

The Politics of Independence: Police Accountability in the Canadian Context

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Abstract

This paper analyses the principle of police independence which came into being with the establishment of liberal democracies such as Canada. Nowadays, there are increasing signs that the traditional view of police independence held in a liberal democracy has become obsolete. In Canada, the Executive's use of police forces as a political instrument has resulted in an increasing demand for accountability of police actions. These calls for change have been repeatedly rejected on the basis of a potential danger posed to the independence of the police. This produces an impasse in which the legitimacy of police actions is increasingly challenged. The relation between police independence and accountability in liberal democracies, therefore, reveals itself as highly conflictive and invites a reformulation of the principle of police independence.

Key words: Police independence, accountability, liberal democracy, Canada.

La política de independencia: La responsabilidad por las acciones policiales en el contexto canadiense

Resumen

Este artículo analiza el principio de independencia policial que surgió junto con la constitución de regímenes democráticos liberales como el de Canadá. En nuestros días, existe una clara percepción por parte de la ciudadanía que este principio se ha tornado obsoleto. En Canadá el uso de fuerzas policiales como instrumento político del Poder Ejecutivo ha resultado en una creciente demanda por una mayor prestación de cuentas de acciones policiales. Esta demanda se enfrenta con una clara resistencia por parte de defensores de la independencia de las fuerzas policiales, que ven estos intentos como intrusiones peligrosas dentro de la orbita policial. El resultado de este impasse es una creciente deslegitimación de acciones policiales. La relación entre los principios de independencia policial y prestación de cuentas en sistemas democráticos liberales como el canadiense, se revela como claramente conflictiva y sugiere, en consecuencia, la necesidad de una reformulación del principio de independencia policial.

Palabras clave: Independencia policial, responsabilidad policial, democracia liberal, Canadá.

Introduction

The intention of this paper is to contribute to the debate over the role of police in a liberal democracy. There are increasing signs that the traditional view of police independence held in a liberal democracy has become obsolete. The change in the general public's perception of the police is reinforced both by the engagement of police officers and institutions in politics and by the increasing questioning of the legitimacy of police methods (Robb, 1994:167). In Canada, police forces are being increasingly called upon by the public they purport to serve and protect to account for their actions.

In most liberal democracies, police forces are considered to be independent of the three branches of government, the executive, legislative and judiciary. The police are thus seen as an independent body which merely enforces the laws of the State.

Calls for increasing democratic accountability of police actions has been repeatedly rejected on the basis of a potential danger posed to the independence of the police. However, if the police do not possess the alleged independence, or the distance from politics and political or other influences that we normally understand to be present, then the arguments used to resist increasing accountability cease to be persuasive. Moreover, it means that democratic accountability has a more important role to play in the functioning of police institutions than what originally had been thought.

The first chapter of this paper presents a brief overview of the concept and origins of police independence and its problematic relation to the notion of accountability in the context of a liberal democracy. It then describes the adoption of the principle of police independence in the Canadian context, taking a look at both legislation and judicial decisions. Chapter Two purports to reassess the concept of police independence by disclosing its inherent contradictions in both a conceptual and empirical sense. The final chapter of this paper formulates some alternatives which may be called upon to play a role in resolving the need for greater accountability by the police, and possibly in general, within liberal democracies.

In this paper I will focus on an analysis on of both Canadian municipal police forces and the Royal Canadian Mounted Police (RCMP) because of the greater relevance of these two forces to the Canadian national territory (1). Virtually all provinces have both a municipal police force and/or contract RCMP services (2).

1. The Shaping of Police Independence

The basic idea of accountability in the policing context refers to the duty and indeed responsibility of those who hold delegated power, or have it conferred upon them, to account for their performance. There are three clearly defined potential models of police accountability. First, the link between the head of the force and government; second, the means by which individual police action is examined; and finally, the means by which possible police wrongdoing or corruption can be examined (Marin, 1997:108).

For the purposes of this paper I will focus on the first area since it is the one which I believe best exemplifies the current tensions between accountability and independence which characterize any liberal democracy.

