

Civilian Oversight in a Changed World*

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- September eleventh will be remembered as a turning point in modern history.
- Six months later, we are still wrestling with the impact.
- Our spirits are scarred by images of death and destruction.
- Today, Canadian soldiers are fighting alongside our allies in a war against terrorism.
- Here at home, we have willingly let the threat of terrorism alter the relationship between the public and the forces of law and order that we have empowered to protect us.
- We have all accepted the need for increased security, even at the price of personal inconvenience.
- At airports and public buildings, we wait in line while strangers meticulously search our personal effects.
- Parliament has given our police forces vast new powers to better equip them not just to catch terrorists, but to prevent acts of terrorism. And I'm not even talking about the new organized crime legislation¹ which also presents new challenges to police forces and oversight agencies.
- The Royal Canadian Mounted Police (RCMP), along with other police forces, faces a tremendous and critical challenge as it begins to wield these powers to combat terrorism.

* Notes to speech given by Shirley Heafey at the Conference on Terrorism, Law & Democracy.

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¹ *An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts*, S.C. 2001, c. 32.

- The challenge is—how to use these new powers effectively, and responsibly.
- The public must continue to have confidence in the RCMP: confidence that it has the tools and resources to get a tough job done, and also confidence that the rights of all will be respected by the RCMP as it does its job.
- Just as any act of terrorism is a threat to our democratic way of life, so is any action that damages public confidence in the police.
- Let me explain further what I mean by that.
- Today, I released my final report on Asia-Pacific Economic Commission (APEC).
- Recalling the events that took place at the APEC conference in Vancouver in November of 1997, is a timely reminder of the magnitude of the challenge facing police.
- Poor planning, inadequate communication, poor training and limited understanding of existing law resulted in an unacceptable response by the RCMP to legitimate protest.
- I highlight the limited understanding of existing law and in so doing I am referring, for example, to the strip searches of female prisoners that Mr. Ted Hughes said were unjustified, far too intrusive and inconsistent with the Charter.²
- I also investigated another incident in which the RCMP displayed some of the same failings.
- I refer to the overreaction of the RCMP during demonstrations in St-Simon and St-Sauveur, New Brunswick in may of 1997.
- To contain demonstrations by families opposing the closure of French language schools in two small Acadian communities of 800, the RCMP employed tactical troops, the emergency response team, tear gas units, police service dogs and a helicopter.
- These confrontations were filmed by the RCMP. The Canadian public has never seen the tapes.

² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

- But I have seen them.
- And having seen them I understand how these tactics, along with improper arrests, left these communities feeling traumatized and frightened of the police.
- Frightened of the very police on whom they depend for protection.
- And all that was before September 11.
- To its credit, the RCMP accepted responsibility for this conduct and made a public apology to the people of St-Sauveur and St-Simon.
- I have no doubt that members of the RCMP have learned a great deal from the detailed examinations of these events in Vancouver and New Brunswick.
- But these events show that, even at the best of times, overzealous use of the extraordinary powers vested in the police can undermine our confidence in our police forces.
- Moreover these are not the best of times.
- Let me refer again to a dilemma I described moments ago.
- On the one hand, we feel the need to give more power to the police to protect our security in the face of the increased threat of terrorism.
- On the other hand, we firmly support the rule of law and the rights guaranteed by our laws and our Constitution.³
- That is why the challenge facing the RCMP and other police forces is so great.
- The police need to make *extraordinary* efforts to prevent abuse of these *extraordinary* new powers.
- At the same time, there are great challenges for civilian oversight agencies as well.
- The civilian oversight community must try to understand what Parliament intended in granting these new powers.
- And, civilian oversight agencies must take the lead in helping to define the parameters of these powers.

