



Royal Canadian Mounted Police External Review Committee

Post-Complaint Management

The Impact of Complaint Procedures on Police Discipline



The Impact of Complaint Procedures on Police Discipline

by

Clifford D. Shearing

with assistance from

Lorraine Boucher and Julia Powditch

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Simon Coakeley
Executive Director
RCMP External Review Committee
Postal Box 1159, Station "B"
Ottawa, Ontario
K1P 5R2

Fax: (613) 990-8969

**ROYAL CANADIAN MOUNTED POLICE
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Number 4: Post-Complaint Management

Author

Clifford D. Shearing
Professor
Centre of Criminology
University of Toronto

with assistance from

Lorraine Boucher and Julia Powditch
Research Assistants
Centre of Criminology
University of Toronto

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Post-Complaint Management The Impact of Complaint Procedures on Police Discipline¹

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Chapter 1

Introduction

1.1 The Central Argument

There is a tendency within traditional police organizations to manage via a discipline system that responds to problems of performance by identifying "bad apples" and then punishing them. This strategy has come under increasing attack so that today there is a well established managerial reform movement within the police community concerned with promoting a management style that is less punitive and more remedial (Grosman, 1975; Butler, 1984). This movement promotes a management style that directs attention to structural sources of inappropriate conduct and views remedy, not punishment, as the proper focus of management (Canada, 1976; Fyfe, 1985).²

This argument in favour of remedy and a structural focus has also been central to the philosophy underlying the reform of police complaint procedures that has led to the adoption of ombudsman-like authorities in several parts of the world to oversee complaint procedures (Gellhorn, 1966a; Canada, 1976; Goldsmith, 1991). This movement towards remedy has, however, been constrained by several features intrinsic to complaining, for instance, the motives that promote it and the standards used to assess the police response.

As a result of these constraints, complaint processes have tended in practice to reinforce the "bad apple" approach because they promote and give legitimacy to calls for punishment at the individual level. As complaint processes, and the police response to complaints, become increasingly public events, this pressure to punish is being felt more and more strongly by police managers. They are being urged by a variety of sources, not least of all the media, to demonstrate their commitment to taking complaints seriously by punishing officers found responsible for wrongdoing. The more serious the wrongdoing, the more severe the punishment is expected to be. In short, punishment has become a measure of the adequacy and effectiveness of complaint systems, especially when cases at issue are politically sensitive (Goldsmith, 1991).

This tendency for complaint systems to operate in a manner that is at odds with a remedial approach to management presents a major challenge to police managers and police reformers (including police oversight authorities who promote a remedial approach), as the reasons for favouring punishment in response to complaints run very deep and are difficult to change. The justice motive that links wrongdoing and punishment is central to our thinking not only about complaints but, as our criminal justice system makes abundantly clear, about wrongdoing generally.

In responding to this challenge, we propose that the police, as well as police oversight and review authorities with responsibilities to advise the police, look to solutions developed elsewhere as a source of ideas and suggestions. In particular, we draw attention to the system adopted in relation to financial markets in response to the twin concerns of "justice" and "remedy" (Stenning et al., 1991).

1.2 Authority and Purpose

This paper has been commissioned by the Royal Canadian Mounted Police External Review Committee (ERC) as part of its ongoing series of Discussion Papers on Issues relevant to its mandate. These papers are designed to provide the Committee with the background and knowledge it requires to exercise its responsibility properly to provide advice to the Commissioner of the Royal Canadian Mounted Police in response to grievances and appeals of discipline that come before it. This paper considers the relationship between public complaints and police management and in particular the implications that public complaints and public complaint-procedures have for police management and the place of discipline within it.

Although responsibility for reviewing the processing of public complaints lies with the Royal Canadian Mounted Police Public Complaints Commission (PCC), public complaints are relevant to the ERC because its mandate requires it to review and advise the Commissioner of the RCMP with respect to grievances and disciplinary appeals that may have their origin in complaint-initiated dispositions.

1.3 The External Review Committee's Mandate

The *RCMP Act* requires the ERC to advise the Commissioner of the *RCMP* on how he should respond to:

1. appeals from members of the Force with respect to discipline, and
2. grievances from members of the Force.³

1.4 Responsibility for Reviewing Public Complaints

The *RCMP Act* divides responsibility for reviewing the RCMP's response to public complaints between the ERC and the PCC. Each of these review bodies has oversight responsibility with respect to different features of the process the *Act* establishes for responding to public complaints against the RCMP. Thus, while the PCC is required to advise the Commissioner on the receipt, investigation, adjudication and disposition of public complaints by the RCMP, the ERC is required to advise him on appeals that arise in relation to dispositions involving discipline. In addition, the ERC is also required to advise the Commissioner on grievances within its purview that arise out of actions taken by the RCMP in the course of its response to public complaints.

The PCC normally becomes involved in reviewing complaints when a complainant is dissatisfied with the response of the RCMP. When this happens the PCC has a variety of courses of action open to it including calling for further investigation by the RCMP, undertaking an investigation itself and holding a hearing. As a review body the PCC may make recommendations but it cannot compel the Force to take its advice.⁴

The ERC is in a similar situation with respect to appeals and grievances that arise in relation to complaints. It too is required to review the actions of the Force and to make recommendations regarding them to the Commissioner.

1.5 Outline of the Report

Chapter 2 opens the argument by considering the nature of police management. This involves an examination of police discipline systems and their implications for police management. This discussion outlines the relationship between punishment and discipline, as well as the way in which a reliance on disciplinary punishments injects a justice motive into management that inclines it towards an individualistic focus.

Chapter 3 examines the way in which a variety of features of public complaints against the police combine to promote a concern with justice that looks to punishment as a strategy for putting matters right, and limits remedy to whatever it is that punishment can accomplish as a remedial mechanism.

Chapter 4 identifies the traditional model for dealing with public complaints and shows how, by tacking complaints on to the discipline system, it serves to reinforce a punitive, individualistic approach to police management.

Chapter 5 discusses the criticisms of the traditional model that have arisen during the debate over public complaint procedures. It identifies how, despite an expressed desire for complaint systems to promote remedy that is structural and not individually focused, a concern for justice in the response to complaints has often led to the adoption of complaint processes that stress punishment and retribution at the expense of structural remedy.

Chapter 6 considers the alternative proposals that have been developed in response to criticisms of the traditional approach to public complaints. The discussion focuses attention on the place of the justice and the remedial motives with respect to the two major proposals for the incorporation of an independent element into complaint procedures.

Chapter 7 examines in more detail the reform strategy selected by the Canadian Government in responding to criticisms of the RCMP with respect to its handling of public complaints. It identifies the way in which the *RCMP Act* gives expression to the External Review Model adopted by the Government and explores the relationship the Act establishes between the ERC and the PCC. Finally, it examines the way in which financial regulators have sought to accommodate the twin concerns of justice and remedy, and suggests that this approach might provide a source of ideas for police managers and review authorities.

Chapter 2

Police Management

2.1 Introduction

An understanding of the impact of complaints and public complaint systems on police management styles requires an appreciation of police management and how it has operated. In this chapter we consider how police management has tended to operate via disciplinary systems that have emphasized punishment over non-punitive strategies and individualistic over structurally focused strategies. We also note the critique of this traditional focus and the reform movement with respect to police management styles that this has generated (Bradley et al., 1986).

This discussion identifies the managerial context within which complaints and complaint systems should be seen if their impact is to be understood and if policy, with respect to complaints and their relationship to police management, is to be developed.

2.2 Police Discipline

Police management has traditionally relied upon, and continues to rely on, discipline as its central managerial strategy. Indeed, the heart of police managerial systems has traditionally been the system employed to allocate blame and punish the blameworthy (Bradley et al., 1986).

What then is police discipline? If asked this question most police officers would probably answer that discipline means punishment for wrongdoing. This answer is consistent with established usage, namely, that discipline is "punishment inflicted by way of correction or training" (Random House Dictionary of the English Language, 1987).

What police officers recognize in identifying police discipline with punishment is that police management tends to rely very heavily on punishment as a management tool and to see police management largely as a response to wrongdoing. This focus on wrongdoing as a central category in police management establishes "justice" as a central concern and motive for police management (Shearing and Stenning, 1985). For police managers and for the officers they manage, police management is thus largely a matter of "doing justice". Thus, the police manage their own organization in much the same way as they "manage" the communities they police. Put differently, police management has traditionally been a form of organizational policing (see Wilson, 1968, on states of police management; Canada, 1976).

One consequence of this has been a heavy reliance on rules that define wrongdoing as a basis for police management in the same way that rules are central to the policing of communities. Thus, the central internal texts of police management in most police departments are volumes of rules and procedures (Thibault et al., 1990:139). These rules are the standards for determining when wrongdoing has taken place and when it has not. As the response to wrongdoing is punishment, these rules become the standards used for assessing whether punishment is deserved or not. This reliance on rules tends to produce an organizational rigidity that has come to characterize police organizations (Bradley et al., 1986).⁵

The centrality of rules and wrongdoing to traditional police management has meant that police management tends to have an individualistic, top-down orientation, as senior officers examine the propriety of the actions of rank and file officers and make judgments about whether or not wrongdoing has occurred, and if so what penalty should be applied. This top-down process of oversight with its rule-bound justice orientation is applied through discipline systems with procedures that parallel the steps of the criminal justice process.⁶

The justice motive that governs police management establishes punishment as the most common managerial response to police wrongdoing in precisely the same way that the justice motive establishes punishment as the major strategy of criminal justice (see Canada, 1976: Part V, Chapter 1).

