

**Topic** – Oversees Development of Police Oversight – Policies, Practicalities and Challenges from International Perspective.

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Thanks for the invitation to participate in this symposium hosted by the IPCC about Civilian Oversight and the Building of Trust while emphasizing the role of IPCC in the evolving future of Civilian Oversight of Police.

This presentation will discuss the mechanisms, reasons and purpose of the introduction of Civilian Oversight of Policing, from the perspective of the Canadian experience, with a particular focus on Ontario. Ontario has been the leader in establishing and enhancing civilian oversight in Canada.

Policing in a democracy is based on political and structural framework. This framework is based upon the Government being responsible to create and oversee that police officers should be representative of the communities they serve and live in. It is based on this structure that Sir Robert Peel, set the policing function and foundation that was adopted and exists in Canada. Peel developed “The Principles of Policing”, referred to as the “Peelian Principles”. His main premises that the “police are the public and the public are the police”, is the guideline followed by Government and leaders in creating a fine balance in policing and the public it serves. Policing laws and regulations thus created strive to maintain this balance through our democratic process, to ensure that there is accountability, confident, and trust in police and policing. This is so because public confidence in the police is important in a democracy to ensure the balance between the creation of laws and the enforcing of those laws. All

communities have a majority of law abiding citizens who all want peace, security and a safe communities.

This balancing is what leads to the creation of police oversight ruler and eventually to Civilian Oversight, to enhance the legitimacy of Police and the work they do and the public they serve. Establishing this legitimacy is important to maintain trust while at the same time allowing police to carry out the State's authority of peace, order and goodwill, necessary to curb any tyranny over policing of public groups. This also adds to the public demand for transparency, accountability and fairness in those who are responsible for carrying out the enforcement of laws and those who are to live by those laws. Policing is by consent and depends on public approval. Police, after all are merely citizens in uniform but are given special powers unavailable to other citizens.

From the above comments, it cannot be overstated that in any democracy, civilian oversight of police is critical and necessary. If we do not hold police accountable, if we do not insist that policing be done fairly and with transparency, we lose or weaken our ability to ensure that those to whom we have given the most coercive and extraordinary power can operate outside the rule of law with impunity or oversight. No one is above the rule of law.

Civilian oversight, over the last 40 years in Canada has as its purpose, the promotion and maintenance of community ([public] confidence in police and policing and enhancing the trust and confidence of police and the public complaint and review systems.

Over the last 40 years civilian oversight of police gained the interest of the public in both Canada and the United States. Specifically, Canada has

seen the creation and advancement of Independent civilian oversight from a relatively theoretical concept of small non-independent inexperienced and underfunded agencies charged with auditing, monitoring or reviewing but without and real authority or powers over police or policing, to more developed and authoritative bodies in most of the provinces and territories, some with substantive powers and independence. Along with this slow evolution came the necessity to promote oversight and to effect attitudinal change to police towards Independent Oversight. Promotion in this regard was necessary given that there was some reservations, some resentment and in some cases resistance by both police leaders, police and police officers. It was also necessary to build and ensure public trust in oversight. Public trust is built through mutual respect, honesty and patience.

For a better overview of understanding the actual creation of oversight bodies in Ontario the history looks like this: A distinct wave of historical development from about 1949 to present. Prior to the 1980's there was no actual civilian oversight in Ontario. The first original Police Act, came about in 1949 but it was not Independent, nor did it deal with public complaints. However, as time marched on, more so, during the 1960's and 1970's, the public demanded and put pressure on governments to ensure more accountability in policing, due to the fact that during this period of time, the police carried out their own investigations of complaints from the public.

As a result, after public consultations through various reports commissioned by Municipal and Provincial governments, the Ontario government created and passed the Metropolitan Trust Police Force Complaint Project Act, 1981, establishing The Office of the Public Complaints Commissioner and a police Complaints Board to deal with public complaints against police officers. Given that this was created as a

pilot project, it was set to expire in December 1989. But, given public sentiment and concerns, this Act was continued and into law and called the Metropolitan Toronto Police Force Complaints Act, 198 and maintained the Public Complaints Commissioner as a permanent agency.

As a result of unfavorable incidents between police and the public and additional reviews, a new Police Act was created in 1990, titled, The Police Services Act, 1990. This new act, included mandates to create a Special Investigations Unit, to investigate police shooting and serious incidents and a public complaints unit to deal with public complaints of a conduct nature and thus the concept of Civilian Oversight was born. This act remained in force until 1007, when the then government reviewed it and made changes thereby implementing a new act titled, The Police Services Amendment Act, 1997, replacing Part VI, of the civilian oversight section, The Office of the Commissioner and replaced it with a new section Part V, which in effect directed that all public complaints were to be now dealt with by each police service that the complaint relates to.

