
Stakeholder Perspectives on Police Complaints and Discipline: Towards a Civilian Control Model

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This paper examines the case for independent investigation and adjudication of complaints against police, and the implications for restructuring of public sector institutions concerned with integrity. The need for external review of police in-house investigations is well established. However, there is now an accelerating trend for civilian agencies to go beyond review to engage directly in investigations and to have much greater input into disciplinary decisions. This paper reports on the experiences and principles behind this trend, focusing on the points of view of specific actors and stakeholders. These include commissions of inquiry, oversight agencies, complainants, police, the public, civil liberties groups, government review bodies and miscellaneous bodies. The perspectives of each of the groups were analysed to develop a distinctive “civilian control model” for maximising stakeholder confidence in police integrity. The model entails police management responsibility for primary misconduct prevention and informal resolution of complaints, with external agencies having control over the investigation and adjudication of complaints. The paper also argues for efficiency gains from integrating police oversight within a larger public sector integrity commission, especially in countries with large numbers of small police departments.

Civilian Oversight of Police

The last three decades in policing have been characterised by a marked evolution of accountability away from police control of disciplinary processes towards greater input from civilian oversight agencies (Goldsmith, 1991a; Walker, 2001). Typically, oversight agencies have names such as Civilian Review Board, Police Complaints Authority or Ombudsman. They are normally located in offices apart from police establishments and are usually managed by personnel who have never been police — with lawyers, especially public prosecutors, prominent in the staff profile. The powers and functions of these agencies can vary significantly, but two main types are apparent. In a minimal “review” model, staff respond to appeals from dissatisfied

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complainants, audit selected files, and recommend changes to police procedures or disciplinary decisions. This has been the main form adopted in the formative stages, and it has been roundly criticised as too weak (USCCR, 1981). More advanced agencies obtained powers to conduct their own investigations or supervise police investigations in more serious cases (Goldsmith, 1991b). Evolution in this direction has not been unilinear, with police union and political opposition at times succeeding in cutting back the powers of agencies or even closing them down. Nonetheless, the global trend is clearly in the direction of more civilian review agencies and more powerful agencies, although limited review remains the norm (Walker, 2001; for profiles of agencies in North America see www.nacole.org and <http://cacole.ca/>).

Civilian review was initially developed as a counter to the charge that police internal investigations were compromised by the natural tendency to close ranks and cover-up misconduct. The creation of internal affairs departments with specially selected staff did little to mitigate this. Inquiries have repeatedly condemned internal affairs as being incompetent, ineffective or complicit in corruption (Lewis, 1999). This failure covered the spectrum of potential deviance in policing, from core corruption in the form of graft and fabrication of evidence; through excessive force, brutality and harassment; to customer service issues of tardy response and incivility. Information about possible misconduct comes from a variety of sources, but the major quantitative source is complaints. Complaints from the public tend to be voluminous, and accountability systems need to plan to manage large numbers (Goldsmith, 1991b). Some complaints are vexatious or trivial or based on misunderstandings. Many contain little of substance in terms of legally admissible evidence, primarily because of the absence of independent witnesses. Nonetheless, complaints need to be taken seriously in any formal system of police accountability. Their significance receives added weight from the fact many people who have a grievance against police will not complain — as many as two-thirds or more in some studies (Adams, 1995, p. 79) — and complainants can face considerable obstacles in simply lodging a complaint or having it investigated without being subject to harassment and intimidation (Landau, 1996; Russell, 1976).

The importance of effective police accountability can hardly be overstated. It is a cornerstone of democracy and the rule of law. Following a review of excessive force cases, the 1998 report by Human Rights Watch, *Shielded from Justice*, described police brutality as “one of the most serious, enduring, and divisive human rights violations in the United States” (1998, p. 1). The 1991 riots in Los Angeles, which followed the failed prosecution of police in the Rodney King beating, were described as “arguably the most devastating civil disturbance in the history of the United States”, with 54 people killed, over 2000 injured and over 800 buildings damaged (Parks & Smith, 1999, p. 1). The Ramparts Scandal in Los Angeles led to millions of dollars in lawsuits against the City and undermined the validity of hundreds of criminal convictions (RIRP, 2000). In New York City — another hot spot for police conduct issues — despite significant reform, a recent survey found that 67% of the population believed police brutality was a problem, and 62% felt police failed to respond appropriately to rape or sexual assault allegations (McGuire Research Services, 2000, p. 2). These sentiments were stronger amongst minority groups.

Police misconduct remains a major issue in other established democracies such as Britain and Australia. British policing in particular has been subject to numerous scandals. One of the most recent was centred on the MacPherson (1999) Inquiry into the failed investigation by police into a racially-based murder, which led to admissions by chief constables of endemic problems of police racism. More recently, the Blair government's highly publicised war on crime threatened to unravel following disclosure of an internal report alleging significant "information compromise", with investigations undermined by officers who "pass on police secrets to the underworld, resulting in failed operations, intimidation of witnesses and the exposure of informants" (Webb, 2002, p. A13). Australia has experienced major corruption inquiries in Queensland (Fitzgerald, 1989) and New South Wales (Wood, 1997), with findings of diverse and entrenched corruption.

Police corruption also poses a major threat to new democracies emerging from the collapse of the Soviet Union and other dictatorships. Many of these countries are still in transition from a police state, based on terror and secrecy, to a civilian model of community policing (Bayley, 2001). In 2002 the Russian President declared a crackdown on police corruption, highlighting links between organised crime, government officials and police who "converted their service into a form of business" (in *Daily News Bulletin*, 2002). At the same time the Mexican government announced a similar campaign. According to one report, "Many of Mexico City's citizens think their biggest law enforcement problem is the police. Thousands of uniformed officers do double duty as criminals: petty thieves, armed robbers, extortionists and, on occasion, killers" (Weiner, 2002, p. 3). Post-Taliban Afghanistan is facing up to the same task of "reforming a bankrupt police force rife with corruption" (Gannon, 2002, p. A2).

Goldsmith's (1991) collection of studies on civilian oversight focused on independent review as a means of counteracting police subversion of complaints investigation. In his Preface, Bayley (1991, p. iv) formulated a first principle of modern police accountability as follows: "Police cannot be trusted to police themselves. Exclusive reliance on internal investigations and discipline is foolhardy. Civilian review is essential". The question that flows from this precept is: how far should civilian involvement go, especially in the critical areas of investigation and adjudication of complaints? There is a growing number of voices asserting that review is insufficient to properly detect and prevent police misconduct or to ensure confidence in the integrity of the complaints process. From a theoretical perspective, greater external control is supported by the concepts of "relational distance" in law enforcement commitment (Black, 1980; Grabosky & Braithwaite, 1986) and of "regulatory capture" — when regulated organisations obtain undue influence over the regulator (Prenzler, 2000). The remainder of this paper reports on the reasons behind support for the principle that formal investigations of complaints and accompanying decisions on disciplinary outcomes should be carried out directly by an independent authority.

Method

This is a qualitative study integrating primary and secondary sources in a policy-oriented critical review format. The author searched for relevant sources of opinion

using electronic search engines and a snowball method following references in extant material. A search of the international electronic database Criminal Justice Abstracts provided a variety of published sources using keyword combinations of terms such as “police”, “complaints”, “discipline”, “accountability”, “investigation”, “internal affairs”, “civilian”, “oversight” and “review”. Once the more promising sources were obtained, their reference lists were searched and copies obtained of relevant documents.