The Traditional View of Police Independence

Before entering into the contemporary debate surrounding police independence, I believe it would be helpful to briefly establish the traditional role of police forces and their relationships with their surrounding communities. Later in this paper this contextualization and delving into history will form the basis for a more detailed argument surrounding present-day conflicts and difficulties in discussing the inherent politics involved in conventional policing as well as the possible political scenarios which may emerge in the forces' dealings with external parties who are given a role in controlling police actions.

The history of the role of police in common law countries has emerged in two contradictory versions, as Reiner points out in his book *The Politics of the Police* (1992). The official narrative, which ignores the conflicts which arose during the creation of what we today know as the police, places a great emphasis on the fact that the roots of the police force lie "in ancient traditions of self-policing" (Reiner, 1992:21). The police, thus, belongs to the com-

munity, and not to any governing body. Furthermore there was a strong emphasis on democratic accountability, as the police was armed "with prestige rather than power, thus obliging them to rely on popular support" (Critchley, 1978:18).

The traditional view of the police officer in common law countries has been that of a servant of the people (as exemplified by the motto of the Toronto Police, "to serve and protect"), assigned the task of enforcing the laws of the state. These same laws, enacted by the legislature, reflect the will of the people. Police officers are, therefore, answerable only to the law: they exercise an original, not a delegated authority (Robb, 1994:177).

The second "revisionist" version of the history of the police claims that the force was in fact the long arm of the bourgeoisie, interested only in protecting property and personal gain. Echoes of this approach still reverberate nowadays as the police is regularly accused of providing unequal services to different sectors of the community which they serve.

The traditional approach, however, acknowledges that influence on police matters, which usually originates from within the executive branch of government, may very well reflect partisan interests. Therefore, the idea is to immunize the police against political interference. Otherwise, the police forces risk becoming a servant or tool of the political authorities, enforcing the will of the latter instead of the law. In this latter case, the result is the creation of a *political police* (Turk, 1982), with a different purpose and task than the one envisioned for the police in a liberal democracy.

The most extreme version of police independence was conveyed by Lord Denning in the English case of *R. v. Commissioner of Police of the Metropolis, ex p. Blackburn* (3). In this case, Denning held that the duty of every chief of police was the enforcement of the law, and that a police officer "is answerable to the law and to the law alone" (4). This case stands for the proposition that

not only are political control and direction *ultra vires* in matters pertaining to law enforcement, but so is political accountability.

Canadian Courts have adopted the traditional view of police independence which has also pushed them towards an ambivalent approach to accountability and fears of political interference. At the municipal level, the contact between the "head" of the force and the relevant political authorities is restricted to the police chief as expressed by the Ontario *Police Services Act*:

"The board [the municipal civilian organ which oversights the activities of the municipal police] may give orders and directions to the chief of police, but not to other members of the police force, and no individual member of the board shall give orders or directions to any member of the police force" (5).

In Canada, this (apparently) necessary exclusive relationship between the head of the municipal police forces - the chief - and the civilian body in charge of it - the municipal police board, is one of the legal pillars of the idea of police independence.

The traditional view of police independence became an issue before the Canadian Courts in a number of cases. In *Re Reference under the Constitutional Questions Act* (6), the Ontario Court of Appeal held that a Municipal Council did not have the power to dismiss a Chief Constable or any other police officer appointed by the Council, without a hearing as provided by the old *Police Act* (7) and the regulations made thereunder (8). The Court found that no member of the municipal police was an employee or servant of the municipality and that the duties owed by a policeman were of a public nature and were not owing to the municipality or a board by which a police officer has been appointed.

Following the enactment of the new *Police Services Act* in 1990, the courts have affirmed this vision of police independence. In *Pembroke (City) Police Services Board v. Kidder* (9), the Court confirmed the view that the relationship of master and servant (or employer employee) did not exist in law as between a municipi-

pality or a police board and a member of a police force appointed under the *Police Services Act*. Therefore, a municipality, through its police services board, lacked the authority to terminate the employment of its police chief through a simple thirty-day notice provision such as that contained in the termination provision of the agreement between the parties of then lawsuit. In doing so, the court stated that:

The necessary independence of the office of chief of police militates against a finding of authority in an appointed Police Services Board to terminate a police chief's services with nothing more than the giving of 30 days notice. Such authority would invite an environment in which a chief's conduct must maintain the pleasure or satisfaction of, in the case of Pembroke, one elected municipal counselor and two individuals appointed by the provincial cabinet (10).

