parliament, or should otherwise be structured to have real and perceived operational independence from any bureaucratic department of the government.



Report to the Legislature or to Parliament

“The Authority is not subject to any direction from the government and our only obligation is to report annually to Parliament. For administrative purposes we’re part of the Attorney General’s department. So, if we have a human resources issue, we’ll go to the Attorney General’s department HR section, but we only report to Parliament. We don’t have to report to the Attorney.” – Senior Legal Officer, Police Complaints Authority, South Australia.

Report to the Legislature or to Parliament

“I think the best model is the independent officer of the Legislature model where the head of the organization must report out on an annual basis to the Legislature but does not report exclusively to government. The body needs to report to both opposition and government MLA’s.” – Executive Director, British Columbia Civil Liberties Association.

Adequate Budget

Theme # 4: Civilian-led oversight agencies require adequate budgets to ensure they will be capable of fulfilling their mandates.

Adequate Budget

“The extent to which the resourcing is subject to a police budget, or indeed is subject to detailed political kind of decision, is an extent to which independence can be compromised.” – Deputy Director, Committee on the Administration of Justice (CAJ), Northern Ireland.

Adequate Budget

“You have to set up these organizations to be adequately funded because otherwise they’re constantly going to be second guessing themselves in terms of the cases that they’re going to be able to take on.” - Executive Director, Commission for Public Complaints Against the RCMP.

No Seconded Resources

Theme # 5: Civilian-led oversight agencies, wherever possible, should avoid using seconded or serving police officer resources. Instead, on their 'investigative teams', civilian-led oversight agencies should employ a combination of trained civilian investigators with no prior police experience and former police officers, but in the case of the latter only to the extent that it is necessary to ensure investigative competence.



No Seconded Resources

“I think you have to remember that appearance is incredibly important as well. So, even if you’ve got some of the most professional officers with a huge amount of integrity and second them so they’re essentially part of the team and potentially investigating close colleagues or even colleagues that are at an arm’s length, it’s always going to undermine how independent such an investigation is going to look to the public.” – Policy Director, Liberty, United Kingdom.

No Seconded Resources

“The public simply will not accept a body that has current police involved in it. That’s the stage where we’ve reached now.” – Wally Oppal, Q.C.

No Seconded Resources

We live in a practical world:

- If seconded resources can be avoided outside of the investigative teams, this is also recommended.
- SIU – Forensics Unit
- Police Integrity Commission, NSW – Telecommunication Interception Team
- Not always possible.

No Seconded Resources



Trained Civilian Investigators

Former Police Officers

No Seconded Resources

“I have concerns about the all civilian model, I know it’s been proposed by some very high profile thinkers. And, I understand why, it’s because the public would say, ‘okay it’s completely objective, you don’t have cops, you don’t have former cops.’ But, I think you also need that practical experience. And, I think if you’re involved in a situation, where let’s say your family member or a loved one has been seriously injured, or if you’re the police officer involved in that situation, you don’t want an amateur.” – Executive Director, Commission for Public Complaints Against the RCMP.

No Seconded Resources

“When he came in for his interview, he challenged our investigator and said, ‘what are your credentials and what gives you the right to think that you can be qualified enough to sit down and interview me?’ Well, our guy was about ten minutes into his resume and finally the other officer said, ‘okay fine, fine, fine,’ and sat for the interview.” - Executive Director of the Public Complaints Commission in Saskatchewan.

No Seconded Resources

“It’s not that there should be any bar on ex-policemen necessarily being involved, but you’ve got to be very careful if you’ve got a situation where people may be investigating their own ex units.” - Deputy Director, Committee on the Administration of Justice (CAJ), Northern Ireland.

Direct Public Reporting

Theme #6: The public should have the ability to report incidents directly to a civilian-led oversight agency.

Direct Public Reporting

“Individuals will often feel intimidated to make the complaint to the body that they are complaining about. I have to say I can’t blame them especially if they have really suffered serious mistreatment. A direct complaints mechanism to the oversight body is very important.” – Director, Public Safety Program, Canadian Civil Liberties Association.

Direct Public Reporting

“Some people are just afraid of the police. They’ve had different experiences with them, different cultural backgrounds and different parts of the world and they’re afraid to go directly to the police.” – Jennifer Freund.

Ability to Self-initiate Investigations

Theme #7: Civilian-led oversight agencies should have the ability to self-initiate investigations.

Ability to Self-initiate Investigations

“One of the big concerns is that these things get filtered out at the level of the police service and they say well this is not a serious injury or a matter of a sensitive nature so we’re not even going to report it.” – Tom Engel.

Ability to Self-initiate Investigations

“We found when we did the inquiry in the ‘90's that members of the public who had an unpleasant (experience) with an officer were reluctant, understandably, to go to the police station and lay a complaint against that officer or an officer of that force. It is intimidating to say the least.” – Wally Oppal, Q.C.

Sole Decision Authority

Theme #8: Civilian-led oversight agencies, operating within their mandate, should have the sole authority to determine which incidents they will or will not investigate, without influence from any person or entity.

Sole Decision Authority

We have complete control over determining whether or not a matter meets our mandate or not, and that's a strong guarantee of independence. Therefore the Minister of Justice can't say, 'I want you to investigate this,' or a Police Chief can't say, 'I want you to investigate this,' and not give us a choice. It's up to us to make that determination. That's legislated." – Director, Serious Incident Response Team, Nova Scotia.

Sole Decision Authority

“We have our own piece of legislation, the Independent Police Conduct Authority Act 1988, which actually allows us to stand alone from government. We cannot actually be directed by government to carry out a specific task or investigation.” – Group Manager of Operations, Independent Police Conduct Authority, New Zealand.

Public Reporting / Public Face

Theme #9: Civilian-led oversight agencies should embrace public reporting with the idea of having greater transparency.



Public Reporting / Public Face

“The failure of an oversight agency to be able to publicly report on its actions, as well as the reasonableness of actions by the police or government, takes an enormous amount from the independence of the organization.” – Chief Civilian Director of the Independent Investigations Office.

Public Reporting / Public Face

“I think the organization has to have somewhat of a public face. I think there really is a very important part of a police oversight agency that needs to be able to convince the public that it is a robust agency with enough resources to do the job and is actually looking out for the public interest in what they do.” – Director, Public Safety Program, Canadian Civil Liberties Association.

Legislation to Support Independence

Theme #10: Civilian-led oversight agencies require strong legislation to ensure their independence from the police and the government.

Strong Legislation to Support Independence

The Office of Police Integrity's legislation - the *Police Integrity Act 2008*:

Section 9 (1): “The Director is an independent officer of the Parliament.”

Section 9 (7): “In particular, and without limiting subsection (6), the Director is not subject to the direction or control of the Minister in respect of the performance or exercise of the Director's functions or powers.”

Strong Legislation to Support Independence

“That’s the first starting point; make sure that your legislation is grounded in such a way to protect the independence of the office.” – Police Ombudsman of Northern Ireland.

Discussion – 10 Themes

1. No Prior Police Employment
2. Fixed Term of 5 – 7 Years
3. Report to Legislature or to Parliament
4. Adequate Budget
5. No Seconded Resources (Former P.O.'s acceptable)
6. Direct Public Reporting
7. Ability to Self-initiate Investigations
8. Sole Decision Authority
9. Public Reporting / Public Face
10. Legislation to Support Independence