In addition, an Internet search of institutional websites was conducted. The same keyword combinations were entered. Once relevant sites were identified, hyperlinks were followed between web pages to locate additional information. Searches were also initiated by examining key stakeholder sites, such as police labor union sites, the UK Home Office, US Department of Justice, and well-known civilian oversight agencies. These searches were conducted through July to November 2001 and again in August and September 2002. The searches produced large volumes of material, which were organised into the stakeholder format listed in the abstract and used below to report findings. The stakeholder groups were readily identifiable from consistent references in the literature. The source material was analysed in terms of the following:

- the specific interests of each group in terms of what they sought to achieve from complaints systems
- the problems or benefits each group experienced with a limited review model of citizen oversight
- how they saw a greater degree of independent control as a remedy — at least in part — to their criticisms
- conditions they would seek to impose on expanded citizen control
- how success in oversight is measured by different groups
- how stakeholder perspectives resonate with the concepts of relational distance and capture in regulatory theory
- how complementary and competing views can be best synthesised into a model institutional structure for controlling misconduct and dealing with complaints.

Secondary sources used in the study include complainant surveys, public opinion surveys, and surveys of police. Primary sources include judicial inquiry reports, oversight agency special reports and annual reports, civil libertarian reports, and government reviews. The integration of secondary and primary sources is integral to a policy-oriented historical-comparative method, with the documentary sources used as objects of analysis and critique (Neuman, 1997, chapter 15). The volume of material produced a great deal of repetition of viewpoints. As a result, the paper selectively recounts arguments, but with attention to representation of diverse viewpoints.

Findings: Stakeholder Views

Inquiry Reports

Judicial inquiries have been the most important source of legally valid information about police corruption. Inquiries can be concerned exclusively with police

corruption or have a wider brief that includes issues of police conduct, such as inquiries into riots. Prior to the 1970s, there was a long history of failure on the part of such inquiries to either expose corruption or effect permanent preventive reforms (Henry, 1994; Lewis, 1999). However, this failure has usually resulted from limited terms of reference or inadequate powers and resources. It was mainly in the last three decades of the 20th century that public pressure led to the establishment of properly equipped inquiries with adequate resources, powers to demand answers to questions and provide indemnities to turned officers, and the capacity to use covert surveillance and undercover operations (Wood, 1997).

Inquiries have made a major contribution to the rationale for external review by revealing the gross failures of police to act zealously against corruption. But inquiries have also embodied the very necessity of independent enquiry in their structure and functions. In many cases, the new or revised external agencies following on the inquiry's heels have not had the same powers granted as a temporary emergency measure to the inquiry. As well, the degree of independence of inquiries was sometimes limited by the use of police investigators seconded from the agency being investigated. Nonetheless, the core independent nature of the inquiry provided the essential measure for an ideal type of permanent corruption control agency. The trend for civilian oversight agencies to acquire more powers (below) is simply a process of them becoming more like commissions of inquiry in a permanent form.

In the United States, (US) one of the earliest national inquiries to call for civilian review of police was the federal Kerner Commission, which followed the race riots of 1967 (Kerner, 1968). But the most significant inquiry has been the Knapp Commission in New York City (1970–1972). It exposed massive highly organised corruption and provided a template report for similar inquiries around the world. A critical element of the success of Knapp was its ability to instil confidence in police witnesses to testify in the belief they would be protected from reprisals and that the disclosures they provided would be put to good effect. Consequently, independent control of intelligence about police conduct was a core recommendation. In the words of the Knapp Report:

At the present time a citizen wishing to make a complaint about a policeman knows that his complaint will ultimately be investigated by other policemen. This discourages complaints, because many New Yorkers just don't trust policemen to investigate each other ...

This distrust is not confined to members of the public. Many policemen came to us with valuable information which they consented to give us only upon our assurance that we would not disclose their identity to the Department or to any District Attorney.

Any proposal for dealing with corruption must therefore provide a place where policemen as well as the public can come with confidence and without fear of retaliation. Any office designed to achieve this must be staffed by persons wholly unconnected with the Police Department (Knapp, 1972, p. 14).

The words "wholly unconnected" were chosen because of what Goldsmith (1996, p. 38) calls "occupational alignment": the tendency for protective solidarity to extend beyond one agency to another agency that works cooperatively with it or in

a common field. Hence, Knapp argued that district attorneys did not provide a suitable office for processing complaints, because “they work so closely with policemen that the public tends to look upon them — and indeed they seem to look upon themselves — as allies of the [police] Department” (1972, p. 14).

There are serious practical limitations on the extent to which an external agency can be staffed by qualified personnel unconnected with the police or without some degree of occupational alignment. Nonetheless, there was only a limited attempt to realise the Knapp vision in the relatively weak Special Prosecutor’s Office, established in the wake of the Inquiry. The post-Knapp reforms were focused on the Police Chief and a revamped internal affairs (Henry, 1994). In the 1990s the reappearance of serious corruption in the NYPD prompted the Mollen Commission to recommend a more powerful independent commission to perform continuing audits of police internal disciplinary processes and be:

empowered to conduct its own intelligence gathering operations, self-initiated investigations, and integrity tests ... [with] unrestricted access to the Department’s records and personnel ... powers to subpoena witnesses ... take testimony in private and public hearings; and the power to grant immunity (1994, pp. 153, 154).

The Report observed that “the vigilance of the [post-Knapp] generation failed to survive the department’s natural desire to protect itself from scandal”. Reformed police departments would inevitably slide back into corruption, “unless some countervailing pressure compels the Department to do what it naturally strays from doing” (1994, p. 148).

In Canada, the expansion of civilian oversight was driven less by serious corruption than by breakdowns in police–community relations and dissatisfaction with police handling of complaints (Landau, 1994; see also Marin, 1976; McDonald, 1981; Oppal, 1994). The creation of The Office of the Public Complaints Commissioner in Toronto in 1981 was a landmark development. It was restructured, with its jurisdiction enlarged to the whole of Ontario in 1990 and an independent Special Investigations Unit was created to deal with serious incidents (Adams, 1998). In Britain, the 1981 Scarman Report into the policing of race riots led to the establishment in 1985 of the Police Complaints Authority, charged with supervising investigations of serious matters and reviewing investigations conducted by police from outside the subject officer’s force (Maguire, 1991). The original Scarman Report of 1981 recommended independent investigation in principle but suggested there were too many practical obstacles to full implementation. Subsequently, however, Scarman (1986) argued that operationalisation of the principle was possible, especially in light of Police Federation support:

Many will continue to criticise [the complaint system] so long as the investigation of complaints remains in police hands ... Only the establishment of an independent service for the investigation of all complaints against the police will silence their criticisms (pp. 182–83).

More recently, the high profile “Stephen Lawrence Inquiry” was critical of the PCA’s reliance on police investigators. Weaknesses in the disciplinary process greatly exacerbated problems of ethnic minority dissatisfaction with police. The Report’s observation that “investigation of police officers by their own or another

Police Service is widely regarded as unjust, and does not inspire public confidence” (MacPherson, 1999, p. 333) was a major contributor to the creation of the new Independent Police Complaints Commission introduced in 2002–2003.

Australian policing has been a site of major developments in external oversight. Like the Knapp Inquiry, the breakthrough Fitzgerald Inquiry in Queensland in 1987–1989 exposed a total police management failure to control corruption. The Fitzgerald Report was particularly scathing of the police code of silence and the ability of corrupt police to evade exposure from previous inquiries by keeping to the code. In addition, the Report condemned political interference in investigations as well as malign neglect by a complacent State government secure in a gerrymandered electoral system. It was with a particular interest in creating a safe haven for police whistleblowers and insulating police accountability from politicisation that Fitzgerald recommended the creation of the Criminal Justice Commission, cited as amongst the most powerful oversight agencies in the world (e.g., Liberty, 2000; renamed the Crime and Misconduct Commission in 2001).

Following the exposure of endemic corruption in the New South Wales Police, the Wood Royal Commission (1994–1997) recommended the creation of a new Police Integrity Commission (PIC), established in 1996, with responsibility for the investigation or review of serious misconduct and oversight of all conduct issues, including training and management issues. The PIC has “own motion” powers to pursue any matter it chooses and it cannot employ any present or past member of the NSW Police (Wood, 1997, p. 525). (For reports on the recent expansion of oversight in other jurisdictions see Herzog, 2002; Melville, 1999; Milton-Edwards, 2000).

