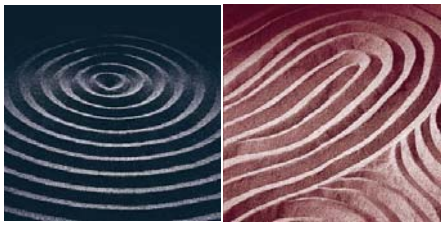
MILLER THOMSON LLP
Barristers & Solicitors
Patent & Trade-Mark Agents

Robson Court
1000-840 Howe Street
Vancouver, BC Canada
V6Z 2M1
Tel. 604.687.2242
Fax. 604.643.1200
www.millerthomson.com



VANCOUVER WHITEHORSE TORONTO CALGARY EDMONTON LONDON KITCHENER-WATERLOO GUELPH MARKHAM MONTRÉAL

Canada's Approach to Battling Police Corruption

Elizabeth Campbell, Nicola Mahaffy, Dwight Stewart, and Monique Trépanier

18th International Conference of the International Society for the Reform of Criminal Law

August 2004

CANADA'S APPROACH TO COMBATTING POLICE CORRUPTION[1]

> Canadians are famously positive about their police. What other country has a police officer as its symbol? The Mountie is on everything from T-shirts to the cover of restaurant guides. We tend to respond to revelations of corruption by denying that there's a systemic problem – it's just a few "rotten apples" – and we punish scapegoats rather than examine the deeper issues.
>
> Jean-Paul Brodeur, Criminologist[2]

INTRODUCTION

As recently as three years ago, Transparency International reported in a Country Study on Corruption, that in Canada, corruption, generally, is not seen to be a major problem and that "based on RCMP (Royal Canadian Mounted Police) research, police corruption is not a major issue in Canada."[3]

Corruption within Canada's law enforcement services, however, is neither a new phenomenon, nor non-existent. Examples abound of police abuse of power in this country. The Caron inquiry of the early 1950s looked into corruption among Montreal police officers involved in prostitution and gambling. The provincial Keable inquiry in Quebec and the related federal Macdonald Commission of the late 1970s examined police wrongdoing following the October crisis. More recent incidents of police corruption and police misconduct in Canada include assaults committed by Vancouver police officers, police involvement in the freezing deaths of aboriginal men in Saskatchewan, and a litany of corruption-related charges facing members of Toronto's Police Force.[4]

Whether these incidents of police misconduct amount to isolated incidents involving a few "bad apples" or whether there is a larger problem within Canada's law enforcement agencies is unclear.[5] In a January 2003 report on the corruption crisis plaguing the Toronto Police Service, the Honourable George Ferguson, Q.C. noted that "there is overwhelming evidence that major police services have been invaded by serious police misconduct and corruption".[6] Given the recent proliferation of police corruption and misconduct cases drawing public attention in the

---

1 This paper was written by Elizabeth Campbell, Nicola Mahaffy, Dwight Stewart, and Monique Trépanier who are members of the Canadian Young Lawyer's Group of the International Society for the Reform of Criminal Law. The writer's biographies appear at the end of this paper.

2 J.-P. Brodeur, "If you can't trust the cops…" *The Globe and Mail* (9 January 2004) at A13.

3 Transparency International, National Integrity Systems Country Study Report, Canada 2001 at 15.

4 See J. Fowlie, "Misconduct accusations hit Canadian police on two fronts: Officers charged in 'shakedown' case" *The Globe and Mail* (4 May 2004) at A1 and P. Webster, "A Snapshot of Police Corruption in Canada" *The Ottawa Citizen* (2 May 2004).

5 As one author notes, measuring police corruption is problematic given a lack of data and given the obstacles imposed by key players such as police officers and police chiefs and administrators. See S. K. Ivkovic, "To Serve And Collect: Measuring Police Corruption" *Journal of Criminal Law and Criminology* 93 (2003): 593-650.

6 G. Ferguson, "Review and Recommendations Concerning Various Aspects of Police Misconduct, Volume 1", (January 2003). This Report was commissioned by Julian Fantino, Chief of Police of the Toronto Police Service.

media, one does have to wonder whether public confidence in Canadian policing is waning. The way in which Canadian authorities are working to solve police corruption problems is the focus of this paper.

Specifically, this paper sets out a hypothetical fact scenario involving police corruption issues. It then addresses the ways in which Canada's internal/regulatory, criminal, and civil systems would deal with such issues. Finally, the paper also briefly reviews Canada's involvement in a select number of international initiatives to combat corruption and considers what impact, if any, these international measures have had on corruption within Canadian law enforcement circles.

HYPOTHETICAL FACTS

The following hypothetical facts[7] are considered throughout this paper.

Officer X is a senior officer in the Drug Squad in a major Canadian City. He, along with other officers in his unit, has been dealing with a number of owners of local-area bars which are believed to be associated with organized crime.

Over the past number of years, Officer X, in exchange for payments of cash, has provided information to one local bar owner, Mr. Bar Owner. Officer X tells Mr. Owner when police enforcement activities -- relating to liquor licensing, vice, and drug enforcement -- are expected to be in the area. Using this information, Mr. Owner is able to avoid detection and prosecution in relation to a number of illegal activities which he operates from the bar.

Mr. Owner informed Officer X that Mr. Drug Dealer just completed a major transaction with him, where Mr. Dealer was paid by Mr. Owner $150,000.00 cash, after harvesting a number of crops of marijuana from local grow-ops. Mr. Owner believed that Mr. Dealer had this cash in his home.

Officer X swears an information to obtain a search warrant to search the residence of Mr. Dealer for evidence of the commission of an offence of trafficking in cocaine. The source of the reasonable and probable grounds is deposed to be a confidential informant. Officer X does not identify Mr. Owner.

