



February 15, 2008

Response to the *Report of the Task Force on Governance and Cultural Change in the RCMP – **Rebuilding the Trust***

Governance and Accountability

Introduction

The Canadian Association of Police Boards is pleased to comment on the Brown Task Force on the Royal Canadian Mounted Police. The CAPB membership, like most Canadians, has a great respect for the RCMP, both in terms of its involvement in the development of Canada and as it relates to its current role in delivering a variety of police services. Our observations and recommendations are made in the spirit of a constructive dialogue to assist the Government of Canada and the RCMP itself in building its organizational strength and capacity to better serve all Canadians.

Who We Are

Police Boards in Canada can be traced back to various provincial legislative acts that predate Confederation. Contrary to what some expert commentaries have voiced in response to the Task Force report, the civilian governance of police in Canada has a rich and deep history in this country.

The Canadian Association of Police Boards itself was formed in 1989, and represents the vast majority of civilian governors of municipal police services in Canada. We have a demonstrated record, in partnership with federal and provincial authorities, as well as other police organizations, of pursuing initiatives to assist our members in discharging their responsibilities in a professional manner. We constantly work to reflect the most modern governance principles from both the private and public sector, while adhering to our respective statutory responsibilities.

In addition, many of the issues identified in the Task Force Report are matters that member Boards have grappled with at various times, often under the glare of public and media scrutiny. Therefore, both through research and at times bitterly

earned experience, we have an appreciation and understanding of the police environment, and acting as civilian governors within that environment.

Given our history, our record and our practical experience, we believe we are well suited to comment on areas of police governance, oversight and accountability to the community and our own members.

Governance

The role of governance within a police environment was best summarized by Justice Wally Oppal, in his seminal report from 1994, entitled: *Closing the Gap – Policing and the Community: Commission of Inquiry into Policing in British Columbia*.

On page six of his report, Justice Oppal, now Attorney General for the Province of British Columbia states:

The subject of governance may be the most important issue examined by this Inquiry. A liberal democracy such as Canada is founded on the rule of law and a system of responsible government. Two principles are fundamental to policing in a democratic society. The first is that police who enforce our laws are ultimately responsible to civilian authorities. The second is that the police must be independent in all operational matters. They must, upon reasonable grounds, be free to investigate anyone without political interference or any fear of political interference.

It is our view that the mandate and responsibilities of the Board of Management as set out in the Task Force Report should reflect the statement above. Therefore we are in agreement with Recommendation 1 and generally with Recommendation 2, with caveats as provided below.

Basic Governance Principles

There has been a great deal of comment on governance during this process. There is even a greater wealth of expert knowledge that can be easily accessed. We do not intend to offer an evaluation on each point or attempt to parse the difference between private sector, public sector and not-for-profit governance practices. We can elaborate as requested; however, within the scope of the Task Force review, we believe certain basic governance principles are vital and require comment:

- The Board has only one voice and governs through its one employee.

It is often stated as a truism that the most important responsibility of any Board is to hire the right individual as CEO. Flowing from that is the responsibility to set an appropriate framework for decision-making by the CEO, including expectations,

limits of authority, and ensuring the appropriate level of reporting, hence accountability. Finally, a Board must have the ability to hire and, if required in the extreme, terminate the employment of the CEO.

We realize this would be a radical departure from current practices. We will address that point further in this report. However, a Board that cannot hire its one employee, or govern that employee's behaviour, will immediately labour under a degradation of its mandated authority. The Task Force emphasized the need for transparency and accountability. We share that view. With the exception of specific law enforcement issues, let the Commissioner be accountable to the Board (whose members will likely be

appointed by the government) and the Board accountable to the Minister and government. It is clear, easily understood and explained, and it is consistent with the fundamental governance principle as set out above.

- Appointing the Right People

We agree generally with Recommendation 1.4.2 regarding the need for a Board comprised of '*appropriately qualified Canadians of outstanding reputation*'. We certainly underscore the comment '*The calibre and experience of people appointed to the Board will be a critical determinant of its success*'. The Task Force report then proceeds to state the Board should have representation from the Provinces and Territories, as well as appointees from the private sector with experience '*in the oversight of management of large, complex business organizations*'. Finally, the optimal number of Board members is set at 12.

Successful Boards have successful board members. Successful board members are those that understand their role, understand how boards work, and are willing to be part of one collective voice. This is more difficult to achieve than appointing individuals with outstanding individual credentials. Most recall the disastrous collapse of Enron. Less recognized is the quality of its Board membership, consisting as it did of a former Stanford dean of accounting, a former CEO of an insurance company, a former CEO of an international bank, a hedge fund manager, a prominent Asian financier, and an economist who headed up the U.S. government's Commodity Futures Trading Commission.

In an article in the Harvard Business Review, entitled: *What Makes Great Boards Great*, Jeffrey A. Sonnenfeld, an associate dean at the Yale School of Management, states: "*It's not rules and regulations. It's the way people work together.*" He goes on to say: "*What distinguishes exemplary boards is that they are robust, effective social systems.*"

We support that view entirely. As important as it is to achieve clarity in the governing legislation, it is even more vital to appoint the right individuals to the Board. Therefore we recommend that the first action of the government, once the enacting legislation is passed, is to select a Board Chair, with the characteristics as identified by the Task Force Report. This we suggest must be a full time

position for the foreseeable future, with administrative support as required. The Board Chair can then work with government, the Commissioner and other groups, including constituency communities, to establish the necessary criteria and then identifying the skills, experiences and competencies required for the composite Board. The Board Chair can also facilitate with the transition of powers and authorities as set out in the legislation, including comment on the regulations.