A noticeable feature of many modern inquiry reports is a tendency to make strong declaratory statements about the need for external control over police complaints and discipline, which are then diluted for various reasons in the final recommendations for institutional restructuring. The Marin Report (1976) into the Royal Canadian Mounted Police emphasised the need for police to ensure public trust by being effective in all areas of police work, including internal discipline. The Mollen Report castigated police management and emphasised “the necessity of independent oversight”, but then argued, “It is the Department that best understands the corruption hazards facing cops, the culture that protects it, and the methods that can most effectively uncover it” (1994, p. 152). In the Queensland case, the use of seconded police in the Fitzgerald Inquiry was transferred to the new Criminal Justice Commission, which has a small number of civilian investigators but is essentially reliant on police (Prenzler, 2000). Like the Mollen Commission, the Wood Commission in New South Wales argued the Police Service needed to retain primary responsibility for controlling corruption, “otherwise there was a risk that that it might abandon all responsibility and interest in maintaining high standards of integrity” (1997, p. 524). Consequently, the PIC was not given powers to make disciplinary decisions. Its independence was severely curtailed by the fact it can only recommend “consideration” of action against an officer, either by the Police Service or the public prosecutor (1997, p. 525). Nor does it have any power to directly intervene when police management is found wanting — to order removal of an officer from a management position, for example.

Oversight Agencies

Civilian review agencies (frequently the offspring of inquiries) often support the view that police should have primary responsibility for discipline and should deal with the bulk of complaints (ALRC, 1995). However, their experience in overseeing police frequently entails extreme frustration, driving them to seek greater powers. Agency reports are marked by repeated criticisms of the failure of police to conduct proper investigations or act on the agency's recommendations. For example, the first review by the New South Wales PIC of the operations of Internal Affairs provoked it to make a special report to parliament highly critical of police investigations and a lack of will in implementing reform. The report provided a detailed catalogue of weaknesses in police processes, including the following (PIC, 2000, pp. i–iv):

- lack of proper planning of investigations
- failure to engage in background checks — for example, on officers' complaints histories — before conducting an investigation
- inadequate use of electronic surveillance
- insufficient encouragement to officers to make admissions
- insufficient encouragement to officers to disclose misconduct by colleagues
- insufficient use of civilian staff
- investigators involved in conflicts of interest, such as investigating a colleague in their work area
- officers investigating other officers superior in rank
- a general lack of rigour
- less rigour applied than in comparable cases in which the suspect was a member of the public
- Internal Affairs under-resourced
- 43% of cases where the police decided not to investigate should have been investigated
- 22% of cases where police decided to take no further action should have been pursued.

Similarly, the Queensland Crime and Misconduct Commission has publicly reported on two special reviews of police processes. A review of investigative methods was conducted by a retired supreme court judge. From a sample of 180 cases, 30 were deemed to have been “inadequately investigated” (CJC, 1996, p. 23). A protective style of questioning by police investigators was identified, along with failure to follow leads or secure physical exhibits. A review of discipline was undertaken by a former magistrate. Of 30 charges (recommended by the CJC against 19 officers) only four had been accepted as substantiated by police, and two of these resulted in “manifestly inadequate” penalties. The auditor conceded that some charges had weak evidence, but concluded with confidence that there were 12 charges involving eight officers where “justice had not been done” (in CJC, 1996, p. 15). These findings, and public disquiet over prominent cases in

which police received light sentences for serious misconduct, compelled the Commission to seek authority to appeal to a tribunal against police disciplinary decisions (obtained in 1997).

Critiques of this sort are commonplace as an outcome of citizen review. In some cases, review agencies persist with the belief that police can be shamed or persuaded into doing the job properly. However, agency frustration typically drives them to seek incremental expansion of their power. This occurs in two main areas. The first concerns the capacity to act independently to investigate matters — either any matter where police action has been considered inadequate, or preemptively in regard to the most serious types of cases. The second area concerns greater input into police responses to disciplinary recommendations, either in terms of representation on disciplinary panels or the capacity to appeal. Types of increased powers sought by agencies and the reasons are listed in Table 1. It should be emphasised that expanded powers are not always confined to those used potentially against police, but can include powers to protect police, such as prosecution of vexatious complainants. Agencies may also recommend expanded anti-misconduct strategies by police internal affairs, such as drug and alcohol testing (PIC, 1998).

A significant experience of review agencies involves the discovery that police internal affairs departments are often content to operate on a purely reactive basis (Landau, 1996, p. 293). Complaints are investigated, findings made and penalties assigned, but there is no analysis to find patterns and facilitating factors in incidents, and no experimentation with preventive initiatives (CJC, 1996). For example, the PIC review of NSW Police Internal Affairs was highly critical of the “reactive focus of the complaints system on single instances of misconduct”, with a consequent failure to identify organised corruption or develop management responsibility for prevention (PIC, 2000, p. i). It would seem that if the civilian review agency does not have a mission or resources for this then it is rare for this vital task to be initiated by police (Walker, Alpert, & Kennedy, 2001).

These frustrations have driven the evolution of police oversight agencies in lobbying for, and obtaining, powers to supervise investigations, conduct their own investigations of serious matters and challenge police disciplinary decisions. Evaluating the impact of enhanced oversight is extremely difficult because of the problem of developing objective performance indicators and the number of variables involved (Walker & Bumphus, 1992). Some research has been attempted, using measures such as police officer perceptions of the rigour and deterrent impact of the different systems, as well as substantiation rates, “action taken”, and public confidence. The limited evidence available suggests that the more assertive an agency is, and the more it engages in independent investigations or supervision of police investigators, the more likely it is to score higher on these indicators than preceding police dominated systems (CJC, 1997a; Herzog, 2002; Maguire & Corbett, 1991; PONI, 2002a, 2002b). External agencies also appear to be much more open in documenting police misconduct and the outcomes of complaints processing (e.g., PCA, 2000a; PONI, 2002a). There are exceptions to the negative experience of review. The British PCA, for example, has consistently supported the overall quality of police investigations of complaints, but it eventually accepted the

TABLE 1

Types of Increased Capacity Sought by Oversight Agencies

Capacity Sought	Reason	Sample Sources
Authority to appeal police disciplinary decisions contrary to agency recommendations.	Strong sense that police decisions were too lenient.	CJC, 1996, p. 25
Representation on disciplinary panels.	Police decisions considered too lenient or open to perception of bias.	PCA, 2000a, p. 39
Complainant right to appeal to agency against police decisions.	Police not responsive to complainant dissatisfaction.	PCA, 2000a, p. 7
Use of the civil standard of proof ("balance of probabilities").	Extreme difficulty in substantiating complaints using the criminal standard ("beyond reasonable doubt").	PCA, 1998, p. 41
More resources.	Insufficient staff to conduct adequate audits or investigations.	Ombudsman Victoria, 1999, p. 26
Expanded supervision of police investigations.	Complainant and public perceptions of police bias.	PCA, 2000b, pp. 5–20
Serious cases investigated directly by the agency.	Public trust demanding independent investigation in high profile cases or extremely serious matters.	PCA, 2000a, p. 7
"Own motion" power to investigate any matters.	Evidence of misconduct not reported in formal complaints. Dissatisfaction with the rigour of police investigations.	Ombudsman Victoria, 1999, p. 26
Public inquiry.	Occasional need to hold an open inquisitorial forum, especially with high public interest and trust at stake.	PCC, 2001, p. 2
Receive complaints.	Police deflection of complainants.	ALRC, 1975, p. 24
Order police to re-investigate cases.	Audit findings of unsatisfactory investigative rigour or premature closure.	PCA, 2000b, pp. 5–20
Conduct integrity tests.	Continued suspicions regarding corruption not exposed by conventional investigations.	PIC, 1998, p. 47
Apply wiretaps and receive transcripts of intercepts from other law enforcement agencies.	Need for independent sources of intelligence.	PIC, 1998, p. 47
Apply for a search warrant.	Need to circumvent police lack of co-operation in supplying documents.	PCC, 2001, p. 45
Compel answers to questions.	Suspect police hiding behind right to silence.	ACC, 1999, p. 3
Conduct covert operations with undercover operatives.	Need to protect investigations from possible internal leaks from police undercover officers.	CJC, 1997b, p. 85
Direct police notify complainants of mediation option.	Police not informing complainants of the availability of mediation.	CCRC, 1999, p. 6.
Issue protection orders for whistleblowers.	Threats to internal witnesses.	PIC, 1998, p. 47
Proactive prevention capacity.	Lack of action by police to conduct research on misconduct and develop prevention plans.	PCC, 2001, p. 55.

view that public confidence was “without doubt, poor”, and sought a wide ranging expansion of its functions (PCA, 2000b, p. 4; see below).