Officer X obtains the search warrant, and searches the residence of Mr. Dealer. In the residence of Mr. Dealer, Officer X locates and seizes the $150,000.00. He does not locate any evidence of the commission of an offence. Officer X keeps $100,000.00 for himself and puts the remaining $50,000.00 into an exhibit envelope. Officer X also places a package containing cocaine, which he has brought with him to the scene, into an exhibit envelope as having been seized in the investigation.

In his notes and in the exhibit reports, Officer X indicates that he has seized $50,000.00 in cash, and that he located a paper bag with individually wrapped 10-gram `hits' or `slips' of cocaine, totalling half a kilo of cocaine.

---

[7] While these are hypothetical facts, they are based on actual events which have occurred in recent years in Canada. The writers extend a special thanks to Edward J. Sapiano, a Toronto, Ontario defence attorney who provided the writers with a copy of a factum from which these facts are partially based.

Mr. Dealer is charged with possession for the purposes of trafficking, trafficking in a narcotic, and one count of proceeds of crime.

It is during preparation for Mr. Dealer's trial that the allegation concerning the removal of $100,000.00 from the home surfaces.

INTERNAL/REGULATORY SYSTEM

Royal Canadian Mounted Police Internal Discipline Procedure

(a) Overview of the Procedure

The *Royal Canadian Mounted Police Act*, R.S.C., c.R-9 (the "RCMP Act"), sets out the procedure to be followed by the RCMP with respect to disciplining its officers. The RCMP Act allows for the Governor in Council to make a Code of Conduct, which regulates the conduct of the police officers.

When it appears that a police officer may have violated the Code of Conduct, a senior officer may start an investigation into the conduct in question.(s. 40(1)) The officer is required to answer any questions relating to the matter being investigated but his or her answers may not be used in any criminal, civil or administrative proceedings other than a hearing under s. 45 of the RCMP Act. (s.40(2)-(3))

Disciplinary action may be either informal or formal. Informal disciplinary action may be taken where the officer in command determines it appropriate to resolve the matter by way of any of the following: counselling, a recommendation for special training, a recommendation for professional counselling, a recommendation for transfer, a direction to work under close supervision, forfeiture of up to one day of regular time off, and/or a reprimand. A decision to impose informal discipline may be appealed. (ss. 41-42)

Formal disciplinary action is taken where informal disciplinary action would not be "sufficient" if the contravention of the Code of Conduct were established (s. 43(1)). If that is the case, a hearing into the alleged contravention will be held. The hearing is before three officers, at least one of whom will be a graduate of a recognized law school. (s. 43(3)) The police officer has the right to object to any members of the panel and a designated officer must provide the police officer with reasons for either selecting a new member or maintaining the original member on the panel. (s. 44)

A hearing must be initiated by notifying the police officer of the allegation, within one year from the time the contravention and the identity of the police officer became known to the appropriate officer. (s. 43(8)) Both the initiating officer and the police officer whose conduct is in question may present evidence, cross-examine witnesses and make representations at the hearing. (s. 45.1(8)) The police officer is not compelled to testify at the hearing but may do so. (s. 45.1(7)) An allegation must be proven on a balance of probabilities. (s. 45.12(1)) The hearing is held in private but is recorded so that a transcript may be prepared if the decision of the board is appealed. (s. 45.1(14)-(15))

The adjudication board (the panel for the hearing) must provide a written decision setting out their findings, reasons for the findings and the sanction. The sanction imposed may include any

of the informal disciplinary actions referenced above, as well as the following: dismissal; direction to resign and dismissal if the officer does not resign within 14 days; demotion; or forfeiture of pay for a period not exceeding 10 work days. (s. 45.12) Decisions may be appealed to the Police Complaints Commissioner. (s. 45.14)

(b) Procedure for the Fact Pattern

The Code of Conduct under the RCMP Act states that "a member shall not engage in any disgraceful or disorderly act or conduct that could bring discredit on the Force" (s. 39) and "a member shall not misapply or unreasonably withhold, in whole or in part, any property, money or valuable security coming into the member's possession, or under the member's control, in the course of the member's duties or by reason of being a member" (s. 44).

The police force would need to have a full hearing into the conduct of Officer X. Assuming he is found to have accepted bribes, stolen money in the course of an investigation, planted evidence, sworn a false affidavit and falsified reports, or even committed some of these offences, he would be dismissed. The conduct goes to the heart of the integrity a police officer must maintain and the only possible action would be dismissal.

British Columbia Police Complaints Commission

(a) Overview of the Procedure

In the Canadian province of British Columbia, the Police Complaints Commission (the "Commission") handles complaints from the public with respect to police officers, pursuant to the *Police Act*, R.S.B.C. 1996, c. 367 (the "Police Act"). The Commission is headed by the Police Complaints Commissioner (the "Commissioner") who is appointed by the Lieutenant Governor in Council on the recommendation of a special committee of the Legislative Assembly. The Commissioner is an officer of the Legislature but cannot be a member of the Legislative Assembly. Subject to resignation or removal by the Lieutenant Governor in Council upon the recommendation of two-thirds of the members present in the Legislative Assembly, the Commissioner holds office for a term of six years. A Commissioner cannot be reappointed to a further term. (ss. 47-48)

The Police Act requires the Commissioner to oversee complaints received from any source either orally or in writing (s. 50). However, before the complaint is processed, it must be reduced to writing in the prescribed form and given to the Commissioner or the chief constable of the police department in question. If the complaint is given to the chief constable, he or she must provide it to the Commissioner within 10 business days of the complaint being lodged. The Commissioner may inform Crown Counsel of any complaint that could constitute a criminal offence and the police department may investigate any allegation of a criminal offence. Criminal charges may be proceeded with despite the complaint being before the Commission. (s. 52) Notification that the complaint has been lodged must be given to the police officer (or department) who is the subject of the complaint unless the Commissioner determines that such notification could jeopardize an investigation into the complaint. (s. 52.1) The Commissioner may continue to investigate a complaint even if the original complainant withdraws the complaint. (s. 52.2)

The Commission accepts a range of different types of complaints and the Police Act has categorized them into three types: public trust complaints; internal discipline complaints; and

service or policy complaints. Each type is defined in s. 46 of the Police Act. The fact pattern being assessed in this paper would fall under public trust complaints so it is those complaints that will be explored in some detail.