This parallel with criminal justice is seen very clearly in the disciplinary procedures of traditional police management systems. In responding to police misconduct, most police organizations employ, as their central mechanism for responding to rule-breaking, a disciplinary system comprised of procedures for identifying police officers who require correction and then subjecting them to the appropriate punishment. These procedures involve four essential steps.

1. Identifying improper conduct.
2. Investigating the nature of the conduct and the reasons for it.
3. Deciding whether discipline is appropriate.
4. Punishing the officer(s) concerned.

As with criminal justice systems, police organizations include procedures that protect officers who are being investigated or who have been charged with a disciplinary offence against arbitrary and unjust treatment. These safeguards typically require that officers be permitted to respond to charges against them, that appropriate standards of proof are imposed, and so on.

Much of the dialogue about discipline, both within police departments and in the public domain, especially between police management and police associations, has had to do with what these safeguards should include. For example, should police officers be permitted legal representation in responding to charges of misconduct, should they be required to answer questions in response to charges against them and so on?⁷

2.3 Punishment as a Managerial Strategy

How punishment operates to promote appropriate conduct, and under what circumstances it does so, is a complex question that we need not consider in detail here. It is sufficient to note that punishment operates in both instrumental, remedial ways and in more purely expressive ways.

At an instrumental level the loss of liberty and the pain typically associated with punishment may motivate people to act according to the rules in future, both through its specific and general deterrent effects, and to be more respectful towards authority. Punishment also has a symbolic value in that it represents society's disapproval of the act.⁸

In addition to these instrumental features of punishment which operate to secure obedience, punishment also has significant expressive functions. Wrongdoing not only prompts punishment as a way of remedying conduct, punishment also puts matters right by righting wrongs. One argument used to explain how punishment does this is that a wrong creates a moral imbalance that must be set right. By balancing the "hurt" to the victim that created the wrong, with a "hurt" to the offender, the moral order can be re-established. This is the retributive logic of the "eye for an eye" argument of the Old Testament.⁹

2.4 Retribution Versus Remedy

A central topic of debate about punishment among police reformers is the weight retribution should have in its application. In particular, traditional police managers have been criticised for giving far too much weight to the retributive features of punishment (Canada, 1976). The argument advanced is that the retrospective orientation of retribution that looks to the righting of past wrongs should not take precedence over a prospective orientation that seeks to ensure that what happened will not be repeated (Butler, 1984). All too often, it is argued, police managers act as if a problem is solved once blame has been allocated and the person responsible has been identified and punished, while the systemic features that prompted the wrongdoing are not addressed. Indeed, the use of punishment to right past wrongs may, it has been argued, be detrimental to a long-term remedy (Canada, 1976; Lustgarten, 1986; Goldsmith, 1991).

For example, it is argued that an act by a police officer, while both wrong and hurtful to a citizen, may result not from any wilful intention but simply from poor judgement arising from such things as inadequate supervision, inadequate training, stress and so on. In fact the officer may have been encouraged tacitly to engage in this wrongdoing by institutional pressures that are difficult if not impossible to resist (Canada, 1976:116-117; Shearing, 1981). In such cases punishment, although it might serve to "right the wrong", may not be as beneficial as a remedial response and may very well create a sense of injustice on the part of the "offending" officer and his or her colleagues that may exacerbate rather than correct the problem.

2.5 Non-Punitive Remedy

Those who argue for the reform of traditional police management argue that while punishment can be used to secure compliance with desired standards of conduct it is by no means the only or most effective means available. There are in fact, they note, a whole host of managerial strategies beside punishment that police could make more use of to shape the conduct of police officers. Besides training and promotion, two non-punitive strategies which are used within police departments, there are in addition a host of others, including strategies that seek to reduce opportunities for inappropriate conduct (Shearing and Stenning, 1985; Friedland, 1990) that police managers have been encouraged to consider in creating a management style that is less punitive in character (Canada, 1976). These compliance strategies are, it is noted, widely used within other organizations, where they serve to draw attention away from individuals and individual wrongdoing and redirect it to structural issues.

2.6 Towards a Structural Focus

In response to such criticisms, many police managers have endeavoured to move away from a traditional disciplinary approach. Their efforts, for the most part however, have taken place within the context of the traditional disciplinary mechanism. What this has meant is that they have left all the steps of the disciplinary procedures noted above in place and have added to them a fifth step, namely, a consideration of other remedial measures.

For example, in responding to wrongdoing a manager may conclude that the source of the problem lies with the scheduling of shifts or excessive overtime that places exhausted police officers on duty. In response, a change in resource allocation procedures and not simply punishment may be deemed appropriate. Similarly, if a rule has been violated in a number of instances, action may be taken to revise policy to prevent its recurrence.

While such modifications to disciplinary mechanisms do occur, their location within an essentially disciplinary mechanism specifically designed to allocate blame and apply punishment, militates against fundamental reform (cf. *RCMP Act*).

2.7 Police Management as Discipline

The situation at present within police organizations is that police management remains, by and large, committed by its procedures and practices to essentially disciplinary strategies (Brown, 1987). This remains true despite considerable talk within the police community about broader management strategies (Canada, 1976; Butler, 1984; Fyfe, 1985). This commitment to discipline has, as we have seen, deep roots, and it will take a considerable shift, not merely in police thinking, but more importantly in police organizational forms, if the practice of police management is to shift away from its current focus (Apostle and Stenning, 1989:137-8).

2.8 Summary

Police management traditionally has been, and continues to be, driven by a response to wrongdoing that assigns blame and applies punishment. While the disciplinary systems established to do this can also be used in a broader way to correct structural inadequacies, they restrict the ability of police managers to make a fundamental move towards a truly remedially and structurally-oriented management system. This suggests that a shift in police management practice will not occur until the present organizational procedures that equate police management with discipline are significantly revised. This possibility tends to be hampered rather than encouraged by public complaint systems.

The traditional thinking and practices that sustain a disciplinary focus within police management are at odds with reform arguments that propose a wider view of police management. This has created a significant tension within police management as traditional procedural forms

inhibit and constrain the ability of police managers to respond positively to managerial philosophies that advocate a greater exploration of non-punitive strategies.

This chapter has dealt with the roots of the disciplinary emphasis that characterizes police management entirely from an internal perspective. In addition to these internal pressures that sustain a disciplinary focus, there are external pressures as well that serve to maintain this focus. Of these external influences the pressure exerted by complaint procedures is particularly important.

Chapter 3

Public Complaints

3.1 Introduction

We concluded the last chapter with the claim that public complaint systems tend to hamper rather than encourage a remedial, structural emphasis within police management. This bald assertion will strike many people as highly problematic because so much of the debate over public complaint systems has been explicitly oriented to encouraging a remedial response (Goldsmith, 1991). In this chapter we support this claim by showing both how the very nature of complaining tends to promote a punitive, wrong-oriented response and how this remains true despite the language of remedy that has dominated the reform of public complaint systems.

3.2 The Nature of Complaints

Public complaints against the police arise out of dissatisfaction with police performance. Dissatisfaction with the performance of others is a normal and natural part of social life; "disappointment" is, as Hirschman (1982:11) observes, "a central element of the human experience".¹⁰ This is especially true of "street-level" occupations in which interaction with the public is an essential feature (Schuck, 1983:60). This is particularly the case, as Herbert Packer (1968:283) noted over two decades ago, for the police due to the "aggressively interventionist character of much of our criminal law [which] thrusts the police into the role of snoopers and harassers".

Dissatisfaction with police performance may apply to the police organization as a whole, for example, a complaint about what the organization seeks to accomplish or about its procedures, and/or it may apply to persons within it, for instance, a charge that an officer has violated the law or police regulations (Maguire and Corbett, 1989:190).

3.3 Reasons for Complaint

Complaints are made for many different reasons.¹¹ Sometimes the complainants' motives are remedial; they want to ensure that the events that took place will not be repeated (Brown, 1987; Maguire and Corbett, 1989:190). At other times complainants are motivated by what Lerner (cited in Goldsmith, 1991) calls the "justice motive". These complainants believed, Maguire and Corbett (1989:190) note in commenting on a survey of complainants, that "they had been treated wrongly and wanted this recognised and somehow 'put right'". This distinction between justice and remedial concerns is, of course, analytic and there is every reason for assuming that many complaints will be prompted by both these motives. Indeed, it seems likely that this would very often be the case.

3.4 Complaints and Punishment

The remedial as well as the symbolic and retributive features of punishment make it a useful tool for responding to complaints and for satisfying complainants. Where punishment serves as remedial action it acts as a vehicle for satisfying the remedial motives that prompt complaints. In

addition, because punishment can be used to right wrongs, it can also be used to satisfy complainants who want some form of vindication. In this case, the punishment of an officer is a symbolic admission -- an apology as it were -- on the part of the police department that its officer was at fault. By punishing the offender it also establishes a balance that puts matters right.

The ability of punishment to satisfy both instrumental and expressive motives makes it a very apt method for responding positively to the range of dissatisfaction that prompts complaints. For this reason, an approach to complaints that takes the complainant's motives seriously will tend to be drawn to punishment as the appropriate response.