Complainants

Complainants are a key stakeholder group that provide the main source of work for police internal affairs and civilian review agencies. One of the most extensive studies of complainant satisfaction was done as part of an evaluation of the complaints system for England and Wales — based on PCA oversight of police investigations and supervision of more serious cases. Given the problem of vexatious and trivial complaints, Maguire and Corbett (1991) began by considering the question of complainant sincerity. They concluded that the large majority of complainants were honest in feeling genuinely aggrieved. This was partly gauged by the reluctance of many to complain and by the fact complainants on the whole were not vindictive. Most sought an apology or official acknowledgement that there was some substance to their complaint (p. 168). Dissatisfaction was centred on the investigation process, which complainants felt was biased in favour of police, starting with the fact investigations were done by police. Eighty-three percent of survey respondents were dissatisfied with the way the police conducted the investigation. This was the main influence on the fact that 96% were dissatisfied with the outcome (pp. 148, 164). Almost 90% supported the view that “the whole investigation should be carried out by someone other than the police” (p. 180). Of additional significance was the fact that over two-thirds developed a more negative view of police as a result of their experience of the system (p. 179; see also CJC, 1994). Few differences were found for those serious cases directly supervised by the PCA, although the researchers concluded that:

Respondents whose cases had been supervised were slightly happier than the remainder, but the overall levels of confidence and satisfaction were uncomfortably low ... Those who awarded the PCA, as it were, “marks for trying” tended to feel that the Authority’s independence and effectiveness were compromised, either by the fact that investigations were carried out by the police, or by close links between the PCA and the police (Maguire & Corbett, 1991, pp. 161, 176).

A decade later, Waters and Brown (2000) found similar sentiments with the same system: 80% of complainants surveyed felt their complaint had not received fair treatment and 67% strongly agreed that “complaints should be investigated by an independent body” (pp. 631–2). The findings from studies of complainants, all showing essentially similar outcomes, are summarised in Table 2. Typically, these surveys also show very few respondents reporting satisfaction — with “neither satisfied nor dissatisfied” attracting many of the remaining responses.

Some surveys are particularly useful in showing how the presence of an external agency creates misleading expectations, followed by disillusion when the agency’s involvement in the process proves to be extremely limited. Interviews with complainants regarding their experiences with the Ontario Police Complaints Commissioner (PCC) showed the presence of the PCC created a false impression of a fully independent process (Landau, 1996, 1994). Many complainants were not initially aware of the existence of the PCC, but were then shocked to discover that the complaints were passed to police and investigated by police. About 75% of

TABLE 2

Summary Results of Complainant Surveys

Jurisdiction	Percent dissatisfied with police-based system		Percent supporting independent process*	Source
	outcome	process		
England and Wales	71	80	67	Waters & Brown, 2000, pp. 629, 631–32
Calgary	80	68	—	CCRC, 1999, p. 92
Northern Ireland	—	74	83	Hayes, 1997, pp. 119, 121
Toronto	—	74	72	Landau, 1994, pp. 57, 64
Queensland	72	60	—	CJC, 1994, pp. 61, 62
England and Wales	96	82	90	Maguire & Corbett, 1991, pp. 164, 180
		74		
		supervised		
England and Wales	overall: 60 dissatisfied, 20 mixed feelings		64	Brown, 1987, pp. 9, 18

Note: * In some cases this is not explicitly stated in the questions but is clearly implied by rejection of “police investigating police”. Figures are rounded.

interviewees felt the Commissioner was “not at all, or not very involved in their case”, and this underlay the “considerable dissatisfaction with the internal nature of the investigation” (1996, pp. 307, 305). Interviewees felt that police were too legalistic about admissible evidence and tended to give the subject police officer the benefit of the doubt. (In the CJC survey, 41% of complainants felt the investigating police “just went through the motions, making no real effort”, while 15% felt police “deliberately went out of their way to avoid the truth” (1994, p. 58]). Landau conceded that such faults were not necessarily intrinsic to in-house investigations. Negative perceptions about police investigating police might be mitigated by improved police practices, such as more attention to listening skills. Nonetheless, she noted that, “perhaps the most salient feature in the minds of complainants remains the fact that the police investigate the police” (Landau, 1996, p. 310). The following comments by complainants typify this view (p. 304).

- I thought that this organization has their hands tied and they do not have the capability to carry on a separate investigation from the police force. I don't think they could do anything for me.
- It was the greatest shock — as soon as I phoned them, they passed all the information to the police.
- If they really were an independent body, they would do their own investigations from the start.

The data presented above beg the question of whether or not independent investigations would prove more satisfying for complainants. It seems strange then that studies of complainants' experiences of independent processing are difficult to find. A study

that appears to do this, and found similarly high rates of complainant dissatisfaction, was flawed by the fact that the investigators were ex-police from the subject department (Herzog, 2000, 2002). One explanation for the paucity of studies may lie in the rarity of cases fully investigated by civilians. Certainly, it would seem that improved complainant satisfaction remains a challenge for oversight agencies.

Police

In many jurisdictions police have been stridently opposed to civilian oversight and have often mobilised successfully to block its introduction or curtail agency powers. But police are not unanimous in their opposition. Interviews by Reiner (1991) with chief constables in England and Wales revealed that opinions were divided. While 52% rejected the proposition of a fully independent system, 30% were supportive, and 18% felt there were strong arguments for both systems. The 30% in favour did not believe that a more independent system would be more effective in identifying and preventing misconduct. They tended to agree that police investigators were in the best position to penetrate the police culture and use their inside knowledge to advantage. Nonetheless, they felt an independent system was essential to ensure public confidence and remove perceptions of bias. Many in this group also supported an external system in order to reduce the costs to police of dealing with complaints and to address police morale over delays and excessive bureaucracy.

The US-based International Association of Chiefs of Police (IACP, 2000) has adopted something of an equivocal stance on civilian oversight. While endorsing it as a step forward in improving accountability, the Association recommends that individual police chiefs determine the extent to which citizen review is required, if at all, and at what level of independence. A primary concern in the 2000 IACP position paper is that police chiefs do not lose control of the political process as community pressure for civilian review intensifies. Nonetheless, the paper does not counsel against the introduction of the most independent model, and it makes useful recommendations for building in quality control mechanisms such as monitoring user satisfaction and ensuring adequate resources.

In their study of the police/PCA system in England and Wales, Maguire and Corbett (1991) examined the views of police officers who had been the subject of a complaint. Just over half the interviewees were concerned that outside investigators lacked the necessary insight into police practices to conduct a fair investigation and would not understand the pressures on police. However, just under half expressed “some positive comments about the idea of outside investigators replacing senior police officers” (p. 70). They felt civilian investigators would improve the credibility of the complaints process, and could also “weed out’ trivial or malicious complaints at an early stage without being suspected of doing so unfairly” (p. 70). The views of investigating police officers canvassed by Maguire and Corbett were also very mixed. A majority insisted they were more effective than outsiders. However, one-third favoured an independent system because it would improve public confidence and because it would reduce “ill-feeling and divided loyalties” manifest under a predominantly internal system (p. 71).