Public trust complaints refer to conduct by a police officer which would constitute a breach of the Code of Professional Conduct and that "causes or has the potential to cause physical or emotional harm or financial loss to any person, violates any person's dignity, privacy or other rights recognized by law, or is likely to undermine public confidence in the police".(s. 46) In the Code of Professional Conduct Regulation to the Police Act, disciplinary defaults include the following: discreditable conduct; neglect of duty; deceit; improper disclosure of information; corrupt practice; abuse of authority; improper use and care of firearms; damage to police property; misuse of intoxicating liquor or drugs in a manner prejudicial to duty; conduct constituting an offence; being a party to a disciplinary default; and improper off-duty conduct (s. 4).

Complaints may be either summarily dismissed or the subject of an informal resolution. If neither of those two routes are followed then the complaint is investigated. Following the investigation, there may be a disciplinary hearing or public hearing and disciplinary or corrective measures may be imposed.

Under certain conditions, a discipline authority may summarily dismiss a complaint. (s. 54) The Police Act defines a "discipline authority" in s. 46 to be the chief constable of the police department which employs the constable who is the subject of the complaint or, if the subject of the complaint is the chief constable or the police department itself, then the "discipline authority" is the chair of the police board. A discipline authority may summarily dismiss a public trust complaint if the authority is satisfied that the complaint is frivolous or vexatious, if there is no reasonable likelihood that further investigation would produce evidence of a public trust default, or if the complaint concerns an act or omission made more than 12 months before the complaint was made. If such a decision is made, the discipline authority must provide notice and reasons for the decision to the complainant, the respondent and the Commissioner.

A complainant may apply to the Commissioner for a review of a decision by a discipline authority to summarily dismiss a complaint. The Commissioner, whether or not requested to review the decision, must examine the reasons for the summary dismissal and either confirm the discipline authority's decision or order the discipline authority to conduct an investigation into the complaint. (s. 54(6))

If a complaint is not summarily dismissed, the discipline authority must consider whether an informal resolution of the complaint is appropriate. (s. 54.1) If an informal resolution is not appropriate, the discipline authority must proceed with an investigation. If an informal resolution is determined to be appropriate, the discipline authority must have the consent of both the complainant and the respondent to the procedure. Alternate dispute resolution and/or a mediator may be used in the process. Complainants may seek advice prior to the process and may have a support person present with them through the process. Either the complainant or respondent may ask the Commissioner to appoint a mediator if one has not been appointed. No statements given by any person in the process can be used at civil, criminal or administrative proceedings. The complaint is resolved when the complainant and respondent sign a letter

consenting to the resolution of the complaint and that letter is provided to the discipline authority and the Commissioner.(s. 54.2)

An investigation can be commenced either because a complaint was neither summarily dismissed nor informally resolved, or because the Commissioner orders an investigation of an act or omission whether or not a complaint was lodged with respect to the concern. (s. 55) The investigation must be conducted by another police department if the discipline authority considers an external investigation is necessary to preserve public confidence in the complaint process or if the Commissioner so orders. (s. 55.1)

An investigation into a public trust complaint must be completed within six months unless an extension is granted by the Commissioner. (s. 56(7)) The Commissioner may appoint an employee to act as an observer to an investigation and to provide the Commissioner with an independent report. The Commissioner may also order a new investigation or an investigation by another police department if the Commissioner concludes the original investigation was inadequate or unreasonably delayed. (s. 56.1)

In the case of an internal investigation, the final investigation report must be given to the discipline authority. In the case of an investigation conducted by another police department or an investigation ordered by the Commissioner, the final investigation report must be given to the Commissioner.(s. 56(6)) In the case of a report to the discipline authority, such reports must also be provided to the Commissioner. (s. 57(2)) Along with the investigation report, the Commissioner must be given written policies or procedures that may have been a factor in the act or omission in question, the respondent's service record of discipline and reasons for imposing or not imposing disciplinary or corrective measures in relation to the complaint. (s. 57(2))

Within 10 business days of receiving the investigation report, the discipline authority must determine if the evidence is sufficient to warrant the imposition of disciplinary or corrective measures and give notice of that decision to both the respondent and complainant. (s. 57.1(1)) If the decision is not to impose disciplinary or corrective measures, the complainant may make a written request to the Commissioner for a public hearing. (s. 57.1(3))

If the decision is to impose disciplinary or corrective measures short of dismissal or reduction in rank, the discipline authority may conduct a pre-hearing conference with the respondent, at which time the respondent may voluntarily accept the proposed measures. The complainant would then be notified of the resolution and has the option of making a written request to the Commissioner for a public hearing. The Commissioner must be informed of any resolution made at the pre-hearing conference. (s. 58)

A discipline hearing will be convened if either there was no pre-hearing conference or such a conference did not result in a resolution. The discipline authority presides at the hearing. The complainant may make written or oral submissions to the discipline authority regarding the complaint, the investigation and the disciplinary or corrective measures to be considered. The Commissioner may attend a discipline proceeding. (s. 58.1)

The investigating officer who prepared the final investigation report is the only witness that can be called at a discipline hearing. The respondent or his or her counsel may ask the investigating officer questions and may make submissions regarding the complaint, the investigation and the

range of disciplinary or corrective measures that should be considered. Within 10 business days of the hearing, the discipline authority must propose disciplinary or corrective measures and record those in a disposition record. (s. 59)