The Court, however, did not go as far as to strike down the ten year limitation of the contract, since this would have granted the head of the police a status comparable to that of a judge. It seems that the court was trying to strike a middle ground between police independence and some degree of accountability.

Canadian courts, thus, appear to have adopted (or assumed) the proposition that policing is a non-political activity. Underlying this assumption is the overriding belief that a clear distinction can be made between "policy" decisions, which are the prerogative of elected representatives, and "operational" decisions, "which are the legitimate preserve of the professional chief" (Reiner, 1995:78). This division between spheres of activity has been used, thus far, to reconcile the notions of police independence and accountability.

In Ontario, this division between "policy" and "operational" decisions was codified in the *Police Services Act* which limits the municipal police boards' powers to:

(b)generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality.

and

(e)direct the chief of police and monitor his or her performance (11).

As was previously mentioned, the Act limits the capacity of the board to give orders and directions, allowing contact only with the chief of police. The board is also enjoined from directing the chief with respect to "specific operational decisions" or the "day-to-day operation" of the force (12), a decisive limitation which I will question further on in this paper.

A clear application of this division was used by the Prince Edward Island Court of Appeal in *Arsenault v. Charlottetown (City)* (13). In *Arsenault*, the municipality of the City of Charlottetown enacted a bylaw to regulate and license automobile repair garages. Auto body repairs were carried out by a business located on premises adjacent to Arsenault's property. Arsenault complained to the municipality that the business operated in violation of the regulations but charges were never laid. Later, Arsenault commenced an action against the municipality and the police and demanded that they enforce the bylaw. The trial judge found that the defendants had a duty to enforce the bylaw and that breach of this duty gave rise to a cause of action in damages against the municipality.

On appeal, the court surveyed the applicable authorities to determine whether the defendants owed a private duty of care to Arsenault to enforce its bylaws, and concluded that if there was a relationship of proximity between the plaintiff and a public authority, there was a duty of care with respect to negligent acts or omissions which may have caused damage and which were within the operational sphere of the municipality's activities. *Liability, how-*

ever, could be excluded if discretionary policy decisions were involved at the operational sphere or level or by legislation.

In this case the bylaw did not impose a mandatory obligation to enforce it. In the view of the Court, the trial judge erred when he held there were no discretionary policy decisions involved at the secondary or operational level, since the police had a wide discretion whether to prosecute in any particular case. In support of his position the court referred to the English case of *Hill v. Chief Constable of West Yorkshire*:

It is for him [the police officer] to decide how available resources should be deployed, whether particular lines of inquiry should or should not be followed and even whether or not certain crimes should be prosecuted. It is only if his decision on such matters is such as no reasonable chief officer of police would arrive at that someone with an interest to do so may be in a position to have recourse to judicial review. So the common law, while laying on chief officers of police an obligation to enforce the law, makes no specific requirements as to the manner in which the obligation is to be discharged" (14).

The court, by placing the police automatically in the "operational" sphere, closed the doors for any accountability with regard to the decision taken by the police in *Arsenault*. This wide discretion at the "operational" level exempted the defendants from any duty of care. Because it applies the principle of police independence as elaborated by the common law, *Arsenault* cannot logically be considered a wrong decision. What is problematic is that the Court, by following a division of "policy" and "operational" spheres of activities was in effect shielding the police from public accountability. There is no questioning regarding the fictitiousness of such separation between spheres of activities.

