

## Civilian Investigation Will Mean Little Without Transparency and Accountability

From Greg Klein

June 11, 2019

To discuss how British Columbia's police complaint process could become more effective and accessible, I'd like to make two suggestions. We need civilian investigation into all misconduct allegations against police. We also need transparency and accountability in the process.

One or more speakers to your committee have broached the idea of expanding civilian investigations into police beyond cases involving death or serious injury, which are handled by B.C.'s Independent Investigations Office (IIO). I ask your committee to recommend that all misconduct allegations against police be investigated by civilians. The change could increase public confidence in the process and, I maintain, avoid some very unfortunate occurrences that have greatly hindered effectiveness.

Additionally, I ask your committee to recommend expanding that same civilian investigation process beyond the police forces currently covered by British Columbia's Police Act to the province's RCMP officers. The RCMP polices most of B.C. but continues to investigate itself with "oversight" from the Civilian Review and Complaints Commission. Despite its encouraging name, that's simply an RCMP in-house agency.

Of course applying civilian investigation to federal police would require agreement from Ottawa. But the example of the IIO suggests this could be feasible. As you know, the IIO can investigate Mounties, as well as municipal, transit and First Nations forces.

If your committee decides to recommend a limited expansion of civilian investigation, I urge you to at least recommend ending the practice of police investigating police accused of sexual misconduct. B.C. and Quebec remain the only two provinces that allow this. I've been advised against referring to specific cases in this submission, but I maintain there's especially strong cause for concern in this regard.

That leads to the issues of transparency and accountability. B.C.'s Office of the Police Complaint Commissioner (OPCC) works in near secrecy and, in practice, answers to no one.

While the IIO provides considerable public info about its investigations and decisions, the OPCC releases very little to the public, or even to complainants. Most OPCC disclosure comes through quarterly reports that mention only selected cases and provide so little info that it's impossible to assess, for example, the degree of misconduct or the fairness of the outcome.

An exception occurs when the commissioner orders a Public Inquiry. However that happens with only a small fraction of cases.

Despite the OPCC's veil of secrecy, some cases have come to light that raise very disturbing questions about how the agency conducted its responsibilities. Again, I'd like to point out

some of these cases, which I believe demonstrate the danger of allowing such an agency to work without transparency and accountability. But I've been advised not to refer to them.

So what does someone do with concerns about the fairness of the process? As an independent officer of the legislature, the police complaint commissioner answers only to the legislature. In practice, that applies to the commissioner's staff as well. A legislative review requires a committee appointed for that purpose. In the OPCC's 21-year history, such a committee has been struck only once.

That was way back in 2002 and concerned the OPCC's first commissioner. Media accounts (for example the Vancouver Province, April 17, 2002) reported strong criticism about how that commissioner handled allegations of police misconduct. But most media coverage gave the impression that the inquiry mainly addressed accusations that the commissioner "bullied" OPCC staff. He left his job with a nearly \$100,000 settlement, according to media reports.

As you know, your committee doesn't have the mandate to hold the OPCC accountable. In fact you've specifically been barred from reviewing OPCC cases. But I ask you to remember that your mandate does allow you to recommend transparency and accountability for the OPCC if those changes would improve the police complaint process.

Transparency and accountability weren't addressed by your predecessor committee. The Special Committee to Inquire into the Use of Conducted Energy Weapons and to Audit Selected Police Complaints, which took place during 2012 and 2013, met only with police interests and, as far as I've been able to determine, rejected all written submissions from the public.

Coinciding with that committee was an audit of OPCC cases by B.C.'s auditor general. The AG's full report has been kept confidential. The AG's office refused to tell me who chose the OPCC cases that were audited, and on what basis. The AG focused on numerically quantifiable issues, like the length of time taken to handle police complaints. Buried in the AG's final press release, and missed by the media, was this key statement: "Excluded from the scope of the audit was providing an opinion about the validity of investigation decisions."