Within 10 business days of the disposition record, the discipline authority must send a report out to the complainant setting out the findings and any disciplinary or corrective measures proposed by the discipline authority. The discipline authority must also provide that report to the Commissioner along with the entire record of the proceedings and the disposition record. Upon receiving that information, the Commissioner may order the discipline authority to provide further reasons justifying the particular disciplinary or corrective measure imposed and provide those further reasons to the complainant and respondent. Either the respondent or complainant may make a written request to the Commissioner for a public hearing. Unless a public hearing is arranged, the disciplinary or corrective measures proposed are final and binding. (s. 59.1)

The Commissioner must arrange a public hearing if the request is made by the respondent and a disciplinary or corrective measure more severe than a verbal reprimand was proposed or in any case where the Commissioner determines there are grounds to believe that a public hearing is necessary in the public interest. (s. 60(3))

A public hearing is adjudicated by a retired judge (s. 60.1(2)) and the case is presented by "commission counsel" who is appointed by the Commissioner (s. 61(2)). Commission counsel may call any witnesses with relevant evidence to give and may introduce into evidence any records including those of the proceedings concerning the complaint up to the date of the hearing. (s. 61(3)) The respondent may examine or cross-examine any witnesses. The respondent is not compellable to testify either at a discipline proceeding or at a public hearing, however, an adverse inference may be drawn from his failure to testify. (s. 61.1(1)) Other police officers may be compelled to testify. (s. 61.1(2)) The complainant and the respondent may make oral and/or written submissions after all of the evidence is called and both may be represented by private counsel. (s. 61(4)) The hearing must be open to the public unless the adjudicator orders otherwise to protect a "substantial and compelling privacy interest of one or more of the persons attending the hearing". (s. 61(5))

The adjudicator of a public hearing must decide whether the alleged discipline default has been proven on a balance of probabilities and, if all or part of the alleged discipline default has been proven, impose any disciplinary or corrective measures that may be imposed by a discipline authority. If disciplinary or corrective measures had been imposed by a discipline authority, the adjudicator may affirm, increase or reduce those measures. (s. 61(6)) An appeal from a decision of an adjudicator may be made, with leave, to the Court of Appeal on a question of law. (s. 62)

Disciplinary or corrective measures that may be imposed by a discipline authority include: dismissal; demotion; suspension up to five days without pay; probationary period or close supervision; counselling, treatment or training; and verbal or written reprimand.

In addition to the procedures set out above, the Commissioner may also do the following: make recommendations to a board that it examine and reconsider any written policies or procedures that may have been a factor in an act or omission that gave rise to a complaint; make recommendations to the Attorney General that a review, study or audit be undertaken to assist police departments in developing training or other programs designed to prevent recurrence of any problems revealed by the complaint process; and make recommendations to the Attorney

General for a public inquiry if there are reasonable grounds to believe that the issues are so serious or widespread that an inquiry is necessary in the public interest, an investigation and public hearing under the Police Act would be too limited in scope, or the powers granted under the *Inquiry Act* are needed. (s. 50(3))

Nothing in the Police Act prohibits civil or criminal proceedings against a respondent (s. 65).

(b) Procedure for the Fact Pattern

The hypothetical facts involve the conduct of one officer, however, given the egregious nature of his conduct, the Commission would likely be concerned about whether the issue is endemic to the police force. This is a situation where an investigation is necessary and, in order to preserve public confidence, the investigation should be conducted by an external police department.

Either a disciplinary hearing or a public hearing would be the necessary result of the investigation. A public hearing would be more appropriate as there would likely have been significant publicity giving rise to concerns about properly airing the complaint in order to preserve the public's confidence in the police force. Officer X would face disciplinary measures and, in all likelihood, dismissal.

CRIMINAL PROSECUTION

(a) Overview of Criminal Prosecutions in British Columbia

In British Columbia, the decision whether to lay charges in a criminal matter lies with Crown Counsel[8]. Following an investigation, the police submit cases to Crown Counsel for review and charge approval. The Crown, upon review of the case, may lay charges, not lay charges, or send the case back to the police for further investigation.

The test applied by Crown Counsel when deciding whether or not to approve a charge is:

1. whether there is a substantial likelihood of conviction and, if so,

2. whether a prosecution is required in the public interest[9]

In cases where it is alleged that the criminal conduct was perpetrated by the police, the decision regarding whether or not to lay charges will be made by a very senior prosecutor or, depending on the nature of the case, by an experienced senior member of the private bar who is retained by the Crown to act as a Special Prosecutor in the matter.

The decision to appoint a Special Prosecutor is made by the Assistant Deputy Attorney General ("ADAG") of the province and is made from a list of counsel who have been jointly approved by the President of the Law Society and the ADAG[10]. These Special Prosecutors are appointed in

---

8 *Crown Counsel Act*, [RSBC 1999] Chapter 87, sections 2 and 4.

9 Criminal Justice Branch, Ministry of Attorney General (British Columbia), Crown Counsel Policy Manual, "Charge Approval Guidelines".

10 Criminal Justice Branch, Ministry of Attorney General (British Columbia), Crown Counsel Policy Manual "Crown Counsel Act- Special Prosecutions".

cases where the ADAG forms the view that there could be significant potential for real or perceived improper influence in the administration of criminal justice, such as cases involving senior police officers and persons in close proximity to them.[11]

Once a decision to appoint a Special Prosecutor has been made, the Special Prosecutor will make the charging decision and will usually assume conduct of the prosecution and any subsequent appeal.