The case of the RCMP is even more troubling with respect to this issue. Art. 5 of the *Royal Canadian Mounted Police Act*, the Statute which governs most of the RCMP activities, states that

the Commissioner, who is the head of the force, "under the direction of the minister, has the control and management of the Force..."(15) Absent a municipal police board, the Canadian Executive (embodied by the Crown) -the branch of the government with the greatest capability to effect political influences- is the one in charge of appointing the Federal Solicitor General (responsible for the RCMP) and the Attorney General (who takes over a criminal case after the police lays charges). Moreover, in Canada, the Attorney General is also a high-ranking member of the Prime Minister's Cabinet.

This is certainly a paradoxical situation in that the offices of both the Attorney and the Solicitor General are supposed to perform accountability functions vis-a-vis the police. It also begs the question of how neutral policing can possibly be.

There are some examples in the Canadian context which indicate that the "neutrality" of police activities has not prevented abusive situations. Examples are the RCMP laying criminal charges against a television reporter and two others in the matter of a federal budget leak for reasons a judge latter attributed to "unfairness and vexatiousness"; the finding of a public inquiry into the activities of the police that in the Province of Nova Scotia there is a 'two tier system of justice'; or the claim that "political manipulation delayed the laying of fraud charges against a Progressive Conservative candidate leadership in Nova Scotia (Smith, 1994:193-93).

Thus, not only does the current arrangement between "policy" and "operating" spheres of influence appears to fail to provide proper accountability a-propos the "operating" activities of the police, but it also allows room for partisan politics, especially in the case of the RCMP, to emerge within the supposedly more open "policy" sphere.

2. Reassessing Police Independence

The argument I wish to make at this point is, then, that the attempt to reconcile police independence and accountability in the Canadian context needs to be reevaluated and rethought using different divisions. Two different views may be taken in this respect. The first one is that:

...policing is necessarily a political process in that it operates to preserve a particular set of values that are prioritized by a particular structure of power. Policing decisions are not matters of neutral professional expertise, as the case law suggests (Reiner, 1995:78).

This view questions the entire concept of police independence. I will return to this approach in more detail later on.

The second approach calls for the strengthening of police independence by distancing the government from police activities. This second approach, however, is difficult to maintain as it does not resolve the problem formulated by the first more radical approach. Nor does it provide with a solution to the partisanship of policing revealed by the examples mentioned above.

The Canadian police forces themselves have been described as "having either a political agenda or attitudes tantamount to" (Smith, 1994:194). Some examples are the Sûreté du Québec (Quebec's Provincial Police) as manifested in the handling of the Oka crisis (a botched police raid to put an end to a blockade a group of native people had erected) or the Winnipeg Police Service laying charges against the lawyer of Native leader J.J. Harper who had been shot to death while undergoing arrest. Police's annual demands for the return of capital punishment, as well as criticism of the Charter of Rights and Freedoms (16) as impinging on the police's ability to do their job, are additional examples (17).

The political campaign against the New Democratic Party (NDP) provincial government in Ontario carried out by the Metropolitan Toronto Police Association in late 1992, was one of the

clearest illustrations of overtly political activity. The campaign was provoked by government-inspired regulations for stricter controls over police use of firearms. "It quickly became clear, however, that the concerns of the Association were broader than this, as they accused the NDP government of always placing the complaints of 'minority special interest group' over the legitimate interests and concerns of police officers" (Stenning, 1994:228).

The political role of the police, however, is not a new phenomena. Public police forces in Canada (as well as in other Commonwealth countries) were, historically, "deployed for sometimes overtly politically purposes" (Stenning, 1994:228). Brogden suggests that the police in British colonial jurisdictions was used to "pacify" the colonies and suppress adherence to local customs and laws in favour of compliance with the laws and values of the colonial power (Brogden, 1987).

During the early 1800's, the Canadian dominion underwent major reforms with respect to police governance. The authority of establishing and governing municipal forces was transferred from the justices of the peace -politically appointed judicial officers- to the new elected municipal councils (Stenning, 1994:212). This arrangement was not really satisfactory in that it signified a mere transfer of political control of the police from the British Crown to the local authorities. The *Municipal Institution of Upper Canada Act, 1958* was a limited attempt to eliminate political influence over police forces, since the 1858 provisions did not apply to the majority of municipal police forces. It was not until the enactment of the *Police Services Act* in 1990 that all municipal forces in Ontario were required to be governed by police boards.

