

# CIVILIAN OVERSIGHT OF POLICE THE CANADIAN EXPERIENCE

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**ABSTRACT:** *The presentation will be a general overview of the framework of civilian oversight of municipal police forces in Canada. After a brief discussion of the history of the modern day police force, the three branches of civilian oversight will be described and discussed: Police Boards (governance), Office of Police Complaints Commissioner (complaints against police) and Independent Investigation Office (criminal investigation of police). Each branch of oversight will be discussed in the context of a specific case study. The consistent theme will be Sir Robert Peel's vision that "we are the police; the police are us" and demonstrating why this theme is essential to the success of modern society as well as policing itself.*

**KEYWORDS:** *civilian oversight, police, police boards, overview, complaints, investigation, Canada, Peel*

**JEL CODE:** *K1*

## 1. THE HISTORY OF POLICING

The existence of a professional, uniformed police force is so ingrained in the fabric of modern society that it is easy for us to think of such police forces as a traditional part of society. In fact the modern day police force is a relatively recent concept, dating back only to the 19th century.

In ancient societies there was little if any attempt to establish a police force as such: a defined group of people charged with law enforcement. Instead, individuals, families and clans took it upon themselves to exact revenge against those individuals who wronged them. This type of "law enforcement" was reactionary. The idea of crime prevention was not a part of this type of model.

As cultures and societies developed, the responsibility for law enforcement fell to the military. In the time of the Roman Empire, when riots and uprisings were not uncommon, the military played an important role in maintaining social order. It was common to see Roman centurions patrolling markets and other common meeting areas; their very presence served as an effective deterrent to law breakers. ( Echols, 1958)

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After the fall of the Roman Empire, the responsibility for maintaining social order fell once again to local authorities. In England, society reverted to the notion that individuals were responsible for themselves and their own protection. ( Lyman, 1964) Over time, individuals grouped together and hired “constables” to patrol their areas. When trouble erupted, the constable “raised the hue and cry” and all male citizens joined in the effort to deal with a particular crime or other emergency.

This system of local law enforcement served Britain and her colonies well, right into the 19th century. With the population growth in cities in England in the 18th century, however, the need for a professional and regulated law enforcement agency became apparent. ( Lyman, 1964)

## 2. SIR ROBERT PEEL AND PRINCIPLED MODERN DAY POLICING

Robert Peel lived in England between 1788 and 1850. He served two terms as Prime Minister of Great Britain. He is generally considered in England and her colonies as the father of modern day policing. Peel was the first Commissioner of the London Metropolitan Police, which was established in 1829.<sup>1</sup> By 1857 all cities in the United Kingdom were required to form their own police forces.<sup>2</sup> The first 1,000 constables of the London Metropolitan Police were fondly nicknamed “Bobbies” after Sir Robert Peel (“Bob” or “Bobby” is a nickname for “Robert” in the English speaking world.). This affectionate nickname for the police continues to be used today in England.

Sir Robert Peel established a sound ethical foundation for a professional police force that would enable it to maintain credibility with the society it serves. Supported by the following principles, Sir Robert Peel’s main concept was that the police must act with the consent of the people and not by decree.<sup>3</sup>

1. The basic mission for which the police exist is to prevent crime and disorder.
2. The ability of the police to perform their duties is dependent upon public approval of police actions.
3. Police must secure the willing cooperation of the public in voluntary observance of the law.
4. The more that the police use physical force against members of the public, the less the public will be willing to cooperate with the police. The public is known to disapprove of the use of excessive force and the manifestation of such disapproval can result in greater crime and disorder, for example recent riots in the United States in protest of the shooting of a black person by white officers.
5. Police seek and preserve public favour not by catering to public opinion but by constantly demonstrating absolute impartial service to the law.

<sup>1</sup> *Metropolitan Police Act 1829* (10 Geo 4 c 44)

<sup>2</sup> The *County and Borough Police Act 1856* made policing mandatory throughout England in Wales. The *Police (Scotland) Act 1857* did the same in Scotland.