Indeed, given these features, punishment may even be regarded as a requirement of a satisfactory response with non-punitive responses demonstrating that the complaint was not taken seriously. In this case, punishment becomes a litmus test for determining whether or not complaints are properly handled. Thus, for example, Goldsmith (1991), who is an outspoken advocate of responses to public complaints that seek to identify and respond to structural deficiencies, comments critically on the public complaints procedures in the Australian state of Victoria because "the substantiation of complaints does not ensure that the officer involved will be formally disciplined or punished".¹²

3.5 Complaints and Remedy

As complaints very often identify systemic problems that require managerial attention, they constitute a source of intelligence that Gellhorn (1966b) terms "managerial feedback" about the police organization.¹³ Given this, it is not surprising to find the argument advanced that police organizations should respond positively to complaints and treat them as a useful source of information about police performance and community expectations. Thus Goldsmith (1991) talks, for example, of "supporting the police by complaining".

In fact, of course, rank-and-file members are not particularly inclined to welcome complaints and complainants with open arms.¹⁴ Furthermore, police managers are very often inclined to treat complaints as a source of embarrassment, and do little to exploit fully their managerial value beyond recording them on personal files. as a way of identifying troublesome officers (Canada, 1976; Apostle and Stenning, 1989; Maguire, 1990) or in some cases not recording them at all (Littlejohn, 1981:24; Goldsmith, 1991).¹⁵ This is hardly surprising as a complaint is, as we have already noted, an expression of dissatisfaction with police performance. No one likes to be the subject of a complaint and the police are no exception.

This natural disinclination to respond positively to complaints is exacerbated by the expectation we have noted on the part of some complainants, and critics of police complaint procedures, that the appropriate response to valid complaints is punishment, because punishment is the appropriate response to wrongdoing. Just as no one likes to be complained about and no one likes to be told that he or she has done wrong, few people respond positively to the possibility of punishment. As a result, complaints very often produce a defensive response on the part of police officers that is not conducive to complaints being treated as a monitoring system, no matter how

valuable the intelligence they provide might be.

This linkage between complaints, wrongdoing and punishment that prompts this defensive response has been criticized by Goldstein (1977:160, cited in Goldsmith, 1991). He writes that:

[a] narrow concentration on wrongdoing commits the police to waiting for complaints to be filed. It commits them to focusing their attention on investigations, disciplinary procedures and sanctions. Both the police and the public become so preoccupied with identifying wrongdoing and taking disciplinary action against errant officers that they lose sight of the primary objective of control which is to achieve maximum conformity with legal requirements established policies and prevailing standards of propriety. This objective is far more likely to be attained by fostering an atmosphere in which the police conform because they want to conform, rather than out of fear of the consequences if they do not.

Such criticisms, while they correctly recognize that claims of wrongdoing militate against a remedial management style, do not alter the fact that complainants make such charges or that complaint systems, as we shall make clear below, are designed to recognize and respond to them as charges of wrongdoing that "require" punishment.

3.6 Political Conflicts

The public attention which complaints against the police draw reflects a larger political concern about the power available to the police and its potential for misuse. This concern is frequently the explicit focus of a variety of debates and struggles. Claims that the police have either too much or too little power and claims that they are acting beyond the scope of their powers, are often the focus of a host of different conflicts (Reiner, 1985; Spencer, 1985; Scraton et al., 1987). These include, for example, conflicts carried out within Parliament and the press between governing and opposition parties, conflicts between persons concerned with advancing civil liberties and governments, conflicts between defence and prosecuting attorneys within a court of law and conflicts in which minority groups seek to transform their status and position within the community. In these conflicts, police officers and police organizations often find themselves unwilling objects of, and participants in, struggles in which the specific complaints are simply moves in a wider game over which they have very little control and in which objectives specific to policing are overshadowed by other considerations.¹⁶

In situations of political conflict, such as ones over the treatment of minorities, the symbolic importance of complaints as claims about police abuse of power tends to catapult them into the public eye where they become a battleground on which different interest groups seek advantage.¹⁷ Thus, for example, in the case of minority/police conflicts, spokespersons for the minority community who regard the police -- and more generally the society of which they are a part -- as racist, will tend to regard any disposition with respect to a complaint of brutality other than severe punishment as evidence of a "whitewash". In contrast, the police-rank-and file will be inclined to regard such a disposition as "scapegoating".

Police management, for its part, will tend to feel caught in a political conflict that severely limits its ability to manage according to its own inclinations. Managers will feel pressured to take action to satisfy a larger political agenda rather than deal with the managerial problems they face on their own terms. That is they will feel pressured to adopt a disciplinary rather than a remedial response.

3.7 Summary

In this chapter we have described how the very nature of a complaint, the reasons for complaining, the way in which responses to complaints are evaluated, the consequences of punishment, as well as the political context in which complaints take place, tend to link complaints to discipline. Furthermore, we have shown how this linkage persists, despite arguments to the effect that complaints provide valuable sources of feedback about police performance. This chapter demonstrates how the tendency to equate police management with discipline is strengthened when the issue initiating managerial interest is a complaint. That is, complaints by their very nature tend to reinforce the tendency within police organizations for managers to manage via discipline.

Chapter 4

Traditional Complaint Systems

4.1 Introduction

As the affinity between complaints and punishment fits very nicely with the reliance on punishment as a managerial strategy, it is not surprising that the traditional response to complaints against the police was to deal with complaints through the police discipline system. That is, police discipline systems and complaint systems have traditionally been one and the same thing and this continues to be the case for the majority of police organizations in Canada.

In this chapter we will consider this integration of complaints into police discipline systems before going on in the next chapter to consider the critique of this arrangement that has developed in Canada and elsewhere over the past two decades.

4.2 Citizens as Informers

In integrated systems that use disciplinary procedures to respond to complaints, complaints operate as a source of disciplinary intelligence about the wrongdoing of police officers. This traditional integration of complaints into disciplinary procedures and the arguments in support of it are neatly summed-up in the following statement in support of its continuance by the Australian Law Reform Commission in its report on Complaints Against the Police:

It is vital that the unity of discipline both in kind and measure should be preserved. Whilst recognising the greater public involvement in an external complaint, the mere origin of a complaint outside the force ought not to alter radically the way in which it is dealt with. Misconduct is misconduct whether brought to attention by another member of the force or by a member of the public (Australia, Law Reform Commission, 1975, p.11).

What this argument makes clear is that internal disciplinary objectives should govern the way in which a complaint is handled.

4.3 Receiving a Complaint

As the above statement makes clear, the only thing that differentiates traditional complaint systems from discipline systems is the fact that it is a member of the public, rather than a police officer, who identifies improper conduct. Two approaches have been developed within traditional complaint systems for receiving complaints and integrating them into police discipline: an informal approach that makes no special provision for the receipt of complaints and a more formal approach that establishes specific procedures for receiving complaints.

4.3.1 The Informal Approach

Within this approach a member of the public who contacts the police with a complaint is typically put in touch with the officer on duty in the division in question who listens to the complaint and decides whether there are sufficient grounds to initiate a disciplinary process. Whether the complaint is recorded, and whether it receives a response, depends on the judgment of the person who happens to be on duty at the time. Very often the complaint is "resolved" at the level of the first or second person contacted. In this case it is unlikely that any formal recognition of a complaint will be made.¹⁸

4.3.2 The Formal Approach

In response to arguments that the informal approach may lead to the loss of useful intelligence because the officer receiving the complaint may be tempted to avoid criticism of his subordinates and his own management abilities by ignoring the complaint, more formal processes for receiving complaints are sometimes incorporated into complaint systems. The usual way of formalizing the process has been the establishment of internal complaint bureaus responsible for receiving and recording public complaints. These bureaus are designed to take decisions out of the hands of the persons who are directly involved in the operations of the unit against whose officer(s) the complaint is made.

4.4 Processing Complaints

Within a traditional system, complaints, as we have already noted, are simply fed into the normal internal supervisory process. Once a complaint enters the system, it is theoretically treated via the same procedures as wrongdoing that is identified internally by a manager.

One of the criticisms of this procedure has been that complaints that do enter the system may not in fact get the attention they deserve for the same sorts of reasons that lead to complaints being "lost". The criticism here is not that a disciplinary response is inappropriate but rather that the complaint may not receive a proper disciplinary response. Evidence that this is the case has been almost endemic worldwide, as revelation after revelation has led to inquiry after inquiry that has shown how the wrongdoing alleged by complainants has been covered up by police officers who have investigated and adjudicated complaints within the disciplinary process (Punch, 1985; Goldsmith, 1991).

One of the consequences of these scandals has been the development of internal affairs units, within police departments designed to ensure that the discipline system is not subverted when it is used to respond to complaints. Internal affairs units are typically organizationally separated from other divisions within the police department and very often are made directly responsible to the chief of police. The idea behind these units is that relatively autonomous bodies, directly responsible to the apex of the police department, can be relied upon to investigate and adjudicate complaints thoroughly and that this will ensure that proper discipline is applied.

Very often, the procedures governing internal affairs units provide for some sort of external police intervention into the disciplinary process, for example investigations by another police department, in particularly sensitive cases. This introduces a quasi-independent element into the processing of complaints as a way of ensuring that justice with respect to complaints is not only seen to be done but in fact is done.

The argument in favour of internal affairs units with quasi-independent elements is that it keeps the command structure intact while at the same time eliminating, or at least severely reducing, the possibility of bias in the handling of complaints in a way that will encourage public confidence in the process.¹⁹

4.5 Summary

The traditional complaints model responds to complaints by dealing with them through the discipline system. This arrangement places police managers in control of the complaint process. It does so by placing them in a position where they are able to decide the extent to which wider political interests, and the interests of specific complainants, should take precedence over more narrowly defined managerial objectives.