Crown Counsel- charge approval

In Canada, Criminal Law is national in scope and is governed by the *Criminal Code of Canada* (the "Criminal Code"). The Criminal Law is the same across the country regardless of which province the offence is committed in.

The allegations of police corruption in this case are very serious. They involve a high ranking police officer who is alleged to have acted in a corrupt manner for years. The level of organization, planning and persistence involved are particularly troublesome. Given these factors, a Special Prosecutor would be retained for the charge approval and prosecution of this case.

Charges

Before criminal charges are approved, the Special Prosecutor would review all of the evidence in the case to determine whether the charge approval standard is met. This evidence is likely to include: witness statements; forensic evidence such as fingerprints; real evidence such as the false police notes, exhibit envelope, etc.; forensic accounting reports regarding the finances and banking activity of Officer X; search warrants for Officer X's home and bank accounts; and covert surveillance evidence such as any undercover operations in relation to Officer X's conduct. In assessing the evidence, the Special Prosecutor must consider the reliability and admissibility of the evidence. Only evidence that is admissible in a criminal trial should be considered in the charge approval process.

It is assumed, for the purposes of this paper, that there is admissible evidence for each charge that is proposed and that the Special Prosecutor decides to lay the charge.

The case can be divided into two sections: Officer X's conduct in relation to Mr. Bar Owner, and Officer X's conduct in relation to Mr. Dealer. Possible criminal charges arising from Officer X's conduct in relation to both men are discussed below.

1. Officer X's conduct in relation to Mr. Bar Owner

Two possible charges arise out of Officer X's conduct in relation to Mr. Bar Owner: bribery and obstruction of justice.

---

[11] Criminal Justice Branch, Ministry of Attorney General (British Columbia), Crown Counsel Policy Manual "Crown Counsel Act- Special Prosecutions"

The offence of bribery is found in section 120 of the *Criminal Code* which makes it an offence for a police officer to accept, obtain, agree to accept, or attempt to obtain "for himself or any other person any money, valuable consideration, office, place or employment with intent to interfere with the administration of justice . . . or to protect from detection or punishment a person who has committed or who intends to commit an offence". Here, Officer X has received money in exchange for information about police enforcement activities. Having tipped off Mr. Bar Owner regarding the police enforcement activities, Officer X has interfered with the administration of justice. This information will permit Mr. Bar Owner to tailor his illegal activity to times when he knows the police will not be present. Officer X's conduct falls squarely within the provisions of s. 120 with the result that he would be charged with bribery.

While this paper concerns the conduct of Officer X, Mr. Bar Owner could also faces charges of bribery because it is an offence to not only accept a bribe, but also to give one.

Obstruction of justice is another charge which Officer X will face. Section 139 of the *Criminal Code* makes it an offence to "obstruct, pervert or defeat the course of justice". "The course of justice" has been held to include not only the actual prosecution of an offender, but also the investigation of the offence.[12] Thus, a person who obstructs, perverts, or defeats the investigation of criminal conduct, will commit the offence of obstruction of justice.

Officer X, by tipping off Mr. Bar Owner as to the police enforcement activities, has allowed Mr. Bar Owner to avoid detection of his criminal activity; Mr. Bar Owner has been able to cease his criminal conduct when he knows the police will be present. As a result, Officer X has prevented the police from investigating Mr. Bar Owner's criminal conduct, and will, therefore, be charged with obstruction of justice.

When laying the charges of bribery and obstruction of justice, the Special Prosecutor may lay one count of bribery and one count of obstruction of justice covering the entire time frame of several years, or lay separate counts for each instance of bribery and obstruction of justice. In cases like this where there are many, many instances of bribery and obstruction of justice, the Crown will usually choose to lay one single count covering the entire time period. This keeps the trial neat, and prevents the charges from becoming unwieldy. If the Crown chooses to lay one single count to cover the entire time period, it is possible that the judge will later require the Crown to particularize the count -- in effect, set out each instance of bribery and obstruction of justice. Usually, however, the trial proceeds without such particularization.

2. Officer X's conduct in relation to Mr. Dealer

Officer X faces the following charges for his conduct in relation to Mr. Dealer: perjury, fabricating evidence, obstruction of justice, and theft over $5,000.

The offence of perjury is set out in s. 131 of the *Criminal Code* and covers situations where a person lies under oath. It is a difficult charge to prove. It requires the Crown to prove that the sworn evidence is false, that the accused, when he gave the evidence, knew it was false, and that he gave the false evidence with the intent to mislead.[13] In practical terms, this often means that

---

[12] *Wijesinha v The Queen* (1995), 100 C.C.C. (3d) 410.

[13] *R v Calder*, [1960] S.C.R. 892.

in proving that the sworn evidence is false, the Crown needs to prove what the truth is. In addition, no one can be convicted of perjury on the uncorroborated evidence of only one witness.[14]

The sworn false evidence in this case relates to the sworn statement Officer X gave in support of his application for a search warrant for Mr. Dealer's house. Officer X gave sworn evidence that he had information relating to Mr. Dealer's involvement in a trafficking in cocaine scheme. In fact, Officer X's information related to Mr. Dealer's involvement in the cultivation of marijuana. To prove the offence of perjury, the Crown has to prove that Officer X knew that his sworn evidence was false, that he knew his evidence was false when he gave it, and that he gave the evidence with the intent to mislead. Assuming that there is sufficient evidence to prove this, Officer X will be charged with perjury.

Section 137 of the *Criminal Code* sets out the offence of fabricating evidence. It requires the Crown to prove:

1. that the evidence is fabricated,

2. that in fabricating the evidence, the accused intended to mislead, and

3. that he intended that the fabricated evidence be used in a judicial proceeding.