<sup>3</sup> According to the Home Office of the United Kingdom in a Freedom of Information Release of December 10, 2012, Robert Peel’s nine principles were set out in “General Instructions” provided to each new police officer from 1829.

6. Police should use physical force only to the extent necessary to secure observance with the law or to restore order and only when the exercise of persuasion, advice and warning is found to be insufficient.

7. Police should at all times maintain a relationship with the public that gives reality to the tradition that the “police are the public and the public are the police”. The only difference between the police and public is that the police are the members of the public who are paid to give full time attention to duties which all citizens have, in the interests of community welfare and existence.

8. Police should always direct their action strictly towards their functions and never attempt to usurp the powers of the judiciary. All persons are innocent until proven guilty and must be afforded their rights. Accused persons should not be treated by the police as if they are guilty.

9. The test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with it.

A liberal democracy, such as Canada, is founded on the rule of law and a system of responsible government. There are two fundamental principles with regard to policing in a democratic society. The first is that the police who enforce our laws are ultimately responsible to civilian authorities. The second is that the police must be independent in all operational matters. They must, upon reasonable grounds, be free to investigate anyone without any political interference or any fear of political interference.

### 3. THE FIRST LEVEL OF CIVILIAN OVERSIGHT - POLICE BOARDS

The police must be independent from the government and insulated from political influence. They are not servants of the government but servants of the law. In 1858 the first statute creating police services in Canada’s cities was passed.<sup>4</sup> It provided for a Police Board of civilians who were responsible to appoint the members of the police force and to govern the force without interfering with the day to day operations of the police force. The police, through their chief constable, are accountable to the Police Board and the Police Board is accountable to the public.

While policing in Canada is a provincial responsibility, all of the ten Canadian provinces have similar legislation establishing Police Boards for municipal police forces.<sup>5</sup> The mayor is a member and sometimes the chair. The municipal council appoints a member. The balance of the members are appointed by the provincial government. Typically a Police Board is made up of seven to nine members. While retired police are sometimes valuable members of civilian oversight Police Boards, no sworn officer is eligible to sit on a Police Board.<sup>6</sup>

One of the most significant responsibilities of a Police Board is to recruit and hire a chief constable. The choice of chief constable will be key to the management style of the organization during his tenure. While some chiefs are known to place community

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<sup>4</sup> *Municipal Institutions of Upper Canada Act*, 1858

<sup>5</sup> The legislation is called the “*Police Act*” in every province except Ontario and Manitoba, where the legislation is called the “*Police Services Act*”, and Newfoundland where it is called the “*Royal Newfoundland Constabulary Act*”.

<sup>6</sup> The specific composition of a Police Board in each province is set out in its respective enabling legislation, which is listed in note 8.

engagement at a high priority, others are known to prefer a more insulated approach to “operations”.

The Police Board will also engage in strategic planning in order view to establish and articulating a mission, vision and values for the department. Also, reviewing and monitoring the budget for the department is a key function of the Board.

The Police Board is also responsible for governance of the police department. This involves determining policy for the department and ensuring that the police department complies with that policy. It is this function where there is frequent tension between the governing Police Board and its police department. The line between governance (the job of the Police Board) and day to day operations (the exclusive jurisdiction of the police themselves) is often not a clear one.

Understandably, the attitude of the police to the Police Boards’ attempts to exercise their civilian oversight responsibilities can at times be less than enthusiastic. Frequently the police argue that issues which the Police Board regards as part of its governance and civilian oversight responsibilities are in fact purely matters of “operations” and, therefore, the exclusive jurisdiction of the police. This conflict between Police Boards, who are the civilian governors of the police, and the police was recently discussed in the report of the “Morden Inquiry”.<sup>7</sup> The Honourable John Morden, a retired judge of the Ontario Court of Appeal was commissioned to conduct an inquiry into the conduct of the police at the G-20 Summit in June 2010 in Toronto, Ontario, Canada. This was the largest security event in Canadian history.<sup>8</sup> There were thousands of demonstrators. The police arrested more than 1,100 persons, many of whom were not even demonstrators. A large number of these people were kept in standing room only cells for over 24 hours, without access to lawyers or proper food, water or facilities.<sup>9</sup> This resulted in civil lawsuits and a number of reports including the Morden Report.