The criticisms of this model have had to do primarily with the extent to which charges of wrongdoing made by complainants are properly investigated, adjudicated and punished. In response to such criticisms steps have been taken to improve the traditional model. These within-model reforms have sought to improve the likelihood of complaints being properly dealt with by police disciplinary systems. That is, they have endeavoured to lessen the likelihood of cover-up and lenient dispositions in response to charges of police misconduct by members of the public.

Chapter 5

Criticism of the Traditional System

5.1 Introduction

For the reasons suggested in the previous chapter, the traditional system has been the subject of sustained criticism. The essence of this criticism has been that any system that permits police organizations to respond to complaints in whatever way they choose cannot possibly respond adequately to complaints, nor can it be expected to evoke public confidence. Police, it is argued, have consistently shown that they are prepared to protect themselves in the face of complaints by covering up deficiencies identified by complainants, and that this has happened whether or not there are special internal investigative units with quasi-independent elements.²⁰

In addition to these arguments about police bias, it is also argued that traditional complaint systems, because they treat complaint systems simply as sources of managerial intelligence, do not give sufficient attention to complainant concerns and to their satisfaction with the complaint process.

5.2 The Problem of Bias

The criticism of bias arises from the argument that complaints can, and should, serve as a basis for a review of police management, including its ability to ensure that officers act appropriately. It is claimed that a review of managerial competence and rank-and-file performance simply cannot be done with any degree of credibility if police managers are asked to assess performance, because both they and their subordinates will vigorously resist such an assessment (Freckelton, 1990).

This argument leads to an insistence that police not be permitted to oversee themselves, both because they inevitably will be inclined to protect themselves and because, even if they in fact do not do so, the public will suspect that they have not been as critical in scrutinizing their activity as they should have been (Canada, 1976; Scarman, 1981; Baldwin and Kinsey, 1982). Furthermore, it is argued that since police managers will tend to endorse their managerial style, the public loses a valuable opportunity to assess the managerial practices that lie behind police conduct (Reiner, 1985; Spencer, 1985).

This argument about the possibility of a managerial cover-up is typically applied to the whole police department. The argument is that when members of the public complain about the conduct of any police officer, they are likely to face a united and protective wall maintained by everyone within the police department so that both managerial and rank-and-file inadequacies will be covered up.²¹

5.3 An Independent Element

These charges have given rise to the argument that complaint systems should include an independent element to ensure that complaints are dealt with in an unbiased manner (Terrill, 1990). Just what this independent element ought to be, and where and how it should operate, has been the

subject of intense debate (see, for example, Grant, 1975, or Freckelton, 1990). One position, noted above, is that a quasi-independent element - such as an internal affairs unit -- is sufficient. Most critics, however, reject this as being much too "internal" to provide either the reality or the appearance of impartiality necessary to assure public confidence. In the debate over an independent element, two models have emerged: the one promotes the involvement of an independent element directly in the decision-making process as a way of remedying police bias, while the other argues for an external review process that keeps the structures of managerial and political responsibility intact (see chapters 6 and 7).

5.4 Complainant Satisfaction

The criticisms concerning complainant satisfaction arise in connection with the observation that traditional complaint systems inevitably sideline complainants and their interests. Consequently they are not oriented to resolving the complainant's concerns. Any adequate system for dealing with complaints, it is argued, must be specifically concerned with satisfying complainants and more generally the group(s) or the communities on whose behalf the complainant speaks.

Within the traditional approach, complainant satisfaction and public confidence is not an objective, except in the indirect sense that police managers are ultimately responsible to the public for the provision of police services and may find community relations strained if the public's views are totally ignored. Traditional complaint systems, it is claimed, do not provide for a process that will contribute to public confidence while at the same time satisfying persons who have been unjustly treated by the police.

5.5 Minority Groups

The above arguments have been developed most powerfully in connection with minority groups, such as blacks, native people and homosexuals, who claim that the police are racially biased and homophobic. In the case of complaints from members of these groups, it is argued, it is issues such as the re-establishment of confidence in the police, and satisfaction at the personal level, that are the most important values at stake. Complaints from members of minority groups, it is argued, frequently are an expression of the isolation they as members of a minority community feel, and it is these concerns and feelings that need to be addressed in the response to complaints. Yet, within the traditional system, it is precisely such concerns that tend to be ignored, even where complaints are handled via internal affairs units.²²

5.6 Complaint Systems as Objects of Political Conflict

The debate over traditional complaint systems makes clear that complaint systems are not only sources of managerial intelligence but are, in addition, strategic resources that can be used in political struggles to advance the strategic position of contesting parties where police activity is the terrain of conflict (Freckelton, 1990). The relevance of complaint systems as a strategic resource has fuelled the debate over the reform of public complaint systems. One of the consequences of this is that specific arguments about the "pros" and "cons" of particular systems for dealing with complaints

often mask deeper agendas that arise out of conflicts and interests that may be quite different from those that are the explicit focus of attention. Thus, for example, complaint systems are a resource that minority groups can and do use to assert that they are being unfairly targeted by the police and to redress their perceived disadvantage both at a personal and a group level.

These deeper agendas have informed and shaped the debate over the procedures, appropriate to all phases of complaint processes, from the receipt of the complaint to the final disposition of the complaint, just as they have informed the decisions made within complaint systems. This has meant that complaint systems have themselves become objects of political struggle as various groups have sought to shape them in ways that will make them more useful as a resource that can be used to their advantage.

In this struggle over complaint procedures, the police have very often found themselves the adversaries of those groups arguing for the reform of traditional internal police complaint procedures, as they have sought to maintain control over the complaint process on the grounds that as a profession they should be self-regulating (Bayley, 1983).

5.7 A Systemic Focus

In addition to the above issues that have dominated the debate over complaint systems, a sub-text of these debates has been the argument that the traditional complaint system, because it links complaints with discipline, has tended to take an individualistic, punitive approach to discipline that militates against the identification of systemic problems that require an organizational rather than an individual response (Goldsmith, 1991). These criticisms have complemented the critique of the justice motive within police management reviewed in chapter 2 and 3, that has argued for a more remedial, non-punitive response to police management (Canada, 1976).

5.8 Summary

The traditional system of complaint investigation has been criticized on the grounds that it does not provide the basis for an objective examination of, and response to, complaints; nor does it accord appropriate recognition to the interests and motives of complainants. These criticisms have led to intense debates over the desirability of injecting an external, independent element into public complaint processes to ensure that complaints are taken seriously, that deficiencies are properly dealt with, and that both complainants and the public at large have confidence that this is so.

Chapter 6

Reform of the Complaint Process

6.1 Introduction

The criticisms described above have led to a search for more satisfactory complaint systems. In the debate over how this should be done, two principal lines of thought have developed. Each proposes that a truly independent element be incorporated into complaint systems that will reduce the freedom of police managers. What distinguishes them is the way in which police managers are to be constrained.²³

6.2 The External Review Model

One line of argument has been that criticisms can be addressed within the context of the traditional system, in this system is subject to an external review process which will ensure that any attempt by police management to cover up managerial failures will be brought to the attention of their political masters, and if necessary be made the subject of public debate. The idea here is that police managers should be left to manage, but should be held strictly accountable for what they do. Both Goldstein (1967) and Bayley (1983), in supporting this concept, argue that an external element should be used to strengthen and reinforce internal discipline and managerial decisions, not supplant them (see also Canada, 1976; Apostle and Stenning, 1989).

6.2.1 Oversight

Proposals for external review seek to achieve precisely the gains claimed for internal affairs units, namely, the protection of the integrity of the command structure, but in a way that will provide greater public confidence because it includes external oversight. Proponents of this approach argue that where the review authority is able to make recommendations with respect to adjudication and disposition, this will allow an appropriate balance between objectives central to supervision and those associated with complainant satisfaction.

6.2.2 Arguments for Oversight

The essential premise of this argument is that political processes provided for the control of the police within democratic societies are essentially sound, and should be maintained as a basis for responding to complaints. What is required, it is argued, are modifications that eliminate opportunities for cover-up, bias, a lack of concern for complainant interests and sheer incompetence in the management of policing.

Advocates of this approach take the position that, as serious as the problems with the traditional system may be, they can, and should, be dealt with within the context of the police management systems. Police managers, it is argued, must be left to manage, albeit within a system of public accountability that ensures that they do so in a manner which is consistent with the public and not their own partisan interest. If police management is not what it should be, they argue, then it should be reformed, not replaced by an independent authority.

This line of thought is critical of any response to the criticisms of the traditional system that removes the responsibility, and thus accountability, for managing the police from police managers (Maloney, 1975; Canada, 1976; Bayley, 1983; Reiner, 1985). That is, it is critical of any response that tampers with the command structure.

The purpose of an independent element, it is argued, is to ensure that police managers properly exercise their managerial responsibilities. It is insisted that it should not be used to take over or usurp these responsibilities.