- Organic Growth

Change does not come easily to most organizations. Most would agree change is even more difficult to introduce in large, conservative institutions with well established practices.

This is also true of Boards and governance practices. In our experience, Boards and organizations react better to organic growth and development than the radical introduction of new systems or abandonment of past procedure. Succinctly put, we support evolution, not revolution. It is why we suggest the first appointment be a Board Chair, whose leadership skills will be vital to making the Board work, and who will from the outset have to manage the Board/Commissioner relationship as well as other key liaisons.

In that same vein, despite our strong support for the Board hiring the Commissioner, we recognize and accept this may occur at some future point. We maintain, however, that it does need to occur.

For these reasons, we support the transition of '*additional powers*' to the Board as envisaged by the Task Force Report. A sudden transformation of authority and responsibility, without the necessary resources and procedures having been put in place, will essentially paralyze the organization.

We also support the periodic review as set out in Recommendation 1.5. We would go further and state that care should be taken to design the legislation to provide for flexibility; not rigidity. Let the individuals within the system work to create a governance structure that works for the current and future needs of the RCMP and the communities and country it serves.

Accountability

Chapter Two of the Task Force Report is entitled: *Public Accountability*. While we agree with an oversight agency specific to public complaints, we do not support the range of duties and related authorities recommended by the Report.

As a general principle, public accountability for the activities of the RCMP, and actions of individual police officers, must reside through the chain of command with the Commissioner. The Commissioner should be accountable to the Board, and the Board to the government. It is straightforward, clear and transparent.

Mr. D. Brown in his initial report described ‘human’ lapses in judgement and decision-making, as well as systemic, organizational issues. These will not be rectified by external oversight bodies. They can and have been identified, most recently by Mr. Brown himself. However, public accountability must reside with those given the authority to govern and manage. If they fail, then responsibility for that failure is clear.

In particular, as it relates to the proposed Independent Commission for Complaints and Oversight for the RCMP (ICCOR), we do not agree with this body having a review function with grievance and discipline appeals. This removes a significant degree of accountability from the Commissioner and the management of the RCMP. If there are fundamental human resource issues within the police service, it is vital that they be dealt

with by management. If management fails to, the Board must hold the Commissioner accountable.

It is our recommendation that specific human resources issues that were identified by previous reports should be handled, and we are certain this is occurring, as a priority by the current Commissioner. We would expect that once a Board Chair is appointed, s/he will certainly have an interest in how resolution of these matters is proceeding.

Giving responsibility for internal grievances, discipline matters and other human resource issues to an oversight body will create a shadow human resources department, creating an unnecessary and cumbersome bureaucracy. In particular, we believe recommendation 2.5.6. confuses internal discipline and grievances with public complaints, especially as it relates to the role envisioned for third-party arbitrators. We are concerned this will create an expensive legal quagmire that will drain resources required elsewhere.

We do not support including a mandate for ICCOR ‘*to review any aspect of policing operations including operational reviews*’. Any deficiencies uncovered by ICCOR in its public complaints processes should be brought to the attention of the Board/Commissioner, with a report to the Minister if required. To do otherwise will result in the creation of a quasi-police function for ICCOR, requiring a high degree of police expertise and experience. This is unnecessary. A system can be created by which issues can be identified, brought to the attention of the applicable bodies and a report generated back to ICCOR of the action taken.

Oversight – Public Complaints

We do agree with an external oversight agency for public complaints. We believe it will provide greater confidence to members of the public who believe they have been treated inappropriately by members of the RCMP. It is our view that most

complaints in the first instance should be reviewed by the RCMP itself, with an appeal process to ICCOR. Upon review of the appeal, ICCOR should have sufficient authority to have a complaint either re-investigated or submitted to another large police service to investigate with the final report going to ICCOR.

We fully agree with every attempt being made to reach an informal resolution of a complaint, especially those of a minor nature. It is the finding of many of our member Boards that with experience, the right personnel assigned and a progressive attitude towards complaints, the majority of public complaints can be resolved informally.

The one area where we would support ICCOR having an investigative function is in incidences involving a serious injury or death of an individual resulting from police activity. The Special Investigations Unit in Ontario provides a model that we believe can be emulated by ICCOR. While it would result in significant costs being incurred to establish such a function, high profile incidents do have the capacity to create mistrust and to diminish faith in a police service. It is imperative that steps be taken to ensure the

public are confident in investigations of this nature, and are confident in the findings once released.

Conclusion

The CAPB appreciates having the opportunity to comment on a high level on some of the recommendations contained in the Task Force Report. The common themes in our response can be categorized as follows:

People – It is imperative to put the right people in place, provide the tools necessary to do the job and hold them accountable for their actions. Many of the problems identified by Mr. Brown were the result of ‘human’ errors and actions. Rules and regulations should not be introduced to protect against anomalies but rather to foster and support the ‘*norm*’.

Process – Whether mandated in law or created as policy or procedure, processes should support and regularize appropriate behaviour and actions. Clearly defined authority, expectations and limits at every level will assist all parties and create transparency and accountability. Flexibility at the Board level will allow for the creation of a governance model suited to the particular requirements and needs of the RCMP

Patience – The changes being contemplated are generally supported by the CAPB, and are seen as needed to restore public confidence in the RCMP. However, any attempt to institute wholesale change, especially at the upper levels, could potentially have a paralyzing effect as management concentrates its

efforts on mobilizing to deal with new requirements at the expense of other priorities.