So where does someone turn with concerns about the validity of investigation decisions and the fairness of the process? Where does someone turn with concerns, for example, that the OPCC might have seriously misinterpreted straightforward sections of the Criminal Code and Police Act, or rubber-stamped obviously inadequate police-on-police investigations, or declined to order investigations into serious police incidents that came to the OPCC's attention, or declined to order a Public Inquiry into very troubling police misconduct that the officer's colleagues appeared to treat with undue leniency?

There's nowhere to turn. The OPCC's secretive, unanswerable status is extraordinary in our time and an antediluvian throwback to a less democratic era.

As I mentioned, the IIO presents a strong contrast with its public disclosures. We need Police Act changes that require the OPCC to provide thorough disclosure.

That disclosure should cover not only complaints that faced Police Act investigations, but also complaints that the OPCC deemed inadmissible. Having followed police accountability issues for over 10 years, I've heard from many people who believe their complaints were unfairly rejected at the outset.

As for accountability, one way to apply it to the OPCC would be to put the agency under the provincial Ombudsperson's authority. That's the case, for example, with Ontario's Special Investigations Unit (SIU), which answers to that province's Ombudsman. That was supposed to have been the case for B.C.'s IIO too.

The IIO's creation resulted from Thomas Braidwood's 2010 report following Robert Dziekanski's Taser-related death in 2007. Braidwood suggested the creation of a new agency modeled after Ontario's SIU and, like the SIU, answerable to the provincial Ombudsperson.

In creating the IIO, B.C.'s legislature dodged Braidwood's key recommendation by placing the new agency under the investigative authority of the OPCC. (Yes, the OPCC does have investigative powers in this one area.) As noted, I've been advised not to refer to specific cases. That prevents me from emphasizing the inappropriateness of placing the IIO under OPCC authority.

The fact that Braidwood would make such a suggestion indicates it's possible to change legislation and place a police accountability agency under the Ombudsperson's authority.

From one perspective, an additional layer of oversight might seem gratuitous. But, were I allowed to refer to actual OPCC cases, I could thoroughly substantiate the need to hold the OPCC accountable to another authority.

Currently the OPCC's accountability is just theoretical, as it answers only to a legislative inquiry. Not just anyone can call a legislative inquiry and, as noted, an inquiry of that nature has happened just once in the OPCC's 21-year history.

We need those Police Act reforms but a citizen gets nowhere trying to suggest that to government, official opposition or other MLAs. I've detailed these concerns in e-mails to the appropriate ministers under the former BC Liberal government and current NDP government, as well as all three Green MLAs.

I received just one response. That resulted from my e-mail to the BC Liberal cabinet minister, but didn't come from the minister herself. The response came from an anonymous member of the Solicitor General's Policing and Security Branch, who told me to contact B.C.'s Ombudsperson.

I ask you to pause and consider that response. Was that a misstatement reflecting enormous incompetence? Or a brush-off reflecting enormous arrogance?

Of course a big part of the problem is that the OPCC doesn't answer to the Ombudsperson or anyone else—other than a type of legislative committee that hasn't been called in 17 years.

This leads to a further problem that I've heard expressed in different ways by many others who've been through the police complaint process. The conduct, secrecy and lack of accountability of an agency like the OPCC, along with the indifference of our elected politicians, contribute to overall distrust of public institutions.

To sum up, I urge this committee to recommend civilian investigation of all allegations of police misconduct, and to recommend working with Ottawa to extend that authority to allegations against the RCMP. Should the committee recommend only a limited expansion of civilian investigation, I ask you to at least recommend that civilians investigate allegations of sexual misconduct by police.

Additionally, civilian investigation will mean little without transparency and accountability. This inquiry's restrictions on input prevent me from detailing the seriousness of this matter. But we've all heard the saying: "Not only must justice be done, it must be seen to be done." With the OPCC and B.C.'s system of police accountability, we don't see that at all.

If you've read this submission, thank you. I'll be glad to provide additional info on request.

Greg Klein