Officer X entered Mr. Dealer's home with a package of cocaine. He pretended to find the cocaine in Mr. Dealer's home and placed that cocaine into an exhibit envelope as having been seized in the investigation. The "seized cocaine" would, together with Officer X's notes about the "seizure", be the main evidence the Crown would rely upon in charging and prosecuting Mr. Dealer for drug offences. In creating this false evidence, it can be inferred that Officer X intended to mislead and that he intended the fabricated evidence be used in a judicial proceeding. Assuming there is sufficient evidence to prove that the evidence was, in fact, fabricated, Officer X will be charged with the offence of fabricating evidence.

If Officer X gave evidence at a trial about the "cocaine seizure", assuming the Crown could prove all of the required elements, Officer X would also face an additional charge of perjury.

As with his dealings in relation to Mr. Bar Owner, Officer X faces a charge of obstruction of justice in relation to his dealings with Mr. Dealer. Officer X not only planted evidence at Mr. Dealer's house, he also removed and stole the $100,000.00. These actions would prevent the police from conducting a proper investigation into Mr. Dealer's criminal conduct, thus, making a charge of obstruction of justice warranted.

Theft over $5,000.00 is the final charge Officer X faces. This charge requires the Crown to prove that the accused took something fraudulently and without colour of right, with the intent to deprive temporarily or absolutely, the owner of it.[15] Here, Officer X took and kept for himself,

---

[14] s. 133 *Criminal Code of Canada.*

[15] s. 322 of the *Criminal Code* defines theft. It states in part:

"Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything whether animate or inanimate, with

$100,000.00 of Mr. Dealer's money. Again, assuming there is sufficient evidence to prove that Officer X took the money, Officer X will be charged with theft over $5,000.00.

Bail

As soon as the Special Prosecutor lays charges against Officer X, a warrant will be issued for Officer X's arrest. This is the procedure under which Officer X is first brought before the courts.

Within 24 hours of his arrest, Officer X must be brought before a justice who will consider his bail.[16] The justice can release Officer X from custody on an undertaking to appear in court with or without conditions, on a recognizance with or without sureties or a cash deposit, or the justice may detain the accused in custody pending his trial.[17] The onus is on the Crown to show why conditions of release or a detention order are necessary and the court may only detain Officer X in custody if:

1. his detention is necessary to ensure his attendance in court,

2. his detention is necessary for the protection and safety of the public, including a substantial likelihood that Officer X, if released from custody, will commit a criminal offence or interfere with the administration of justice, and

3. his detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances including the apparent strength of the Crown's case, the gravity or the nature of the offence, the circumstances surrounding its commission and the potential for a lengthy prison term.[18]

At the bail hearing, the Special Prosecutor would allege the circumstances of the offence for the court. The burden of proof at this hearing is the balance of probabilities, not proof beyond a reasonable doubt which is the burden at trial. Normally, at a bail hearing, the Crown simply reads in the allegations of the case and does not call *viva voce* evidence. In rare instances, however, the Crown may be required to call *viva voce* evidence where certain facts are disputed.

Without more information, it is difficult to predict whether Officer X would be granted bail or not. Certainly the Special Prosecutor would be concerned that Officer X, if released from custody, would flee the jurisdiction or would interfere with the administration of justice. Officer X has, it would appear, substantial cash resources which would permit him to flee. In addition, given that Officer X is in custody on charges that he interfered with the administration of justice over the course of several years, the Special Prosecutor would be concerned that if released from custody, Officer X would continue with this behaviour.

---

intent, (a) to deprive, temporarily or absolutely, the owner of it, or a person who has special property or interest in it, of the thing or of his property or interest in it…"

16 Bail, also known as judicial interim release, refers to the determination of whether an accused can be released into the community or whether he/she should remain in custody pending the outcome of the case. See s. 503(1) of the *Criminal Code*.

17 s. 515 of the *Criminal Code*.

18 s. 515(10) of the *Criminal Code*.

It may be that concerns surrounding Officer X's attendance in court and potential repetition of criminal conduct could be addressed through bail conditions. A substantial cash deposit with bail terms such as the following may address these concerns: Officer X report in person to a bail supervisor on a daily or weekly basis; he reside at a specific location; that he not communicate with any of the witnesses; that he not attend certain locations including the bar in question; that he surrender his passport and all travel documents; that he abide by a curfew; and that he not possess any weapons.

The Trial

Once bail is set, the Special Prosecutor and Officer X's lawyer would enter into discussions about whether Officer X intended to plead guilty or not guilty, and what the issues in the case are. Because the offences are indictable offences (that is, more serious offences) if Officer X wishes to plead not guilty, he can choose his mode of trial: trial by a Provincial Court Judge; trial by a Supreme Court Judge and Jury; or trial by a Supreme Court Judge sitting alone. If Officer X does not contest the charges and wishes to plead guilty, he will be sentenced by a Provincial Court Judge.

If Officer X does not plead guilty, a trial will occur. At trial, the Special Prosecutor will have to call all of the evidence that proves Officer X's guilt beyond a reasonable doubt. At the conclusion of the Crown's case, Officer X can elect to call a defence or he may choose to call none. If Officer X chooses not to call a defence, the Court will look at all of the evidence called by the Crown and assess whether the Crown has proved Officer X's guilt beyond a reasonable doubt. If the Crown has not discharged this burden, the Court must acquit Officer X. If Officer X calls a defence, the Court must consider the evidence put forward by both the Crown and defence before reaching a verdict. In cases where credibility is in issue the Court must consider the following when reaching a verdict:

1. If the Court believes the evidence of Officer X, the Court must acquit.

2. If the Court does not believe the evidence of Officer X, but is left with a reasonable doubt by it, the Court must acquit.

3. Even if the Court is not left with a reasonable doubt by the evidence of Officer X, the Court must ask itself whether, on the basis of the evidence it does accept, it is convinced beyond a reasonable doubt by that evidence of the guilt of the accused.[19]

Sentencing

Following either a guilty plea or a finding of guilt, Officer X will be sentenced.