A new government in 2004, retained Justice LeSage, to review the existing police public compliant system. His review report recommended a new police complaint system in Ontario that should be administered by an independent civilian body. In 2006, the government introduced Bill 103 to create a new oversight body. That legislation was passed in 2007 and was titled the *Independent Police Review Act, 2007* and came into force October 19, 2009. I was responsible for creating, establishing and implementing this new legislation. This new *Act* created my position of the Independent Police Review Director, with extraordinary powers to oversee, monitor, and investigate police complaints as well as to conduct audits of police services and conduct systemic reviews into police conduct issues.

In this regard, I have completed reviews into Policing the Right to Protest, G20 Riots in Toronto, Review of the OPP Casting the Net, into the collection DNA canvassing (2016), Police Interactions with People in Crisis and Use of Force – Interim Report (2017) and more recently, Breaking the Golden Rule, Strip Searches (2019) and Broken Trust, Indigenous People and the Thunder Bay Police Service (2018).

But this did not end the review or changes to civilian oversight. In 2017, after another review by Justice Tulloch, of the Ontario Court of Appeal, the then government introduced Bill 175 pursuant to his recommendations. Bill 175, a new Police Act was passed and set to be proclaimed in January 2020, to give the oversight bodies (SIU and OIRPD) expanded jurisdiction and authorities, as well as more robust powers in regards to both investigating serious incidents and conduct issues. IT also enhanced the roles and authorities of the two Directors and the agencies, to the extent that these two bodies were to be the only investigation bodies of police complaints.

Alas, this did not occur. (1) Because January 2020 has not come yet and (2) the government changed. In March 2019, the new government repealed Bill 175 and introduced a new and revised *Police Services Act* Bill 68, to replace the still current *Police Services Act, 1990*. The new Act is called the Community Safety and Policing Act 2019 (or C.O.P.S.). This legislation does not of yet have a proclamation date, so the 1990 Act remains in place. Under the new COPS Act, the roles and authorities of both oversight agencies have be curtailed and reduced, to roles similar to the early 1990, before the amendments of 2005 and 2017. How this new Act plays out is yet to be determined.

So, what does all of this tell us – it tells us that the concept of Civilian Oversight is like a moving wave and is in continuous development; in continuous review and subject to changes and re-incarnations.

It also tells us that to maintain true accountability; true confidence, true trust and true checks and balances in society, in police and policing, that we have to be vigilant and remain true to the principle espoused by Sir Robert Peel, that the “police are the public and the public are the police”.

It also tells us that independent oversight will not stay stagnant, that it will evolve, that it will change as a result of governmental and communities’ changes.

Mostly for me, it tells us that we have to remain vigilant and know that in our democracies, true peace, order and good government will always prevail. Civilian Oversight, will continue to exist and expand. The future

prognosis looks encouraging and conferences like this symposium here in Hong Kong attests to that future.

Thank you

Gerry K. McNeilly

## Civilian Oversight Evolution (Ontario)

*Prior to 1968 Police Investigate Police Complaints			
<p>Ontario Police Commission – created – general supervisory role for municipal Police Service</p> <p><b>1968</b></p>	<p>Maloney Commission on Racial bias and discrimination</p> <p><b>1975</b></p>	<p>Boards of Commission of Police adopt new procedures for public complaints</p> <p><b>1978</b></p>	<p>Public Complaints Commission – Toronto only – (<i>Metropolitan Toronto Police Complaints Project Act 1981</i>)</p> <p><b>1981</b></p>
<p>Public Complaints Commission Oversight expanded Ontario – wide renamed Office of the Police Complaints Commissioner (Civilian)</p> <p><b>1990</b></p>	<p>Special Investigations Unit established (Civilian)</p> <p><b>1990</b></p>	<p>Police Complaints Commission Disbanded, Powers to Ontario Civilian Commission on Police Services – formerly Ontario Police Commission (Police investigate Police)</p> <p><b>1997</b></p>	<p>Justice LeSage issues report on the police complaint system in Ontario</p> <p><b>2005</b></p>
<p>Independent Police Review Act in force creates the OIPRD</p> <p><b>2007</b></p>	<p>OIPRD opens October 19, 2009 – Independent Civilian Oversight</p> <p><b>2009</b></p>	<p>Justice Tulloch issues report on Revamping Complaint System – Bill 175 passed (but not proclaimed)</p> <p><b>2017</b></p>	<p>Bill 68 passed, repeals Bill 175 and creates a new Act, the <i>Community Safety and Policing Act</i> (not yet proclaimed)</p> <p><b>2019</b></p>

\*To be continued ..... Times are changing.....

**Note:** Most of Canada Provinces and Territories have oversight bodies of varying hybrid type structures for both serious incidents (6) and conduct (all)