It has been argued that the 1858 Act limited the municipal control of the police by the provincial governments (Stenning, 1981:161). The creation of police boards needs to be viewed as "an attempt of the provincial authorities to redistribute political control and influence over municipal policing" (Stenning, 1994:213). In

support of this argument, Stenning notes the political nature of the provincial appointments to those boards (Stenning, 1994:213).

Whether this is an accurate assessment is not as important as the point that police forces have always been within the sphere of political influence, be it federal, provincial or municipal. Thus, the political nature of policing has an historical dimension. All this suggests, of course, that the claim for police independence is a very controversial one.

The more radical British approaches to the role of the police have shared the view that police forces are turning into "independent political agencies with its own political objectives, albeit ones which conform to the British police's historic function of defending the capitalist system"(Marin, 1997:109). The reasons for this trend may also be found, on the one hand, in the increasing centralization of police operation and organization, and on the other hand, in the specialization of several police sections in particular areas. This trend contrasts "with the traditional notion of generalized policing which required police officers to be sensitive to the wider public" (Marin, 1997:109). Criticism of the political role of the police, thus, has been directed towards both the use of the police by the state and the "ruling classes" in the maintenance of an acceptable internal order (Cain: 143) and towards the bureaucratization process inherent of all modern institutions which increases the difficulties to control police activities.

These two phenomena are certainly linked to a third factor which challenges traditional views of the police, namely, the crisis of legitimization suffered by police forces. Acceptance (and legitimization) of the role of the police is normally achieved by the consensus of a majority of the community being served (Reiner, 1995). Such consensus can be broken by events such as corruption scandals, police wrongdoing, racial tensions and massive displays of force.

There is no doubt that the Canadian public has been exposed to increasing reports of such events in the last decade. The extent to which the legitimacy of the police has been weakened can be seen in the period of 1990-1 when the RCMP conducted criminal investigations of several MPs involving allegations of misuse of public funds (Robb, 1994: 172). The investigations resulted in the enactment of Bill C-79 which provided for the establishment of an internal Parliamentary Board with exclusive authority to determine the legality of the appropriation of the funds. According to the Bill, the opinion of the Board must be presented to the judge who is asked by a police officer for an application process, for things such as the authorization of wire-taps, special warrants, search warrants, restrain orders, issuance of summons, or arrest warrants to be issued. The implications inherent in the passing of this legislation go beyond the criticism mounted against the rush in which Bill C-79 was passed (18), and the perception created among the public that the parliamentarians were passing the Bill to protect themselves: the process discloses the people representatives' own distrust of impartial and independent police investigations (Robb, 1994:172). In effect, it was the body representing the "will of the people" which questioned the very essence of police independence.

The breaking of such consensus in the Canadian context is also produced by a more sweeping legitimacy crisis which currently affects most of the traditional institutions of a liberal democracy and especially the state. In this context, democratic accountability emerges as an essential complement to police autonomy, in that it can provide the police with the necessary legitimacy. The assumption is that the higher the degree of independence of an institution, the less accountability will be required to obtain legitimacy. In contrast, the less the degree of independence, the more accountability will be required.

The problem is that police forces are less flexible in responding to this demand for greater accountability because of

the traditional concept of police independence. The resistance of the police to greater accountability has received support from the notion of police independence which has been reflected in the artificial division of "policy" and "operational" spheres of influence adopted by Canadian policy-makers and judges. Thus, the police appear to be caught in a dialectical position between accusations of being unaccountable and of being politically controlled. Furthermore, it is clear that the concept of police independence ignores the political nature of policing as well as failing to address legitimacy problems.

3. Accountability Reassessed

The use of lawsuits as a way to control the actions of the police is a limited recourse as the Canadian Courts maintain the distinction of between "policy" and "operational" spheres of action". It is also limited as a significant number of plaintiffs do not have the financial resources to launch a lawsuit against members of the police forces, which usually receive financial support from their powerful unions. Thus, civil actions are certainly insufficient means to cope with a more pressing and widespread need for greater accountability.