³ *Constitution Act, 1982, supra note 2, s. 52.*

- There are reasons for this.
- The focus of the antiterrorist legislation⁴ as we've all heard is the prevention of terrorist acts as opposed to the prosecution of terrorists.
- As a result, many cases in which the RCMP exercise or implement these powers may never get to court.
- This has a significant consequence.
- The Commission for public complaints against the RCMP, which I will refer to as the CPC, was established in 1988.
- Prior to the establishment of the CPC, the only civilian supervision of police conduct was the criminal courts.
- The courts continue to take the lead in explaining the laws regarding police conduct.
- But if prosecutions under the new legislation only rarely occur, then the courts won't have the same opportunity to guide police conduct.
- And so now, civilian oversight agencies must try to understand the extent and intended application of these new powers, often without the usual assistance of the courts.
- Then we must use our civilian oversight mechanisms effectively to ensure that the new powers are used fairly.
- For there is a real danger, in this post September eleventh world, that the new powers will be used to unfairly target people based on their racial background.
- Civilian oversight agencies will have to be alert to this possibility if we are to ensure that we all enjoy equal benefit, and protection, of the law.
- I cannot avoid confronting issues arising from the expanded police powers.
- Both the then minister of Justice and the Solicitor General of Canada, when addressing the Senate committee examining C-36, specifically referred to the role of the CPC when discussing police accountability for the use of these new powers.

⁴ *Anti-terrorism Act*, S.C. 2001, c. 41.

- The minister of Justice and the Solicitor General could not foresee all the consequences for the CPC in light of its expanded role. I have already had a chance to see a few of the gaps and I take a certain comfort in knowing that people like Jean-Paul Brodeur and Paul Copeland are also thinking about these problems.
- The RCMP may have greater powers, but the agency with oversight responsibility does not.
- Let me give an example of what I mean.
- When Parliament framed the *Canadian Security Intelligence Act* (CSIS)⁵ and established the security intelligence review committee (SIRC), it recognized that, where matters of national security are concerned, there is always a great deal of secrecy surrounding operations.
- Accordingly, to ensure adequate oversight, SIRC was equipped with a large arsenal of oversight tools.
- For example: it has audit powers so it can look at any situation that it decides warrants review.
- As well, by law,⁶ certain activities of CSIS must be reported to the security intelligence review committee.
- And, most notably, SIRC has access to judicial warrants and the affidavits upon which they were obtained.
- The CPC does *not* have similar powers.
- Part VII of the RCMP act,⁷ where the powers of the CPC are described, sets out the public complaints process.
- This process is complaint driven.
- That means problems are generally drawn to my attention by a complainant.

⁵ R.S.C. 1985, c. C-23.

⁶ *Ibid.*

⁷ *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10.

- But what happens when a potential complainant doesn't know of the CPC's existence or, worse, is afraid to complain about the actions of the police?
- How then will I become aware that a possible problem may exist?
- Assuming that I do become aware of a possible problem, in the absence of a complaint, how do I pursue an investigation without the cooperation of the affected person?
- In Canada we are proud of our multicultural identity.
- Many people living in Canada fled countries where fear of the police or distrust of Government is a fact of life.
- It is all too easy to rekindle such fears, even in Canada.
- I have heard reports in the last couple of months—disturbing reports—from some members of our community who are convinced that police are targeting individuals based on their racial backgrounds.
- In some cases, I have been specifically told that people are too frightened to complain after what they have gone through.
- Without a complaint and without the power to randomly review files, it is difficult to investigate and to assess RCMP use of the new powers.
- Without power of audit, it will be difficult to determine if certain communities are being unfairly targeted.
- A search is authorized by warrant issued by a judicial official who has read an affidavit in support of the request for the warrant.
- If I don't have access to those documents, how can I, in good conscience, assure the minister of Justice and the Solicitor General that I am overseeing the RCMP's use of these new powers?
- The RCMP has expanded powers and new tools to intervene with force in the lives of civilians; shouldn't the CPC have expanded powers of oversight?

- In fact, the RCMP would benefit from expanded powers of civilian oversight. For they would be spared the risk of undeserved public blame, in cases where, contrary to public perceptions, their actions may ultimately be shown by the CPC to have been in complete conformity with Parliament's intentions.
- In the rush to approve legislation to fight terrorism,⁸ the minister of Justice and the Solicitor General could not foresee the consequences of this imbalance.
- The CPC requires additional powers and additional resources to restore balance—to balance the new powers and resources given to the RCMP for the purpose of combatting terrorism.
- The stakes are high.
- If civilian oversight of police is not a priority, then we expose ourselves to the risk of entrenching a change in police practices that will be ultimately injurious to our democratic way of life.
- We need to take care, that in trying to root out one form of tyranny, we do not tolerate another.

⁸ *Supra* note 4.