6.2.3 The Marin Commission

The argument for this approach to complaints was put most forcibly in Canada by the Marin Commission (Canada, 1976). Its approach has recently been endorsed forcefully by the Marshall Inquiry in its criticism of the Nova Scotia complaint system. The Inquiry, in developing its argument for external review in its report on Public Policing in Nova Scotia, sums up the arguments made by the Marin Commission as follows:

This Commission concluded that it was important to have a public complaints process which preserved and emphasized the chief's responsibility to manage and maintain discipline in his force. Accordingly it recommended that the role of an external review agency should be limited to adjudicating a complaint and publicly recommending to the Chief (in this case the Commissioner of the RCMP) what course of action he ought to take against officers who were found to be at fault, leaving the Chief with the ultimate responsibility for determining and imposing discipline. It argued that a Chief who consistently failed to follow the spirit of such recommendations would in effect be calling his own competence as a leader and manager into question, as a result of which he could himself become the object of legitimate complaint (Apostle and Stenning, 1989:91).

6.3 The Parallel Command Model

In contrast, advocates of the Parallel Command Model argue that, at least so far as the handling of complaints is concerned, the police management system is beyond remedy and should be replaced by a more satisfactory alternative.²⁴ Within this model an external element that has the power to make manager decisions and, if necessary, to usurp the authority of police managers, is introduced into the complaint process. Empirical examples of this approach vary considerably with respect to where and how such an independent element is introduced. Typically, such models provide for an independent complaints authority that can, under certain conditions, undertake its own investigations, adjudicate and decide upon and implement the appropriate disposition.

The advocates of this approach realize that there are costs involved in this strategy as it requires police managers to live with managerial decisions that are not of their making.²⁵ However, in contrast to the advocates of the External Review Model, they insist that these costs must be accepted if complaints are to be properly dealt with, and if public confidence in the complaint

process is to be assured.

6.3.1 The Metropolitan Toronto Police Force Complaints Act

In Canada, one of the clearest examples of the parallel command approach to complaints is the procedure set out by the *Metropolitan Toronto Police Force Complaints Act*, 1984. This Act has its origins in the reports of the Maloney Inquiry (Maloney, 1975) and the Morand Commission (Ontario, 1976) which argued for the injection of an independent element into the complaints process at the adjudication stage, while leaving the investigation and the disposition of the complaint with the police.

The 1984 *Act* in fact went a good deal further than this by establishing a Public Complaints Commissioner with the power to both adjudicate and dispose of complaints. Goldsmith and Farson (1987:619-620) outline the powers of the Commissioner exercised through boards of inquiry to dispose of complaints as follows:

Generally speaking, these boards conduct all hearings de novo and have broad disciplinary powers. They may impose penalties of a labour relations nature which range from the right to dismiss officers in cases of proven serious misconduct to reprimanding officers for minor misconduct (s. 33).

The proposed *Police Services Act* for Ontario will, if it becomes law, extend the essential elements of this system to other police jurisdictions in the province. Bill 107 proposes an authority modelled on the 1984 *Act* that has the power to make management decisions in response to complaints, both by deciding on their validity and by determining what the disposition will be.

6.4 Impact on Discipline

It will be evident from the above that the external review and parallel command models have very different implications for police management. The parallel command model sets up an alternative structure that supersedes the normal management processes in responding to complaints. In this model, an independent authority is given the power to make decisions that affect the running of the force, such as the decision to punish an officer, even though it is not responsible for the maintenance of order in a particular area and cannot be held accountable for the impact of its decisions on police management.

Furthermore, these decisions are typically made by persons without any special competence in police management and within a context that inevitably tends to give a privileged status to the interests and motives of complainants. As punishment has a special value in response to complaints, because it addresses both instrumental and expressive concerns (see chapters 2 and 3), one consequence of this privileging of complainants is a tendency to promote punishment as a response to complaints.

These consequences are, as the preceding discussion makes clear, precisely what the external

review model seeks to eschew, by leaving police management to those responsible for order maintenance within particular jurisdictions. Accordingly, external review authorities, in contrast to the authorities responsible for parallel command complaint systems, are required to compel police managers to address the concerns and issues raised by complainants and to be publicly accountable for the decisions they make, without assuming managerial responsibilities themselves.

The managerial implications of each of these models raise very different concerns on the part of their supporters and critics. The supporters of the parallel command approach concede the difficulties noted by the proponents of external review but argue that it is more important to ensure that complaints are responded to fairly and in ways that will win public confidence. If the cost of this is a parallel command structure, then so be it. The supporters of the external review model, on the other hand, take precisely the opposite view. For them, creating parallel command structures which undercut and sideline the normal system of control is too costly. Their response to the claim that police command structures, and the political structures within which they operate, are inadequate, is that if this is so they should be improved, not abandoned. They argue that by making the decisions and activities of these structures visible, external review will ensure that they perform up to their full potential; if this proves inadequate, it will provide the evidence necessary for reform, whether this be the dismissal of a chief of police, as Apostle and Stenning suggest above, or a reform of the system of political accountability. It is this process of accountability, they argue, that will, in the long run, best respond to the managerial inadequacies identified by complainants.

6.5 Police Versus Non-Police Investigations

A frequency debated issue is whether a complaint should be investigated by the police or by an outside body. It is argued correctly that investigations are absolutely critical to the resolution of complaints as they determine the "facts" that will be adjudicated. The argument against the use of police officers to conduct investigations, as one would expect, is that police officers, or police officers together with police management, will, in the face of criticism from outside the police department, undertake investigations that cover up police wrongdoing.

The strategic question in considering how to respond to this possibility is, as the comments in the previous section suggest, whether one should seek somehow to motivate police investigators to do complete and thorough investigations, or abandon the use of internal police investigators entirely in favour of outsiders. In fact, in most cases this assessment has led to the conclusion that at least the initial investigation should be undertaken internally by officers in the department, even where a parallel approach to complaints has been adopted.²⁶

6.6 Summary

The limitations of the traditional complaint process have given rise to a virtually unanimous insistence, on the part of its critics, that an external element be injected into the process. Two principal alternatives have been developed. Some reformers have advocated an external review authority to oversee decisions regarding complaints made by police managers. Others claim that police managers should be replaced by a parallel authority, at least with respect to some complaints, which will be able to respond impartially to complaints and complainants.

Chapter 7

External Review and the RCMP

7.1 Introduction

In 1986, the Government of Canada established a system of external review of complaints, discipline and grievances within the RCMP. In doing so, the Government was responding to, and heavily influenced by, the report of the Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedure within the Royal Canadian Mounted Police, chaired by Judge René J. Marin (Canada, 1976). In this chapter we consider the essential features of the ideas and proposals of the Marin Commission and the extent to which they are reflected in the 1986 *RCMP Act*. We also examine the challenges that the ERC will face in responding to grievances and appeals of discipline, and identify some of the questions that it will have to address in meeting them. We introduce these topics by considering the philosophy behind the ombudsman idea and its relationship to the managerial issues that have been the focus of this paper.

7.2 The Idea of an Ombudsman

External review models frequently draw their inspiration from the ombudsman concept developed in Scandinavia (Gellhorn, 1966a)²⁷. As this inspiration is explicitly acknowledged by the Marin Commission as shaping its conception of external review, we begin this chapter with a consideration of the concept (Canada, 1976; see also Australia, 1975; 1978).

The first ombudsman was an officer of the Swedish King who was charged with keeping a watchful eye on the Swedish government on the King's behalf (Gellhorn, 1966a:2; Friedmann, 1970:45). This office has provided the basis for the root image of the modern ombudsman idea. An ombudsman is essentially an officer charged with overseeing the activities of officials and then reporting the results of this scrutiny to the authority on whose behalf oversight is being conducted. This review may be prompted by a particular concern, such as a complaint, or it may take the form of an audit.

As a watcher, an ombudsman is not permitted to intervene directly in the activities being scrutinized, that is, the ombudsman is not permitted to usurp the authority or responsibilities of those charged with operating the process under scrutiny. However, an ombudsman may, and is often required to, make recommendations to such persons with respect to the course of action they should take. In making such recommendations ombudsmen have traditionally been required to promote the interests of the public by suggesting ways in which deficiencies may be remedied.²⁸

7.3 The Impact of Scrutiny

Ombudsmen have an effect on the processes they oversee, not by taking direct responsibility for decisions, but by making visible the decisions of those who do have such responsibility and by making recommendations to them. Thus, a useful image for understanding the ombudsman idea is of someone looking over the shoulder of officials and occasionally making suggestions to them. This scrutiny, it is argued, serves to keep officials diligent by reminding them of their responsibilities and

the values and standards they are duty-bound to uphold. Gellhorn (cited in Canada, 1976:100) presents this image as follows:

A young prosecutor acknowledged being conscious of saying to himself with considerable frequency: "I must be careful with this case, because it is just the kind the Ombudsman looks for." A former judge declared: "I can't point to a specific matter, but the Ombudsman entered into my thinking. He was a supervisory shadow, it I may put it so." A more youthful judge added: "The Ombudsman seems to me to personify the law, the omnipotent force in Swedish administration." A prison governor who had not experienced an inspection for nearly ten years said: "Often when I'm making a decision, I ask myself, How would the Ombudsman decide things? It has a good effect on me."

These supervisory effects are accomplished by the fact that ombudsmen are required to provide the authorities ultimately responsible for the administration process they review, and often the public, with reports on the results of their scrutiny. Thus, although the ombudsman does not exercise control directly, he facilitates control by making the decision of officials visible to those who can and should exercise control, for example, by making police management visible to Parliament.