If accountability means politics, but also independence, then a liberal democracy must try to overcome the traditional conception of police independence which has produced the artificial division between political and operational spheres of influence. Clearly, efficient management calls for some day-to-day delegation of responsibility. Yet this inherent element of professional bureaucratization must be reduced as much as possible.

The distinction between "policy" and "operational" activities does not solve problems of legitimacy and police misbehaviour in that it both inhibits accountability and does not limit the coercive powers of the state. Rather, a liberal democracy must aim to establish a method of overseeing the police, while simultaneously striving to give an equal voice to the communities to which the

policing pertains through the maximization of representation. Reiner, in fact, argues in favour of this "low level" (due to the fact that the civilian members of police boards overseeing the police are not elected officials) method of control. "Experience so far suggests, however, that they [the members] are better at communicating police views to typical 'representatives' of the public than vice versa...." (Reiner, 1992:222).

The introduction of community policing strategies could be one possible way to address the question of accountability. Community policing implies greater involvement and participation by the community in police activities. This approach, however, may be useless if it is not capable of questioning the barriers associated with the traditional formulation of police independence.

The involvement of the community should both enhance the democratic nature of police-governing authorities and overcome the distinction between the "political" character of "policy" activities and so-called apolitical "operational" activities.

At the same time, it must be recognized that responses such as community policing also have their own possible pitfalls. Community policing, for example, still needs to ensure that the interests aired by the "community" are the product of a process of careful deliberation which will guarantee the right of everyone to engage in such formation, and is not merely a result of local partisan interests.

Austin Turk, profiling the concept of what he terms "political organizations", outlines a process which strongly resembles the potential conflicts which may (and do) arise in the relations of supposedly independent, apolitical, police boards with those liaison connections/ committees to whom they report. He highlights the obvious pressures brought to bear when "people try to forestall or resolve conflicts with 'them' on terms favourable to 'us'...all forms of...control from the most democratic to the most autocratic" (Turk, 1982:22).

A second approach would involve the creation of civilian bodies with the purpose of overseeing and strengthening the existing bodies (e.g. municipal boards). With respect to those organizations already in existence, some change in the legislation should be effected in order to "democratize" the current arrangement of the membership of municipal police boards in the Canadian context. Both municipal police boards and the RCMP Public Complaints Commission (PPC) -the institution which fulfils the same task as the municipal police boards, but with jurisdiction over the activities of the RCMP- have been criticized for not being capable of escaping political influence. The PCC itself has acknowledged its limitations because of the perception that a conflict of interest exists, since the PPC is financed by the Federal Department of Justice, the same Minister responsible for overseeing the RCMP (Smith, 1994:196-97).

The changes in the composition of the members of municipal boards, which have affected the balance of power between the members appointed by the province and the ones elected by the local municipalities is a sign of this democratization and going-to-the-local process. This reform will improve the amount and the quality of representation of the local constituencies on these boards.

Furthermore, any reassessment of the role of the police with regard to their independence and accountability will have to take into account jurisdictional questions resulting from the structure of Canadian federalism. Issues around the RCMP's contract policing in the provinces, for example, should be expected to take into consideration any significant change in the current balance struck by the court between police independence and accountability. The question regarding the accountability of RCMP police officers who serve in the provincial areas which had contracted them creates another level of tension between local control and accountability and the promotion of national standards of law enforcement (19).

Conclusion

Canadian courts have shown reluctance to reformulate the concept of judicial independence. As we have seen, this artificial partition between spheres of influence (that of "policy" and that concerned with the "operational") has not been any more successful in addressing the issue of cracks and faults in police legitimacy. On the contrary, the weakness of the responses has exposed the police to a dialectic position in which the force is criticized on the one hand for its lack of accountability and on the other for its inherently political motivations. The resolution of this two-pronged problem may be found in the "low-level" community-based answerability which has gained popularity among both police forces and has involved a number of communities in Canada.