When sentencing Officer X, the Court must be mindful of the purpose of sentencing which is set out in s. 718 of the *Criminal Code*:

> s.718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

---

[19] *R v W.(D.)* (1991), 63 C.C.C. (3d) 397 (S.C.C.).

(a) to denounce unlawful conduct;

(b) to deter the offender and other persons from committing offences;

(c) to separate offenders from society, where necessary;

(d) to assist in rehabilitating offenders;

(e) to provide reparations for harm done to victims or to the community; and

(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

The sentence must be proportional to the gravity of the offence and degree of responsibility of the offender,[20] and the court must also consider the aggravating and mitigating factors of the case.

In this case, the Special Prosecutor would ask the court to focus on the principles of denunciation, deterrence and retribution. These have been defined as follows:

> "Retribution represents an objective, reasoned and measured determination of an appropriate punishment that properly reflects the moral culpability of the offender... The objective of denunciation is to communicate society's condemnation for the particular offender's conduct. General deterrence, on the other hand, ought to be approached from a more objective view because here the object is to deter others from emulating the conduct of the accused.[21]"

The Special Prosecutor would also ask the court to consider the very aggravating feature of the case, that being Officer X's abuse of his position as a police officer. Officer X used his position to gain access to Mr. Dealer's home and to thwart the administration of justice. His actions tarnished the reputation of the administration of justice, one of the cornerstones of our democracy.

Without more information about Officer X and what motivated him to commit these crimes, it is difficult to say what sentence he would receive. The range of sentence open to the court is a non-custodial sentence up to the maximum custodial sentence available for these crimes, which are as follows:

1. Bribery- 14 years imprisonment[22]

2. Perjury- 14 years imprisonment[23]

3. Fabricating Evidence- 14 years imprisonment[24]

4. Obstructing Justice- 10 years imprisonment[25]

---

[20] s. 718.1 of the *Criminal Code*.

[21] *R v Ramsay*, [2004] B.C.J. No. 1165 (BCSC).

[22] s. 120 of the *Criminal Code*.

[23] s. 132 of the *Criminal Code.*

[24] s. 137 of the *Criminal Code*.

5. Theft Over $5,000- 10 years imprisonment[26]

Because these offences relate to one chain of events, the sentence imposed on each individual charge would be served concurrent to the sentence imposed on the other charge.[27] While it is difficult to say exactly what sentence Officer X would receive, he is likely to receive a sentence approaching the upper end of the range. This is because of the persistent nature of his conduct, and the serious breach of trust and resulting damage to the justice system.

CIVIL REMEDIES

In addition to being subject to professional measures and criminal liability, police officers can also face civil liability for malicious prosecution in this type of case.[28] While it is common for provincial legislation to limit the personal liability of police officers for torts committed in the execution of their duties, these protections are excluded in circumstances where the police officer is guilty of dishonesty, gross negligence or malicious or wilful misconduct, or the cause of action is libel or slander. The police force itself can be held vicariously liable for the torts committed by its members.[29]

The leading case on malicious prosecution in Canada is *Nelles v The Queen,*[30] where the Supreme Court of Canada set out the four necessary elements which must be proved for a Plaintiff to succeed in an action:

1. the proceedings must have been initiated by the Defendant;

2. the proceedings must have terminated in favour of the Plaintiff;

3. the absence of reasonable and probable cause;

4. malice, or a primary purpose other than that of carrying the law into effect.

Some of the cases dealing with malicious prosecution in Canada are not limited to the police but include claims against the prosecutors, or Crown counsel. To succeed in an action against the Crown it is necessary for the Plaintiff to prove that the prosecutor or police could not reasonably have believed the statements of the informants and/or investigating officers and concluded from them that the Plaintiff was probably guilty of the offences charged. In addition, the Plaintiff would have to prove that the prosecution was initiated for reasons tantamount to a fraud on the process of criminal justice.

---

25 s. 139 of the *Criminal Code*.

26 s. 334(a) of the *Criminal Code*.

27 For example, if Officer X received a sentence of 8 years for obstructing justice and 6 years for theft over $5000.00, a concurrent sentence would mean he would serve a sentence of 8 years, not 14 years.

28 The writers of this paper extend a special thanks to Amy Chapman, a Law Student at the University of Victoria in British Columbia, who completed the legal research for the "Civil Remedies" portion of this paper.

29 See for example, the *Police Act,* RSBC 1996, c. 367, ss. 20, 21.

30 [1989] 2 S.C.R. 170, 60 D.L.R. (4th) 609 (S.C.C.)

If the four elements are established, the plaintiff must establish that damages have been incurred or suffered as a result of the malicious prosecution. The old 1698 English decision in *Savill v Roberts* established three heads of damage:[31]

1. damage to a person's "good name, fame, credit and esteem";

2. damage to the person which includes an emotional reaction to the prosecution and risk of imprisonment;

3. financial loss due to mounting a defence or loss of earnings.

Despite the availability of a remedy, wrongfully accused people who are freed at trial rarely seek or receive compensation in Canada. When actions are commenced the damages awarded have been largely nominal.[32] However a handful of those wrongfully convicted and sentenced to jail have been awarded damages.

After spending 11 years in prison for the stabbing death of a teenager he was later acquitted of, Donald Marshall spent another nine years fighting to be compensated, and eventually agreed to a settlement of $1.2 million.