7.4 The Ombudsman, the Command Structure and Remedy

For those who, like the Marin Commission, believe that in responding to criticisms of traditional police systems for handling complaints one should maintain the integrity of the police command structure, the ombudsman concept is very attractive. It provides a vehicle for holding police managers directly accountable to political authorities, and more generally the public, without tampering with the command structure. The ombudsman idea, because of its historical association with remedy, has also proven attractive to those who, like the Marin Commission, wish to see police management lessen its reliance on discipline in favour of more systemically-focused, non-punitive managerial strategies (Canada, 1976).²⁹

7.5 The Adoption of the Ombudsman Concept

The 1976 Commission of Inquiry into the RCMP identified the External Review Model as the most appropriate strategy to deal with the problems of the traditional complaint procedure in place within the RCMP. In seeking a philosophy and a structure that would give expression to this model, the Commission selected the ombudsman idea as its guiding image.

In looking to the Scandinavian countries for a model for dealing with public complaints against the police in Canada, the Commission was responding to two related concerns. First, the less than happy experience of the United States in the 1960s and early 1970s in seeking to shape an external review process around ideas such as civilian review boards (Hudson, 1971; Brown, 1985). Second, the Commission was insistent that the model it proposed should be not only theoretically

persuasive, but should have been carefully tested on the unforgiving anvil of practical experience. The extensive Scandinavian experience ensured that this was the case (Friedmann, 1970).

In proposing a federal police ombudsman, the Commission made clear that it sought to establish a review mechanism that would:

1. Introduce an external element into the complaint process, while at the same time preserving the principle that managers' responsibilities should not be abrogated; and
2. Promote a remedial approach to police management both in relation to complaints and more generally.

7.6 The RCMP Act

The recommendations of the 1976 Commission of inquiry with respect to the creation of a police ombudsman for the RCMP has given rise, as we noted at the outset of this paper, to two ombudsman-like bodies in Canada at the federal level, namely, the External Review Committee and the Public Complaints Commission.

7.6.1 ERC and PCC Involvement

The normal procedure laid down by the *RCMP Act* for initiating PCC oversight responsibilities is a complaint regarding treatment by the RCMP. In adopting this position the Act does not, with respect to complaints, go as far as the Marin Commission. What the Commission recommended was an external review authority which would, in line with the traditional ombudsman idea, undertake a general review of the Force's activity. That is, the Commission proposed that the external review authority be given an audit function. The only concession the *Act* makes to this more general approach is to permit the PCC to initiate a complaint on its own initiative. In limiting the ERC to responding to disciplinary appeals and grievances, the Act does, however, closely follow the Commission's advice that, with respect to discipline, a review by the ombudsman should be initiated only by appeal.

7.6.2 RCMP Responsibility

The *Act* is careful to ensure that neither the ERC nor the PCC has the power to override the Commissioner of the RCMP with respect to either adjudication or disposition of a complaint-initiated, or indeed any disciplinary or grievance-related, case. Neither body is permitted to act in ways that will undermine the Commissioner's duty to manage the Force. Thus, the *Act* provides that the Commissioner retains ultimate responsibility for managing the RCMP, and thereby ensures that he can be called to account for the actions of the Force.³⁰

The *Act* promotes managerial accountability by providing an opportunity for persons who are dissatisfied with the Commissioner's management to have his and/or his officers' judgments scrutinized by either the PCC or the ERC. This scrutiny is facilitated by enabling the PCC to require

the RCMP to extend and deepen its investigation of a complaint and, where it deems the complainant's or the public's interest requires it, to initiate a further investigation of the complaint or hold a hearing with respect to it.

7.6.3 Accountability to Parliament

By requiring the PCC and the ERC to produce an annual report, which is presented by the Minister to Parliament, the Act ensures that if either body is dissatisfied with the actions of the Commissioner and his officers, or the answers received from them, these concerns can be brought to the attention of the highest political authority in Canada.

7.6.4 The Influence of the PCC

The *RCMP Act* requires the PCC to act in ways that will influence the manner in which complaints are dealt with by the Force. This can occur in several ways.

1. By initiating a complaint itself, the PCC can set in motion a process that will require a managerial response by the Force.
2. By recommending RCMP action with respect to the process, for instance, by promoting a particular tack in the investigation or by proposing a particular adjudication and disposition of a case, the PCC can have a major impact on the way in which the RCMP responds to complaints.
3. By undertaking investigations itself and by holding hearings in which the issues related to a case are explored, the PCC can add directly to the information base the Commissioner and his officers will be required to consider in responding to complaints.
4. By scrutinizing what the Force does in responding to complaints, and then by bringing the results of this scrutiny to the attention of the government, Parliament and the public, the PCC creates a context of scrutiny and prospective control that will require RCMP officers to act in anticipation of subsequent scrutiny.

By influencing RCMP management in these ways, the PCC has the capacity to influence the way in which members of the Force are treated. In this way the PCC may contribute to actions by the Force that may require attention by the ERC either as a result of a disciplinary appeal or a grievance.

7.6.5 Relationship Between the ERC and the PCC

The ERC's responsibilities for discipline place it in a position where it may be required to comment upon, and make recommendations regarding, the actions taken by the Force on the advice of the PCC. When this happens, the ERC will be required to comment on the managerial implications of the PCC's recommendations.

7.6.6 Remedy

One of the central features of the Marin Commission's report was its proposal that the RCMP adopt a remedial approach to misconduct. In advocating a remedial style, the Commission made abundantly clear that it was critical of the individualistic and punitive focus that had characterized RCMP management and that it favoured a managerial stance that directed attention to systemic, organizational issues and encouraged the use of non-punitive strategies.

While the *RCMP Act* incorporates every other principle central to the Marin Commission's report, it does relatively little to promote its remedial emphasis. On the contrary, apart from identifying some very specific remedial measures in its definition of informal discipline, the Act endorses an essentially disciplinary conception of police management. In doing so it advances, rather than discourages, the tendency of complaint systems to promote a punitive, individually focused response to complaints, by providing a system for responding to complaints that reinforces the association between complaints and punishment noted earlier.³¹

7.7 Comments and Recommendations on Discipline

In responding to appeals, both the PCC and the ERC will be required to comment on and make recommendations on the managerial style of the Force.³² This will inevitably require them to address the managerial issues with respect to remedy that we have reviewed in the course of this paper. They will thus find themselves forced to take a position on the managerial stance they wish to promote in formulating their recommendations and comments. Decisions made on individual appeals will establish collectively a jurisprudence that will convey a general message to the RCMP, the government and to Parliament, on the managerial style that these authorities consider appropriate.

7.8 ERC Policy Development

These issues are going to be particularly important to the ERC whose mandate, like the mandate of the PCC, specifically requires it to make recommendations to the Commissioner regarding police management (see sections 35(13), 45.15(5), 45.45(14) and 45.46(3) of the *RCMP Act*). Whatever position the Committee adopts on the managerial questions raised in this paper, it will have, in the course of its deliberations, to make judgments as to when and where punishment should and should not be used, both in relation to complaints and misconduct more generally. In doing so we believe it would be well advised not only to review very carefully the history of police management, but to consider how other organizations have responded to the twin concerns of justice

and remedy that misconduct raises.

While this raises questions that extend beyond the limits of this paper, we would like to conclude with an example that makes clear that police organizations are not alone in having to deal with the issues we have identified.

7.9 Regulating Financial Markets

Stenning et al. (1990) note that in regulating financial markets, stock exchanges in Canada and the United States respond to the twin concerns of remedy and justice by employing two regulatory systems that operate relatively independently of one another. One system, that Stenning et al. term a "behavioural ordering" system, is concerned more or less exclusively with preventing breaches of order both by anticipating problems and, when problems do occur, by seeking to minimize the likelihood of their recurrence. The other system, which they term a "symbolic ordering" system, directs its attention more or less exclusively to moral questions of culpability and the righting of wrongs.

7.9.1 Behavioural Ordering

In regulating equities markets, officials responsible for the behavioural ordering system showed very little, if any, interest in moral issues such as allocating blame, and used a language that did not frame problems in moral terms. Rather, their concern was to preserve the way of doing things the exchange sought to promote. Punishment of persons whose actions upset this order was one of the strategies considered, but it was only one. Furthermore, when punishment was used, it was not employed as a moral response to wrongdoing but as a purely instrumental action. In adopting an instrumental approach, officials were not concerned with wrongs and wrongdoers but with selecting strategies that would encourage compliance with the market order.

7.9.2 A Dual Ordering System

The isolation of this behavioural ordering system from the symbolic ordering system was seen as critical to its effectiveness. Officials were very concerned about the possibility, indeed the likelihood, that moral concerns would overshadow preventive and remedial issues and they were both treated within a single ordering system. This concern extended not only to an organizational separation of the symbolic and behavioural ordering systems, but to an insistence that the moral ways of thinking, appropriate to symbolic ordering, not intrude on the behavioural ordering system.

One expression of this was an extreme hesitancy about permitting persons with legal training to participate in the behavioural ordering system lest they introduce a moral consciousness, with its individualistic focus and its concern with justice, that would undermine the preventive, remedial focus so critical to behavioural ordering.

7.9.3 Symbolic Ordering

Exchange regulators, while insistent about the importance of maintaining a particular behavioural order, recognize that actions that violate it have important symbolic effects that should not be neglected and that at times become a central concern. For example, breaches of market order not only affected the actual workings of the market but sometimes contributed to a lack of confidence in the fairness of the market. In responding to these more symbolic problems, the exchange officials very often saw the righting of wrongs as an appropriate response and punishment as an appropriate strategy for doing so. This action was taken quite independently of whatever might be being done about the behavioural issue. Thus, for instance, the issue of insider trading was tackled at both a behavioural and a symbolic level. At the behavioural level the issue was how to prevent people acting on insider information. At the symbolic level it was how to respond to the resentment that the knowledge that insider trading took place created.