In England and Wales the Police Federation has campaigned since 1981 for a system of fully independent investigation and, in more recent years, for independent

adjudication. The Federation emerged as one of the strongest advocates for diverse reasons, but it argued that the primary impetus for reform should be ensuring public confidence. The complaints system, it claimed, must be:

seen by the public to be wholly independent of the police service ... The fact that police officers undertake the investigations, albeit under the direct supervision of PCA members, lays the system open to allegations of partiality and cover-up (Police Federation, 1997, p. 5).

The Editor of the Federation's journal also pointed to unfairness and a number of ironies in the system in place in 1997, and proposed greater independence for all-round improvement:

This is not the first time that the Police Federation has called for a wholly independent complaints system. In 1983, when the Police and Criminal Evidence Legislation was going through Parliament, we sought such a change, arguing that tinkering with the system by grafting on an independent supervisory arm while retaining police investigators, would not satisfy the critics. What was needed, we said, was a root and branch change involving complete openness and fairness to police and complainants alike. The chief officers, and most of those who had been inveighing against the complaints system, said that the Federation was simply trying to protect the villains in the service, because they would be able to pull the wool over the eyes of outside investigators. Today's chief officers, including those who are wringing their hands over their alleged impotence in the face of corruption, would still defend the retention of the police-only investigations. The Police Complaints Authority balks at such a change, perhaps because it knows that it would then have to take full responsibility, instead of constantly complaining that it is obstructed by manipulative lawyers.

The current demands of the Association of Chief Police Officers (ACPO), for shifting the burden of proof to the lower standard of civil cases, and for powers of summary dismissal, in our view strengthens the case for taking the system out of the hands of chief officers and putting it with a new, publicly accountable, independent authority. Conceding ACPO's demands might well result in speedier justice in a small number of cases, but the risk of injustice towards innocent police officers would be increased considerably (Editorial, 1997, p. 5).

The commitment of the Federation has extended to sponsoring a public opinion survey (below) and a survey of police. The latter covered a sample of over 9,000 officers. It found that 50% of officers supported the existing system of police from an outside force investigating subject police, with one-third preferring investigation by an independent body and 20% expressing equal confidence in both systems (Adams, 1997, p. 4). However, 85% supported the view that independent investigations would improve public confidence. The Federation Vice-Chairman commented:

It's a fairly split decision but I didn't necessarily anticipate that there would be such support for independent investigation ... Half the officers responded are actually saying they didn't mind a major change in the disciplinary complaints system (in Adams, 1997, p. 4).

Police unions can be sensitive to public opinion, and they can be pushed to repudiate internal control when scandals involve wholesale discrediting of police

integrity. Hence, in New South Wales, during the Royal Commission (1994–97), the Police Association (1995) developed a policy of complete externalisation of investigations as a way of removing any doubt about bias and cover-ups. Within a two-tiered scheme of complaints, the Association recommended that lower-level disciplinary matters be returned to police once the credibility of police management was re-established. However, the PIC's extremely negative reviews of Internal Affairs (above) suggest that this may be an optimistic scenario. Similarly, following the Ramparts Scandal in Los Angeles, in a move described as "remarkable", the Los Angeles Police Protective League asserted that the reform package did not go far enough in furthering independent investigation and adjudication of complaints (Barry, 2000, p. 1; LAPPL, 2000).

The above views may be the exception rather than the rule. Nonetheless, there has been only limited research on police perspectives and the terms on which police might support an independent authority. Studies so far show clearly that "police officers are more open to the idea of independent investigation than may have been previously thought" (Liberty, 2000, p. 5). Transparency and timeliness are issues of natural self-interest for police, but there is also recognition that public confidence is a major consideration. The Police Federation of Australia, for example, has held the view that "external review of police agencies is absolutely essential" (Alexander, 1999, p. 2). However, this was qualified by claims that existing external review agencies were overly legalistic, in that they allegedly focused excessively on individual guilt or innocence without due regard for the need to understand the provocations of police work. The Federation prefers a model focused on complaints and disciplinary processes as a means to improve behaviour, with adequate avenues of appeal regarding decisions against police.

Public Opinion

As indicated above, public confidence is almost universally cited as a primary criterion for evaluating police discipline (Walker, 2001), and a number of public opinion surveys have been conducted on the issue of who should handle complaints against police. The British Social Attitudes Survey has included a question on police complaints processing since 1990 — with the question restricted to "serious complaints". The most recent survey, conducted in 1996, showed 89% of respondents supported the proposition that serious complaints "should be investigated by an independent body, not by the police themselves" (Tarling & Dowds, 1997, p. 206). This was down slightly from 93% in 1990 and 92% in 1994, although the percentage who agreed strongly increased from 38% in 1990 to 40% in 1994 and 44% in 1996. Disagreement remained stable at three, four and three per cent respectively. These results prompted the researchers to comment that:

Such near-universal support for a new independent body is unusual and does suggest a degree of public concern, arising (almost certainly) from several recent high profile cases in which evidence turns out to be fabricated (p. 206).

Other studies show similar results. Also in Britain, the Police Federation engaged the Electoral Reform Ballot Service to conduct face-to-face interviews with

members of the public. Of 500 interviewees, 59.4% reported they would “have greatest confidence in an investigation by a body independent of the police”; 19.6% had equal confidence in both approaches and only 16.4% supported the existing system (Jenkins, 1997, p. 4). More recently, 76% of New Yorkers supported the view that “it is necessary to have an independent group to oversee and investigate the [police] department” (McGuire Research Services, 2000, p. 11). Only 19% supported the view that “the department can oversee and investigate the conduct of its own officers”.

The Queensland Crime and Misconduct Commission (CMC) has initiated two surveys about public awareness of, and confidence in, its activities. The most recent study (CJC, 2000) was contracted to a private market research firm, which in 1999 conducted a telephone survey of 1502 people. Eighty-eight percent agreed with the statement that “complaints against the police should be investigated by an independent body, not the police themselves” — an increase of 1% on the previous 1995 survey. Only 5% disagreed. The 1999 survey included questions discriminating between different types of complaints and asked respondents whether they should be investigated by the CMC or police. For rudeness, 59% supported the police, 20% supported the CMC and 10% nominated another body such as members of parliament or the ombudsman. For assault, 38% supported the CMC, 39% supported police and 9% supported another body such as a lawyer. For bribery, 60% supported the CMC, 23% police and 10% another body such as a member of parliament (p. 4). There was clearly slippage, therefore, from a very high level of support for the principle of independent investigation to a greater role for police when specific categories of complaints were identified. Nonetheless, support for the principle of independence held firm in the two more serious cases.

The results of public opinion surveys are summarised in Table 3. It should be noted that public opinion is also generally favourable of existing external agencies, and their effectiveness in making police accountable — although it is often apparent that respondents are not aware of the precise division of labour between police and the external agency (e.g., ICAC, 2000; ACLUT, 2000).

Civil Liberties Groups

Civil libertarians have been pioneering advocates of independent control of police discipline given their prominent role in the courts in challenging police brutality and process corruption. Civil liberties groups are dominated by defence lawyers with firsthand knowledge of police victimisation of their clients, many of whom are from disadvantaged social groups and require legal aid. Lawyers, both in defence and prosecution, know from experience the difficulty of producing sufficient evidence against police officers in adversarial civil and criminal courts. In the US, the most recent substantial report on this issue was by Human Rights Watch in *Shielded from Justice: Police Brutality and Accountability in the United States* (1988). The report documented and analysed numerous cases of excessive force and concluded that the problem remained at epidemic levels. Case studies of 14 large cities yielded the inevitable indictment of internal affairs as largely ineffective to

TABLE 3

Summary Results of Public Opinion Surveys

Jurisdiction	Sponsoring agency	Percent supporting independent process	Source
New York City	NYC Council	76	McGuire Research Services, 2000, p. 11
Queensland	Crime and Misconduct Commission	88	CJC, 2000, p. 4
Britain	British Social Attitudes Survey	89*	Tarling & Dowds, 1997, p. 206.
Britain	Police Federation	59	Jenkins, 1997, p. 3

Note: * For "serious complaints". Figures are rounded.

identify, punish or deter misconduct; with weak civilian oversight providing only a limited positive effect (see also Amnesty International, 1999).