The Morden Report concluded that in the planning process leading up to the G-20 summit, the police had not provided the Police Board with certain essential information, such as who was in command and the details with regard to the policing responsibilities for the G-20 summit.<sup>10</sup> This information was essential for the Police Board to be able to properly exercise its governance role. Morden also concluded that the “timidity” of the Police Board, due to its fear of offending the police by inquiring into what the police insisted was their exclusive “operational” jurisdiction, led to a complete failure on the part of the Police Board to do what it was mandated to do that is to conduct effective governance and civilian oversight of the police.<sup>11</sup> Morden held that these duties had obliged the Police Board to be diligent in requiring the chief of police to keep them informed regarding the police methods, practices and plans leading up to the G-20 summit.<sup>12</sup>

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<sup>7</sup> The result of the “Morden Inquiry” was a report by Hon. John W. Morden entitled *Independent Civilian Review into Matters Relating to the G20 Summit: Report*.

<sup>8</sup> Morden, J. (2012). *Independent Civilian Review into Matters Relating to the G20 Summit: Report.*, p. 9

<sup>9</sup> *Ibid.*, p. 33

<sup>10</sup> *Ibid.*, p. 166

<sup>11</sup> *Ibid.*, pp. 87; 181

<sup>12</sup> *Ibid.*, pp. 167-181

#### **4. THE NEXT LEVEL OF CIVILIAN OVERSIGHT - POLICE COMPLAINTS COMMISSIONER**

Going back to Sir Robert Peel's principles for policing, the key is, of course, that policing is a social contract. The police are given powers to restrict freedom, but the police must in turn act within their clearly defined power and must not encroach on civil liberties and human rights. Inevitably, occasions arise when members of the public allege that the police have violated their authority and committed wrongs against civilians.

Until fairly recently in Canada, the police were left to police themselves, subject only to the governance of Police Boards. This led to dissatisfaction and cynicism amongst members of the public from time to time which was, according to Sir Robert Peel, ultimately contrary to police interests. As Peel predicted, police must be able to secure and maintain the respect of the public if they are to be able to secure the willing cooperation of the public in voluntary observance of the law.

It was not until the late 1980's that the office of Police Complaints Commissioner came to be established in the various Canadian provinces.<sup>13</sup> This office is independent of government and independent of the police.

#### **5. LEGAL OR CRIMINAL - INDEPENDENT INVESTIGATIONS OFFICE**

This branch of civilian oversight investigates incidents where a person has died or suffered serious bodily harm during or after having contact with police. The investigation is automatic and all police departments are obliged to report such incidents to this office for investigation. This is a civilian led investigatory body charged with conducting independent investigations with a view to determining whether criminal charges should be pursued against police.<sup>14</sup>

#### **6. CONCLUSION**

The ongoing challenge is how to strike a balance between maintaining the independence of police from political interference while holding the police accountable to the public. Doing so requires Police Board members who are prepared to insist that the police must submit to civilian governance and oversight. Police Board members must be able to effectively resist attempts by the police to convince them that the ways and means in which the police choose to conduct themselves in the exercise of their duties as police officers is strictly "operational" and therefore not the "business" of the Police Board. Ultimately it is the duty of Police Board members exercise appropriate governance and supervision of police.

The Office of the Police Complaints Commissioner and the Independent Investigations Office also provide important civilian oversight functions in situations where the police are not seen to be the appropriate party to police the police. In summary, this civilian

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<sup>13</sup> One of the first projects in Canada to implement an oversight body to deal with complaints against the police was established in 1984 by the *Metropolitan Toronto Police Force Complaints Act*. The program was expanded to the entire province of Ontario in 1990 when the *Police Services Act, 1990* was passed.

<sup>14</sup> See Part 7.1 of British Columbia's *Police Act*

oversight framework ultimately ensures the police are accountable to the public they serve. It is this accountability which enables the police to have the confidence of the public which is absolutely necessary in order for the police to be able to work effectively to prevent crime and social disorder.

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