7.10 Satisfying both Symbolic and Behavioural Concerns

This discussion has obvious relevance to the issue of complaints against the police because complaints, as we have made clear, raise both symbolic and behavioural concerns. In commenting on these twin motives we have argued that police management, in responding to these concerns, has tended, by privileging punishment, to favour symbolic over behavioural responses.

In the course of this discussion we have indicated how, in seeking to accommodate these concerns, one reform response has been to propose the development of parallel command structures, one inside the organization and the other outside. We have noted that this response poses serious problems for police accountability that have resulted in proposals for an external review approach that rejects a parallel structure.

The Marin Commission, in arguing against the parallel command model, nonetheless made clear that if recognized that twin issues of justice and remedy should both be addressed in response to complaints. The Force's response to complaints, the Commission argued, must be both "fair" and "effective" (Canada, 1976:72). In developing recommendations that would permit this, the Commission suggested that police management should consider these issues through parallel internal structures by proposing that the Force's complaint and discipline systems should be independent of one another (Canada, 1976:72-73).

One way of giving expression to the principle that both the concerns of justice (symbolic order) and remedy (behavioural order) must be addressed would be to encourage the development of a dual internal response to complaints that would ensure that both these concerns were given full and complete consideration. The argument made in this report that police management should move beyond a disciplinary focus is compatible with this proposal, for in essence what it suggests is that police management should not rely on a unitary response to misconduct, namely punishment, that attempts simultaneously to address both these concerns, but should consider these issues independently and respond to them separately.

7.11 Summary

This chapter has explored the influence of the ombudsman idea on the development of external review models and particularly on the complaint process that has been established for the RCMP. It examines how the ombudsman concept provides for external, non-partisan surveillance over administrative processes that leaves control over policing with police managers. In addition, it notes how the ombudsman idea has traditionally promoted a remedial response. These features of the ombudsman have been promoted in Canada by the Marin Commission, whose recommendations provided the stimulus for the complaint, disciplinary and grievance procedures established by the *RCMP Act*. The *Act*, in establishing two external review authorities, one for complaints and the other for discipline and grievance, has accepted the Commission's advocacy of a review process that does not undermine the managers responsibilities of the RCMP command structure. The *Act* does not, however, adopt the Commission's recommendations with respect to remedy. In responding to this, the chapter explores the possibility of the Force developing a dual response to complaints that will allow equal attention to be accorded to the twin concerns of fairness and effectiveness.

Notes

1 This paper has benefitted from Philip Stenning's and David Bayley's insightful comments and suggestions. Their generous assistance is gratefully acknowledged.

2 Stolovitch and MacDonald, for example, writing in 1981, identified a move in police management from a crisis, or incident-reactive, paramilitary style of management, toward planned, integrated and comprehensive approaches (1981:81-97).

3 The *RCMP Act* R.S.C. 1985, c. R-10, as amended, requires the ERC to advise the Commissioner of the RCMP on how to respond to grievances referred to the ERC. The Commissioner refers the grievances dealing with a number of subjects; if the member presenting a grievance requests that it not be referred, the Commissioner has the discretion to refer the grievance or not. Sub-section 34(3) provides:

(3) Where, after reviewing a grievance, the Committee Chairman is not satisfied with the disposition of the grievance by the Force or considers that further inquiry is warranted, the Committee Chairman may

(a) prepare and send to the Commissioner and the member presenting the grievance a report in writing setting out such findings and recommendations with respect to the grievance as the Committee Chairman sees fit; or

(b) institute a hearing to inquire into the grievance.

Sub-section 35(13) provides:

(13) On completion of a hearing, the Committee shall prepare and send to the parties and the Commissioner a report in writing setting out such findings and recommendations with respect to the grievance as the Committee sees fit.

The mandate of the ERC also includes hearing the appeals of members who have had formal disciplinary action taken against them. Section 45.15 states:

(1) Before the Commissioner considers an appeal under section 45.14, the Commissioner shall refer the case to the Committee.

...

(3) Notwithstanding subsection (1), the member whose case is appealed to the Commissioner may request the Commissioner not to refer the case to the Committee and, on such a request, the Commissioner may either not refer the case to the Committee or, if the Commissioner considers that a reference to the Committee is appropriate notwithstanding the request refer the case to the Committee.

Section 45.16 states:

- (1) The Commissioner shall consider an appeal under section 45.14 on the basis of
 - (a) the record of the hearing before the adjudication board whose decision is being appealed,
 - (b) the statement of appeal, and
 - (c) any written submission made to the Commissioner,

and the Commissioner shall also take into consideration the findings or recommendations set out in the report, if any, of the Committee or the Committee Chairman in respect of the case.

...

- (5) The Commissioner shall as soon as possible render a decision in writing on an appeal, including reasons for the decision, and serve each of the parties to the hearing before the adjudication board whose decision was appealed and, if the case has been referred to the Committee pursuant to section 45.15, the Committee Chairman with a copy of the decision.
- (6) The Commissioner is not bound to act on any findings or recommendations set out in a report with respect to a case referred to the Committee under section 45.15, but if the Commissioner does not so act, the Commissioner shall include in the decision on the appeal the reasons for not so acting.

4 The Public Complaints Commission sets out its mandate in its 1988-89 Annual Report as follows:

Part VII [of the *RCMP Act*] provides for:

- reception by the Commission of complaints from the public;
- initiation of complaints by the Chairman where the Chairman considers there are reasonable grounds for taking such action;
- notification by the Commission to the RCMP, for investigation and disposition by the RCMP, of complaints received by the Commission;
- investigation by the Chairman or hearing by the Commission, whether or not the RCMP has investigated the complaint, where the Chairman considered it advisable in the public interest;
- review by the Chairman where the complainant is not satisfied with the RCMP's disposition of the complaint;

- hearings by the Commission when the Chairman has concluded, after a review, that he is not satisfied with the RCMP's disposition and that a hearing should be instituted;
- the making of findings and recommendations by the Chairman and the Commission in their respective reports.

5 This rigidity is often expressed in terms of an excessive concern for procedures in which the objectives they are supposed to produce tend to get lost. In making this point and commenting on its consequences for morale, the Marin Commission (Canada, 1976:116) cites the following passage from the 1944 Haig-Brown Report on Personnel Selection for the RCMP.

Generally it is the pettiness of restrictions, their nagging quality which suggests that the men are irresponsible and hard to discipline that causes most discontent. The writer has been impressed again and again by the number of small infractions, often quite unrelated to the main issue, which are brought to light in almost any inquiry. One feels that a close examination of any 24 hours of a policeman's life would reveal half a dozen such infractions and that any man who survives an inquiry without the discovering of a charge that can be laid against him has been extremely lucky. Such close regulations, particularly under the present system of slow promotion, have a very real tendency to discourage initiative.

6 This style of management is reminiscent of the "scientific" management that was applied in industry in the 1940s and 1950s where strict rules are laid down and conformity is encouraged via the use of piecework rates (Bradley, et al., 1986).

7 One of the procedural failings of the Civilian Review Boards, popular in the United States during the early 1960s, was the fact that it was believed by some that few basic constitutional rights of police officers under investigation were maintained (Hudson, 1972:522). One of the police's main fears regarding external review processes is that they will not be treated fairly or be afforded due process protections (see also Canada, 1976; Brown, 1985).

8 See Garland and Young (1983) for a general discussion of punishment and its purposes. For a discussion of the power of "shaming" and how it can lead to behaviour change and reintegration see Braithwaite (1989).

9 See Cohen (1985) and (1988:36) for an outline of the various expressive effects of punishment.

10 As Hirschman (1970:1) has noted:

No matter how well society's basic institutions are devised, failures of some actors to live up to the behaviour which is expected of them are bound to occur, if only for all kinds of accidental reasons.

11 Complaints can take a number of forms. They may be written, verbal, anonymous or made by a witness to an incident. Most complaints are made against lower echelon officers who have greater contact with the public. However, Maguire and Corbett (1989:182) note that:

there is some evidence that both inspectors and sergeants are equally -- if not more likely to be complained against when account is taken of their numbers (Emment, 1984).

12 Goldsmith (1991) goes on in his analysis of the Victorian situation to note that:

In total then in 1986-87, 60% of all charges referred to the Board resulted in no prejudicial outcome for the police officer charged, while the equivalent figure for 1987-88 was 66%. In 1986-7, of the remaining 69 charges for which some formal sanction was imposed, over half (37) resulted in fines, while nearly a quarter resulted in reprimands. In 1987-88, of the 46 charges which resulted in some form of negative outcome, 18 resulted in fines and 7 in reprimands. Twelve of the charges in that year concerned one police officer, who was dismissed.

13 See Hill's (1981) conception of "bureaucratic monitoring" systems and Dunsire's (1986) conception of "negative feedback" systems referred to by Goldsmith (1991).

14 Adamson (1987) reports that there seems to be confusion on the behalf of some officers, as to the management's part in the complaint process. Some officers in Adamson's study felt that in letting many civilian complaints go forward, management was demonstrating a withdrawal of support for officers on the beat. The management's position was that it was bound by law to process the complaints.

15 The 1976 Commission of inquiry into the RCMP (Canada, 1976) noted the following as reasons why complaints are not brought forward:

1. a belief on the behalf of the potential complainant that the police would cover up the incident;
2. a lack of knowledge as to how to lodge a complaint;
3. fear of retaliation by the police.