The American Civil Liberties Union (ACLU) has been at the forefront of the campaign against police control of discipline. Although the Union tended to the view that "even a weak civilian review process is far better than none at all" (1992, p. 12), it developed a cogent critique of limited review systems born out of bitter experience regarding how they can be undermined. The NYCLU has argued that weak external review "emboldens police officers with a propensity to abuse their power, and gives false assurance to civilians who file a complaint of police misconduct with the expectation that justice will be done" (1998, p. 6). It alleged review agencies usually lack adequate staffing to cope with the large volumes of complaints and with legal and evidentiary complexities. Agencies frequently lack sufficient powers to hold investigative hearings, subpoena documents, engage in covert operations or conduct statistical research on complaint and incident patterns. They can also fail to engage widespread support because of lack of community representation on their management boards. Police can withhold information, delay supply of information, or fail to implement recommended procedural changes. The most significant opportunity for police subversion occurs in the practice of restricting review boards to recommending disciplinary actions, which can then be overturned at the discretion of the Police Chief. Civil liberties groups have also observed how civilian review agencies are much more likely than police to initiate reviews into new law enforcement technologies, public order tactics, treatment of crime victims or other issues that entail civil liberties concerns and require clarification of best practice procedures.

The ACLU has expended considerable resources over the years developing evidence-based arguments for the necessity of independent review. However, extreme defensive hostility from police administrators and unions necessitated a focus on local-level strategies to implement civilian review; with the production of a community action manual for fighting police opposition through community alliances, use of the media, public education and political lobbying (ACLU, 1992). In the US, the local nature of police organisation has produced particular problems

of alliances between mayors and police against civilian review agencies. One notable case was New York City in the 1990s in the context of so-called “zero tolerance policing” and allegations of increased harassment of minority groups. In a 1998 assessment of the Civilian Complaint Review Board, the NYCLU noted that Police Commissioner Safir received substantiated complaints against 635 officers between January 1996 and July 1998. He was alleged to have taken no disciplinary action in 447 cases (70%); and 60% of referrals resulting in discipline were at the lowest level, typically an admonishment (p. 11). In addition to being severely constrained by its advisory function, the CCRB was under-funded, with an enormous caseload and backlog, reliance on novice civilian investigators and police transfers who were openly hostile to the new system. In addition, the Review Board could only respond to complaints, not initiate its own enquiries, and disciplinary actions were constrained by an 18-months statute of limitations. The NYCLU also pointed to the fact that the Mayor appointed all members of the board, and alleged that Mayor Giuliani’s open opposition to civilian review placed board members in a conflict of loyalties.

The NYCLU review concluded that “since its inception New York’s all-civilian review board has been implemented in a manner that virtually ensured it would not provide the oversight called for in the City Charter” (p. 5; see also Amnesty International, 1999). In contrast to the dismissive view of successive mayors that civilians lack the mandate to discipline police, the NYCLU cited the proposition, set out in the Charter, that “civilians have a role in establishing the standards by which they are policed” (1998, p. 3). The failure of democratic accountability necessitated victims resort to civil action. Despite the hazards faced by complainants in the civil courts, the NYPD has been subject to an increasing number of successful lawsuits. In the period 1994–97 the City paid almost \$97 million in claims against police — an increase of 59% on the previous 4 years (p. 8; see also Liberty, 2000, p. 5 on the same situation in the UK).

A notable contribution to the debate is the recent report of the National Council for Civil Liberties — Liberty — in the United Kingdom. The 2000 report, *An Independent Police Complaints Commission*, was produced from a project in which researchers visited oversight agencies internationally, reviewed the literature, and consulted with stakeholders and experts. The report noted the growing convergence of opinion supporting the principle of independent processing of complaints and briefly reiterated the main arguments. The Liberty report gave considerable space to addressing concerns about practical obstacles. In particular, it addressed the issue of investigative expertise — that only police have the requisite skills to investigate police — by citing the wide range of occupations outside policing that involve both generalist and specialist skills in investigation. Civilian investigators can be employed from these groups, and civilian review agencies can also progressively recruit and train investigators as they wean themselves off dependence on police — a view shared by the Police Federation (Jenkins, 1997). However, police experience was recognised as an invaluable resource, and the Report pointed to the example of the Criminal Case Review Commission that engages in complex investigations of suspected miscarriages of justice using civilian investigators but with expert advice from veteran police detectives. Liberty made

the following recommendations to maximise the benefits of police knowledge and skills without permitting subversion of independence (2000, p. 40):

The investigative staff of the IPCC should comprise at least 75% civilians with no more than 25% seconded or ex-police officers. The investigations should take place in a team structure reflecting the above proportions. The IPCC should have the decision as to who are selected as seconded police officers. Investigative teams should always be headed by a civilian team leader.

It also recommended the creation of disciplinary panels comprising an assistant chief constable and two non-police members (p. 49).

Government Reviews

The issue of independent investigation and adjudication of complaints has been the subject of numerous government reviews in the form of parliamentary committees, departmental reviews, law reform commission reviews or reviews contracted out to consultancy firms. At a national level, consideration of civilian oversight has been most deliberative and sustained in the United Kingdom. The scandal over corruption amongst detectives in the London Met in the 1970s led to the establishment of a Police Complaints Board in 1976. Dissatisfaction with the detached review procedures of the Board, and police provocation and mishandling of the race riots of 1981, led to the establishment of the more powerful Police Complaints Authority (PCA) in 1985. Government-sponsored evaluations, such as that of Maguire and Corbett (1991, above) showed that the system still lacked credibility. The pressure for change was fuelled by continuing problems of entrenched corruption in the London Met, and revelations of extreme miscarriages of justice (including the “Birmingham Six” and “Guildford Four” cases). Efforts to reform the Royal Ulster Constabulary included an influential review of the complaints process in Northern Ireland. The Hayes Report did not equivocate on the central principle:

The overwhelming message I got from nearly all sides and from all political parties was the need for the investigation to be independent and to be seen to be independent. While there were systemic failings in the present arrangements they lacked credibility because of a lack of independence, because it was the Chief Constable who decided what was a complaint, because there was no power of initiative, and because the complaints were investigated by police officers ... The main value which was impressed upon me was independence, independence, independence (1997, p. v).

The Hayes recommendations were endorsed as part of the wider remit of the Independent Commission on Policing for Northern Ireland (“The Patten Inquiry” — ICPNI, 1999, p. 37), and in 2000 a powerful Police Ombudsman for Northern Ireland replaced the Independent Commission on Police Complaints. The Ombudsman may refer less serious matters to the Chief Constable for formal investigation, but has sought to investigate all public complaints using civilian investigation teams. The Ombudsman makes disciplinary recommendations to the Chief Constable, Policing Board or Public Prosecutor, but can appeal police decisions to an independent tribunal or direct the Chief Constable to take disciplinary action (PONI, 2002a, pp. 13–14; PONI, personal communication, September 4, 2002; *Police (Northern Ireland) Act 1998*, sections 54 & 57). In England and

Wales, a 1997 House of Commons Home Affairs Committee consulted with stakeholder groups. It concluded the current system did not engender sufficient public confidence and that there were no substantive objections in principle against independent investigation. It recommended some immediate enlargement of the PCA's authority and a detailed feasibility study for a new system (Home Affairs Committee, 1997). The Stephen Lawrence Inquiry (MacPherson, 1999) provided the catalyst for a more urgent consideration of issues, and in 1999 the Home Office commissioned KPMG to conduct a feasibility study.