The success of this strategy relies greatly on an awareness of, communication with, and representation of all sectors of the community. Ideally, of course, this influence would be dealt out in equal shares, allowing a view and a voice for all in the official overseeing of the force. One must, however, admit that realistically, even within this apparently innovative model of police accountability, certain social, economic or political groups will always carry more weight than others in influencing police work and response. In this sense it would perhaps be worth reconsidering the advisory capacity of community-based police boards. I say advisory, because to give the possibility to the force to accept or reject the advice proffered may, paradoxically, allow for an expression of the desired and assumed independence of the police. To reiterate Reiner's comment "accountability institutions will only truly be efficacious in affecting police practices if they win over and work in conjunction with internal disciplinary and self-controlling process. They can not be forced by a heavy hand" (Reiner, 1992:218).

This exemplifies one of the central problems discussed in this paper. This is the fact that police forces need to maintain some distance between the municipal board and most members of the force, following the previously mentioned split between the policy-based and the operational. Even in the case of integrated community-police groups, for example those described by Brian Grosman in his book *Police Command* (Grosman, 1995), some distance "ought" to be maintained, according to the author.

Grosman first indicates that "the mechanics of running the department ought not to concern such committees", but immediately claims the superiority of the integrated (police chief plus community representatives), participatory system as it "heightens the visibility of that process and removes needless suspicion..."(Grosman, 1995:126). This opaque tint to a process of supposed transparency is what must be overcome, both theoretically and in practice in the establishment of an independent police body.

The courts have refrained from entering into a (much needed) debate over the constitutional role of the police. This paper does not argue that they should do so, since that is the task of the representative bodies. The decision which is most urgent at this point in time is that concerning the public perception of the police. A decision must be taken to recognize the inherently political nature of any relationship based on power, as for example in the case of overseers/ forces, and to proceed from there in redefining the limits of the relationship in more realistic and flexible terms, instead of relying on the obviously ineffective policy-operations split.

Notas

1. The RCMP fulfils similar tasks to the ones performed in other foreign jurisdictions by the "Federal Police".
2. The RCMP also provides police services under the terms of policing agreements to all provinces (except Ontario and Quebec, which have their own provincial police), Yukon and Northwest Territories, and under separate municipal policing agreements to more than 190 municipalities.
3. *R. v. Commissioner of Police of the Metropolis, ex p. Blackburn* [1968] 2 Q.B. 118.
4. *Ibid.* at 137.
5. *Police Services Act*, R.S.O. 1990, c. P.15., s.31 (3).
6. *Re Reference under the Constitutional Questions Act*, [1957] O.R. 28 (C.A.).
7. *Police Act*, R.S.O. 1950, c. 279.
8. Specifically, *Regulation 18*.
9. *Pembroke (City) Police Services Board v. Kidder* (1995), 22 O.R (3d) 993 (Gen.Div.).
10. *Ibid.* at 672.
11. *Police Services Act*, s.31(1).
12. *Ibid.* s.31(4).
13. *Arsenault v. Charlottetown (City)* (1992), 100 Nfld. & P.E.I.R. 204 (P.E.I.C.A.).
14. *Hill v. Chief Constable of West Yorkshire*, [1988] 2 All E.R. 238 (H.L.) at pp. 240-241.
15. *Royal Canadian Mounted Police Act*, R.S.C. 1985, R-10, s.5(1).
16. In 1982, Canada achieved proclaimed a set of rights and freedoms in a new part of the constitution known as the Canadian

Charter of Rights and Freedoms, designed to protect individuals against arbitrary actions of governments and their agencies. The Charter is paramount over other legislation because it is "entrenched" in the Constitution and is the supreme law of Canada.

17. In 1984, police demonstrated in front of Parliament Hill calling for the reinstatement of capital punishment. See e.g. Robb, footnote 72 at 183.
18. The Bill received first reading on 26 June 1990 and was given royal assent on 11 April 1991.
19. See e.g. *Attorney General of Alberta and Law Enforcement Appeal Board v. Putnam and Cramer* (1981), 37 N.R. 1, [1981] 2 S.C.R. 267, in which the Supreme Court found *ultra vires* provincial legislation empowering a provincial board to inquire into the conduct of RCMP police officers, and where appropriate to impose sanctions.

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