16 Inquiries prompted by charges that the police have abused their power or have failed to respond properly to complaints against them provide examples. The Maloney (1975), Morand (1976), Scarman (1982), Victoria (1987) and Queensland (1989) inquiries are cases in point.

17 See Smith and Gray (1985) and Gordon (1983; 1987), for discussions of some of the problems which have characterised police/minority relations in the United Kingdom.

18 As Maguire and Corbett (1989:191) note in commenting on the British situation, taking a complaint further than the initial contact within the police organization very often requires considerable perseverance on the behalf of the complainant.

Among those of our complainant interviewees who had either visited or telephoned a local police station in order to make their complaint, over 30 percent had been "put off" at the first attempt, and had to take a further initiative to register it on a later occasion. For example, several who went to police stations had been told by officers or civilians on the desk to write to the chief constable or to the local superintendent, and one had even been told to write two letters to different stations. Another had been informed that she would have to visit headquarters (nearly twenty miles away) to register her complaint. Others, too, had been told to come back later when an inspector was on duty. Those who had tried but failed to complain by telephone said they had received courteous polite replies aimed at convincing them that "the officer was only trying to do his job", but had been given little information about complaint procedures and no efforts had been made to arrange a meeting to take the complaint.

A specific example of the way in which a dissatisfaction on the part of a member of the public can fail to be established as a complaint that will trigger further action is the following:

The complainant was stopped by a traffic officer for making an illegal right hand turn, in an area of town in which considerable road construction was taking place and where the immediately available legal routes were thus not accessible. When this was pointed out to the traffic officer, the response received was that what the city's construction department did was of no concern to the police and that whether it was possible for this person to get where he wanted legally was of no concern to them either. The driver felt aggrieved both at being stopped in these circumstances (a concern about the management of the department), and with the response of the police officer (a concern about the conduct of the officer). He decided to complain by calling his local division, where he was told that this was not their jurisdiction, as the officer involved was a member of the department's traffic division. When the traffic division was called, the response of the sergeant on duty was to express the same sentiments as the traffic officer, but with greater conviction and in more forceful language. In response the complainant, who was now feeling even more aggrieved, called the Deputy Chief of Police responsible for Operations. The Deputy was sympathetic and shared with the complainant the difficulty he had in getting his officers to respond more sensitively to the public. He "cooled out" the complainant, while making clear that neither he, nor anyone else in the department, regarded this complaint as worthy of a managerial response (personal communication)

19 For arguments with respect to the importance of maintaining police self-regulation by keeping the command structure intact see Goldstein, 1967; Bayley, 1983; Doig et al., 1984.

20 Terrill (1990) provides an interesting discussion of peer group solidarity.

21 Claims about in-group solidarity among police officers have almost become a cliché. Freckelton (1990), for example, writes that:

[i]t is well-recognised that hostility toward outsiders is a source of resistance to change that is exacerbated by a high degree of in-group identification, a bonding that gives coherence to a group and emphasises the differentness of that group to those not part of it (Watson 1971: 745). Police forces are notorious for their exclusivity, their brotherhood ethic and their conservatism in the face of proposals for reform (Reiner 1985:97).

Similarly Richardson (1989:202-5 and 362-3) in his report on police corruption in the Australian state of Victoria comments at some length in his report on "the unwritten police code" and its consequences for isolating the police. Richardson writes that the code:

effectively makes police immune from the law. In conflicts between the code and the law, the code prevails. Under the code:

- loyalty to fellow officers is paramount;
- it is impermissible to criticise fellow police, particularly to outsiders;
- critical activities of police, including contact with informants, are exempt from scrutiny;
- police do not enforce the law against, or carry out surveillance on other police; and
- those who breach the code can be punished and ostracised....

The operation of the code means that police reject criticism and external supervision. The Force then counters criticism with misinformation and deceit. Reforms are said to be bad for "morale". Those who make allegations against police often themselves become the subject of abuse, criticism or allegations.

Problems are denied or minimized, which makes planning difficult and increases the cynicism of the community about the Force (cited in Freckelton, 1990; see also Bradley, et al., 1986).

22 See Smith and Gray (1985) for a discussion of the fears of minority groups in bringing complaints to the attention of the police and Gordon (1987) for a more detailed consideration of police-minority relations.

23 Various complaints procedures have been developed and adopted in place of the traditional

model (see Grant, 1975, for a discussion of the various models available). There is variation between models. New Zealand and the United Kingdom provide examples of the nature and extent of this variation.

New Zealand--an ombudsman has had responsibility for national government agencies, public bodies and court staff since 1962. There is no independent police monitoring agency, although some complaints are investigated and the internal process has not produced a satisfactory solution.

England and Wales--the complaints procedure here has recently been changed under The *Police and Criminal Evidence Act 1984*. This legislation replaced the Police Complaints Board with the Police Complaints Authority (PCA). The role of the PCA is to supervise the investigation of complaints from the public against police officers. The police are required to refer certain categories of complaints to the PCA; these include complaints alleging death or serious injury, police corruption issues and allegations of serious crimes having been committed by police officers. The PCA can also investigate other cases where it believes it is in the public's interest to do so.

In cases of investigation where the PCA does supervise, it is able to approve or veto the appointment of the investigating officer and it can give directions on the conduct of the inquiry. The investigating officer must submit a final report to the PCA, and the PCA can state whether or not it believes the investigation was conducted satisfactorily. The PCA therefore acts as an independent review body.

There is still debate about how successful the PCA has been in changing how the police investigate themselves, and whether or not the PCA is seen by the public as a worthwhile and effective body (see, for example, Grimshaw and Jefferson, 1987:285).

See David Fogel (1987) for a comparative examination of the complaints procedure in London, Paris and Chicago.

24 Alberta, Ontario and Manitoba have all established "independent" police complaint mechanisms. Nova Scotia has more recently established an independent Police Review Board (Police Act, 1985 s. 28, proclaimed in May 1988). The Board has been established to "hear and determine public complaints and matters of internal discipline" (Apostle and Stenning, 1989:68-71).

25 Apostle and Stenning (1989) note that one of the costs of this is that it permits a chief of police to avoid responsibility for policing and police management, on the grounds that he does not control what happens within his jurisdiction.

26 The police usually claim that they are the most suited to carrying out an investigation, as they already have expert skilled investigators on hand and because motivated internal investigators are in the best position to overcome the resistance we noted earlier.

27 See also D.C. Rowat "The Ombudsman, Citizen's Defender" (1965) for a discussion of existing Ombudsman systems.

28 As Goldsmith (1991) notes, the mandate of an ombudsman typically requires him to:

assist in the recognition of patterns of organisational misconduct and the recommendations of suitable reforms.

Friedmann (1970:44) argues that this remedial function is one side of the ombudsman coin with the other being fairness to the citizen.

The Ombudsman acts as a bridge between the individual citizens of a state and the people within the government who take administrative action which affects those individuals. On the one side, the Ombudsman is a means by which citizens who have been subjected to administrative abuses are able to present their grievances to an influential functionary who is empowered to investigate the procedure which gave rise to the grievance and who may make recommendations to the department concerned. On the other side, the Ombudsman serves the government by indicating where the administrative machinery is not functioning properly in its dealings with citizens.

Later, in noting the centrality of this remedial feature to the idea of the ombudsman, Friedmann (1970:48) cites Gellhorn who writes:

The Ombudsman was created, not to clean up a mess, but rather simply to provide insurance against future messes.

29 The ombudsman idea is also attractive in countries, such as Canada, where the concept of police independence has currency.

Police independence is a complex, and intrinsically controversial, concept that has been devised to distance operational police decision-making from direct government control. This distancing is seen as desirable because it is feared that in multi-party, representative democracies where a partisan political party is asked to form a government, members of the government may be tempted to use the police, and their special access to physical force, to pursue partisan ends at the expense of the public interest (Marshall, 1978).

The idea of police independence proposes that police be viewed as accountable directly to the law, or the Crown, for the way in which they make decisions with respect to their duty to maintain the law. Thus, while politicians may direct them both by making laws and by instructing them to maintain the law, they should not intervene directly in the way in which police fulfil this duty (Cull, 1975-77).

Where an external review authority operates its oversight responsibilities for a government, the results will be to bring the police more directly under the control of government. While this will please those who would quarrel with the values and objectives that lie behind police independence, and who wish to see the police brought more firmly under government control, it will upset those

who want to distance the police from government.

However, where such an authority adheres strictly to the ombudsman idea and reports to an authority that is regarded as non-partisan, such as Parliament, the concept will find favour with those who support distancing the police from government. In doing so, the ombudsman strengthens the viability of the independence idea by responding to the fear that police independence will result in the police being outside political control (Cull, 1975-77). This fear is assuaged by the presence of an ombudsman who reports directly to Parliament. In this case, political control of the police is enhanced, without jeopardizing the concept of police independence and the reduction of partisan involvement in policing it promotes.

30 Note that section 5 of the *RCMP Act* states that the Commissioner has responsibility for control and management of the force under the direction of the Minister.

31 The mandate of the ERC is, incidentally, also restricted to responding to individual cases of discipline and grievances, although it may review collective grievances.

32 While the occasion for these recommendations will be limited to complaints and grievances and appeals of discipline, the questions raised inevitably will have to do with a wide variety of managerial issues.

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NOTES