The KPMG study concluded that, "the introduction of greater independence is both feasible and desirable if the police complaints system is to have greater public confidence" (KPMG, 2000, p. iii). It emphasised the high level of agreement between stakeholders on the principle of independence and recommended restructuring that was both "whole-scale" and "radical" (pp. 109, 114). KPMG recommended a new Independent Agency for Complaints against Police (IACP) that would operate investigation teams with a 50/50 mix of civilians and seconded police, but with the management structure dominated by civilians and with civilians having the primary say in the disposition of complaints. It recognised that the principle of independent treatment should apply to all levels of complaints in recommending the agency have authority to investigate any complaint. While it gave primacy to criminal cases and those with a high public profile, it argued that the majority of cases now supervised by the PCA should be investigated directly by it, with expanded and intensified civilian supervision of middle-level matters. The proposed IACP would have the power to present cases to disciplinary tribunals; although the report sought to maintain police ownership of disciplinary decisions, subject to "some form of independent membership of tribunals" (p. 11). It also recommended a much wider brief for the authority to collect complaints data and critique police "complaints issues" (p. 70). KPMG estimated the cost of the new system in what it believed were politically acceptable terms. Following a further round of consultation with stakeholders, and support from the PCA (2000a), the Home Office (2000) adopted the main elements of the KPMG and Liberty reports. The new agency, called the Independent Police Complaints Commission, was phased in across 2002–2003 (IPCC, 2002).

In 1981, the US Commission on Civil Rights produced a pioneering report, *Who is Guarding the Guardians? A Report on Police Practice*, that criticised the limited powers of review boards and analysed the way police investigators deflect and intimidate complainants. The 2000 report *Revisiting "Who is Guarding the Guardians?"* argued that police misconduct and public mistrust had increased substantially in the 2 decades following the first report, highlighting the need for review boards to exercise subpoena power and "disciplinary authority over investigations of police abuse incidents" (USCCR, 2000, p. 12). It also pointed to the unfairness in the distribution of civilian review boards in the US, with the large majority of municipalities lacking even rudimentary review, despite recurring abuses by police. It cited weak or absent civilian oversight as a major factor necessitating federal government recourse to civil action and to consent decrees against police departments that show patterned abuses of civil rights.

In the US, the LAPD continues to provide a major focus for this debate. Following the Rampart Scandal, the independent panel charged with evaluating reform engaged in almost comprehensive censure of continued reliance on self-policing, asserting that “weak civilian oversight continues to hamper effective and ethical policing ... The Police Commission’s lack of power over discipline undermines its authority”. The latter point was framed with reference to the Police Chief’s use of his statutory authority over discipline to defy the Commission (RIRP, 2000, pp. 16, 21). Significantly, while police internal discipline was perceived to be weak, it was also described as arbitrary, unfair, erratic and often overly harsh. Considerable emphasis was placed on the failure of the LAPD to develop a sophisticated risk management system, especially in terms of identifying and dealing with problem officers. The report stopped short of recommending independent investigations, but it recommended an increase in the Inspector General’s staff and closer auditing of disciplinary processes. It also recommended that the Police Commission should have “overall control and oversight of the disciplinary system” (p. 41) — although this was framed in vague terms.

Complaints against police was the topic of the first report of the Australian Law Reform Commission when it was established in 1975. Since then it has revisited the issue on several occasions with an increasing emphasis on the need for independence. The 1995 review argued that asking police to investigate police “places them in a ‘hopeless conflict of interest position’” that produces inevitable pressures, sometimes unconscious, to disbelieve the complainant and support the officer (ALRC, 1995, p. 149). It concluded that “the model most likely to engender confidence must be one which gives as much power and responsibility as possible to an external agency” (p. 149), but settled for a compromise arrangement, based on familiar arguments about police knowledge and expertise. However, the corruption web revealed by the Wood Commission included connections with federal policing, leading to a final ALRC (1996) report recommending that the Commonwealth Ombudsman be replaced by a more independent National Integrity and Investigations Commission. The move was stymied by police opposition and the change to a conservative government in 1996.

Miscellaneous Groups

There are other, less prominent, groups with particular interests in police accountability that advocate greater civilian input. Examples include support groups concerned about miscarriages of justice such as wrongful imprisonment, excessive sentences and other abuses. The British group INQUEST, for example, is a registered charity campaigning against deaths in police custody. Following dissatisfaction with police-based inquiries it produced a policy paper supporting recommendations — emanating from the Stephen Lawrence Inquiry — for an expanded jurisdiction for an independent body (INQUEST, 2001). A similar group in the UK focuses its attention on police shootings (PoliceThePolice.org.uk). Also in the UK, the Association of Police Authorities (civilian management advisory boards) has argued that public confidence in police requires greater civilian representation on disciplinary panels and enlarged capacity for independent investigation of serious cases (APA, 2000; also PANI, 1998). Specific lobby groups include the International Association for

Civilian Oversight of Law Enforcement (IACOLE), the US National Association for Civilian Oversight of Law Enforcement (www.nacole.org), the Canadian Association for Civilian Oversight of Law Enforcement (<http://cacole.ca/>) and jurisdictionally specific community groups (e.g., Portland Copwatch: www.portlandcopwatch.org). Other research and lobby groups with a particular interest in promoting civilian oversight include the Vera Institute of Justice (www.vera.org) and the National Association for the Advancement of Colored People (www.naacp.org).

Discussion and Policy Implications

When a person reports a crime, it would never be expected that police would allow colleagues of the alleged offender to conduct the investigation, even under police superintendence. Nor would it be considered appropriate for police to merely recommend an outcome, with the colleagues of the accused left free to choose the disciplinary response. Yet this is essentially what happens with complaints against police under the weak civilian oversight systems that operate in many jurisdictions. Reactive review processes frequently fail the most basic test of independence, as described in the Hayes Report: “independence should be demonstrated by the person or body concerned having control of the process” (Hayes, 1997, p. vi).

Nonetheless, it must be conceded that the experiences and arguments supporting external control of police discipline may not add up to a faultless case. There are major challenges posed by the counter-arguments concerning police expertise and the need for police managerial responsibility for integrity. In addition, it would be naïve to think that simply replacing police investigators and adjudicators with civilians would solve the problems of complainant and police dissatisfaction, lack of investigative rigour and lenient sanctions. The appeal of police responsibility is evident in the equivocal attitude amongst some stakeholders and actors — for example, in the disjunction between the findings and recommendations of many corruption inquiries, and between the philosophical preference of oversight agencies and their experience of working with police. There is, nonetheless, a growing convergence of opinion in favour of the view that direct external conduct of investigations is essential for serious matters — such as police shootings, and allegations of crime and corruption. There would also appear to be a strong case for oversight agencies to have a free hand to investigate other matters they consider need to be pursued on an independent basis, such as strip-searching practices that may involve unjustified invasions of privacy or high-speed police pursuits involving injury or death. Furthermore, it would appear essential that oversight bodies have representation on disciplinary bodies. These functions and powers would arguably constitute the minimum elements of a police oversight system that should attract improved stakeholder confidence. This is consistent with the concept of relational distance — that more formal and detached relations between regulator and regulatee facilitate law enforcement (Grabosky & Braithwaite, 1986). The opinion surveys also show citizens are concerned about police “capturing” the regulating agency (Prenzler, 2000).

Serious consideration should also be given to the view that lower level complaints — which are often of great personal significance to the complainant — should also be processed independently of police. Given that minor matters often

make up the bulk of complaints, and often occur in large numbers, police–public relations might be better served this way. This view is given added weight by the fact that surveys show police investigations frequently compound complainants’ grievances. Although there is some evidence that properly equipped external agencies will produce higher rates of substantiation of complaints, this should not be the primary aim nor the ultimate test of civilian control. The primary goal should be “to invoke public confidence in the police and thereby ensure good police-community relations” (Landau, 1996, p. 294). Perceptions are therefore critical, and it appears that police investigating themselves, even with civilians looking over their shoulders, will always entail an unacceptable level of doubt. Many police also see advantages in a civilian control model, either in terms of public confidence, a fairer hearing for subject officers or because investigation and adjudication of high volume complaints is not a good use of police resources.

This study has been confined to police conduct, but the case for independent control of police discipline receives added weight from a similar trend in other occupations. In her analysis of dissatisfied complaints in Toronto, Landau observed that:

Many see the problem outside of the context of the Metropolitan Toronto Police *per se* to one of the nature of organizations in general, “like doctors investigating doctors” or other professional situations in which a “brotherhood” exists (1994, p. 58).

This view challenges a major objection to civilian oversight of police: that police are unfairly singled out from other occupations. There is an argument that police wield unique powers and operate in a distinctive field of conflict and temptation that necessitates levels of accountability outside the norm. However, this view is difficult to sustain in light of parallel processes of scandal and reform in many occupations, including the traditional self-regulating professions of law and medicine (Smith, 2002). In the words of the Fitzgerald Report:

No powerful institution, especially one with the potential to injure innocent citizens, should have untrammelled responsibility and authority to determine its own policies and methods. Nor should it decide the principles concerning the confidentiality of its material or perform its own regulation (1989, p. 307).

While there has been a continual rhetoric about “deregulation” in Western countries since the 1970s, in many cases in practice this has been more about privatisation of government monopolies and increased market competition than any substantial loosening of controls on conduct. In fact, this same period has seen considerable expansion of the powers of regulatory agencies in anti-trust and business regulation, consumer protection and environmental law enforcement; sometimes after deregulation proved disastrous (Ayres & Braithwaite, 1992).

As far as the public sector is concerned, the expansion of regulatory commissions feeds into a key issue in police oversight: should the agency be exclusive to police or incorporate police within a comprehensive public sector system? As noted, it has been argued that police are a special case, and that the deep nature of police corruption requires a stand-alone agency (Wood, 1997). This is a strong argument, especially in jurisdictions where extreme levels of police deviance have been uncovered and there appears to be a particularly insular police culture.

However, corruption, misconduct and ethical challenges occur across the public sector. Even the issue of excessive force pertains in other domains, such as prisons and the military. There is, therefore, a strong case for an integrity commission with jurisdiction and powers that apply equally to police, politicians and other public sector agencies. This would appear to provide greater efficiency and fairness than in New South Wales for example, where, following the Wood Commission, the public has been saddled with three major integrity agencies: the PIC, Ombudsman and Independent Commission Against Corruption.

An associated issue concerns governmental capacity to support such an agency in jurisdictions with small police departments. Civilian review suffers significantly from the fragmentation of policing. In the US, with approximately 19,000 police departments (ACLU, 1992, p. 3), civilian review agencies have been largely confined to big cities (Walker, 2001). Hence, there is a strong case for a state-based agency that would draw on a larger revenue base and have the added advantage of independence from local political loyalties (Walker, 2001, p. 69; for Canadian examples see <http://cacole.ca/>). It would be important for such agencies to have regional offices, and to engage in considerable promotion and consultation at the local level, to avoid accusations of big city bias (KPMG, 2000; Liberty, 1999). A state-based public-sectorwide integrity commission would also allow for the development of specialist skills in corruption control, and for career paths within such organisations (with a potential role for ex-police outside the police complaints area). In general the net cost of such a model should be limited because it largely involves transferring in-house responsibilities and resources to an external agency.

This study has shown that questions of the effectiveness of civilian oversight and stakeholder confidence cannot be separated from issues of agency powers, resources and due process constraints (cf., Walker & Bumphus, 1992). In proposing a civilian control model, therefore, a number of core principles need to be articulated when seeking to satisfy and balance the different interests of stakeholders. Fundamentally, in the preliminary assessment about how to proceed with a complaint and in the final decision about how to respond to a finding of misconduct, independent investigation and adjudication should include police input — but staff of the civilian agency should constitute the majority on decision-making panels. (Where separate investigative and adjudicative functions are called for, then a disciplinary tribunal can be formed with non-police members in the majority). This maintains civilian control without excluding police. In addition, formal investigations (involving interviewing of witnesses, collection of documentary sources and preparation of a report or brief of evidence) should be done either by civilians or by mixed civilian/police teams dominated by civilians. If this is not feasible because of resource constraints, it may be possible to offer complainants a choice and prioritise independent investigation for those requesting this option. This would considerably add to the capacity of complainants to realise their preferences for how their complaint is managed. Similarly, police who make complaints or provide intelligence can be offered a choice about whether they want the matter investigated independently or internally, subject to external review of cases. In developing a civilian control model of police discipline, defining “civilians” may be difficult. But the category should

probably exclude anyone who has ever been a member of a mainstream “police” department. The more the staff profile includes former or seconded “police” the more likely it is that perceptions of independence will suffer.

Civilian control of formal investigations appears to be a major area where reform is needed to satisfy stakeholders, especially complainants, the public and oversight agencies themselves. However, the decision to conduct a formal investigation needs to be considered in the context of alternative responses that may provide a better outcome for all parties. With this in mind, police might retain a large role in informal resolution and formal apologies, subject to quality reviews by the external agency. Surveys indicate it is possible for police to obtain high levels of complainant satisfaction by these means (CJC, 1994; Walker, 2001, pp. 80–81). Where allegations are substantiated by investigations, there is also support from stakeholders for selective use of non-punitive outcomes such as apology, counselling, retraining or enhanced management supervision. The focus of the system should be on maximising ethical conduct and good police–citizen relations, rather than “busting bad cops”. A further implication of this approach is that the hazards of the criminal courts should be avoided in favour of an inquisitorial approach to finding the truth and the best resolution of a matter. Thus, administrative law should be used where appropriate to deploy sanctions such as fines, suspensions, demotions and — as a last resort — dismissals. Consideration should be given to criminal charges only after administrative procedures have been completed. The stake held by operational police in the complaints process is sometimes left to the margins. But if police are to do their job properly, and if their feelings and rights are to be given due recognition, then it is essential they feel confident that the system will treat them fairly. An inquisitorial approach — waiving the right to silence and employing a civil standard of proof — must be matched by access to legal advice, an appeal tribunal, and counselling and other support services. Police will need to be thoroughly informed about the system and their rights, and surveys of police should be used to obtain their perspectives on the system.

One of the risks inherent in any complaints system is that the processing of large volumes of complaints becomes the sole function. A concern with prevention, on the other hand, will lead to the integration of findings from investigations within a larger research-based risk management approach to integrity. This would include integrity profiling of officers and organisational units, with separate studies on special issues such as new weapons, public order strategies and police powers. Finally, the point needs to be reiterated that independent control of complaints does not absolve police of responsibility for misconduct prevention. Police must retain a large role in developing integrity through human resource management and other strategies, including conducting their own integrity tests and drug and alcohol tests where necessary. The oversight agency will in part function to test the effectiveness of police in-house integrity building strategies.

Conclusion

The issue of control of police conduct is complex and difficult. Each approach has pros and cons. Finding the best system will require some experimentation and the

application of reliable performance measures — although public confidence will be a crucial criterion. Experience with police self-regulation shows that civilian review is essential for accountability. However, there are increasing calls and strong arguments for going beyond “review” to give civilians direct operational responsibility for complaints processing. “Independent control” does not, however, exclude police management from input into disciplinary decisions, and police must retain a large role with alternatives to formal investigations and in preventing corruption through diverse strategies. In considering this model, it should be kept in mind that the principle that “police should not investigate police” extends to many occupations at risk from misconduct. The integration of civilian oversight of police within a broader integrity commission would provide an appropriate location for the dedicated task of corruption prevention across the public sector and provide for the more equitable treatment of police.

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