Perhaps Canada's most well-known case of wrongful conviction is that of David Milgaard. David Milgaard was arrested in 1970 at the age of 16, and was convicted for the sex slaying of Saskatoon nursing aid Gail Miller. He served 23 years in various prisons (including an institution for dangerous mentally ill offenders.) The Supreme Court of Canada ordered his release in 1992, and he was exonerated in 1997 when DNA tests showed he was not the killer. Another man, a known sex-offender who was in the area of the murder and was a suspect that the police ignored in 1969, was convicted of the murder in 1999. Mr. Milgaard was paid approximately $10,000,000.00 including approximately $1.5 million in legal fees. His mother, who fought relentlessly for his release for 23 years, was herself awarded $750,000.00.

Guy Paul Morin was wrongly convicted in the sex slaying of a young girl, which DNA evidence later proved he did not commit. The collection of that DNA evidence by the police was either tainted, destroyed, lost, or otherwise mishandled or mismanaged. Mr. Morin was awarded $1.2 million to cover his legal fees for two first-degree murder trials and as compensation for the 17 months he spent in custody, mainly in pre-trial provincial institutions.

It should be noted that each of these cases focused on wrongful imprisonment which occurred as a result of investigations that were negligent, and a failure to remedy such negligence once discovered, but not on the basis of malicious prosecution.

In addition to the damages available for malicious prosecution, section 24(1) of the *Canadian Charter of Rights and Freedoms,* (the "Charter") provides that a person whose rights or freedoms have been infringed or denied may apply to court "to obtain such remedy as the court considers appropriate and just in the circumstances". The possibility of monetary compensation under section 24(1) of the Charter has not been judicially developed in respect to malicious

---

[31] (1698), 1 Ld. Raym. 374 at 378; 91 E.R. 1147 at 1149.

[32] Elizabeth Portman, "Malicious Prosecution and False Imprisonment" CED 3d Volume 20.

prosecution, although there was favourable *dicta* in *Nelles.* Lamer J. writing for himself, Dickson C.J.C. and Wilson J. noted that "in many, if not all cases of malicious prosecution . . . , there will have been an infringement of an accused's rights as guaranteed by ss. 7 and 11 of the Charter."[33] Charter damages for wrongful imprisonment have been considered where a prisoner was not brought before a justice of the peace in the time required by the *Criminal Code*.[34]

Civil Remedies in this Case:

The example of Mr. Dealer offers some insight into why cases for malicious prosecution are relatively rare. Mr. Dealer, while a victim of Officer X, is not a sympathetic plaintiff. If Mr. Dealer brought an action for damages against Officer X and the RCMP, the defence of that action would focus on the evidence of Mr. Dealer's involvement in criminal activity.

Mr. Dealer may find it difficult to establish that the prosecution has done "damage to his good name, fame, credit and esteem." However, an interesting twist in the facts of this case is that Mr. Dealer might admit to operating a marijuana grow-operation and, despite this admission, the political and cultural climate within Canada in recent years is so permissive of marijuana that his reputation may arguably have been damaged by the fabricated allegation of trafficking in cocaine, distinct from marijuana. Similarly, in terms of his emotional reaction to the prosecution and risk of imprisonment, it is unlikely that Mr. Dealer would face any risk of imprisonment for operating a marijuana grow-operation, whereas the consequences of trafficking in cocaine are more severe. Despite this evidence, the greatest deterrence to Mr. Dealer commencing a civil action will be the evidential burdens he will face. Unlike criminal investigations, the rules of civil procedure provide for quite broad rights of discovery. It is unlikely that Mr. Dealer wants to have police counsel conduct both oral and documentary discovery relevant to his "good name."

Mr. Dealer's primary complaint is likely to be the return of the $100,000.00 cash which Officer X removed from his residence. However it is unlikely that this money would be returned to him, as it may be the subject of a separate application for seizure and forfeiture pursuant to the proceeds of crime provisions of the *Criminal Code.*

It is most likely that Mr. Dealer's civil damages would be limited to reimbursement for his legal costs in the defence of the fabricated allegations, with a possibility that he would be awarded a nominal amount in the form of punitive damages to deter other police officers from acting in the same manner as Officer X.

INTERNATIONAL ANTI-CORRUPTION MEASURES AND THEIR IMPACT ON CANADIAN POLICING

Although many of the more recent anti-corruption conventions and treaties focus on the issue of combating public corruption to facilitate international trade and meet Canadian foreign policy objectives,[35] international law has no doubt played a role in countries such as Canada's

---

[33] *Nelles v The Queen, supra* note 28.

[34] *R. v Sampson* [1995] S.C.J. No. 12 (Q.L.)

[35] For example, the Conventions adopted by the European Union, the Organization for Economic Cooperation and Development and the Organization of American States, as well as the UN Convention against Transnational

understanding of what types of conduct should be regarded as illegal or unethical and the ways in which to eliminate such conduct within its borders. The actual impact of Canada's involvement in the following international initiatives on its own domestic policing issues is, however, unfortunately not very clear.[36]

The United Nations Convention Against Corruption

The United Nations' recent completion of a global Convention Against Corruption (the "Convention") sits at the forefront of international efforts to combat corruption.[37] Heralded as an instrument "with strong enforcement power, a true global response to the global challenge posed by corruption"[38] and one that is "more comprehensive and [that] has a wider application than other anti-corruption treaties,"[39] it appears to represent a concerted worldwide effort to prevent and curtail corruption and to promote transparency, collaboration and the rule of law.

Amongst the Convention's highlights are prevention measures such as the establishment of anti-corruption bodies, and the requirement that countries criminalize a range of acts of corruption, agree to co-operate in the fight against corruption by undertaking measures to support the tracing and freezing of proceeds of crime, and establish measures to prevent and detect transfers of illicitly acquired assets.

The actual or potential impact of this treaty on corruption within Canada's police forces is still unknown, given the Convention's recent emergence on the international scene. Whereas some "countries in transition"[40] such as Bulgaria, are believed to potentially benefit from the Convention by being provided with "a mechanism for technical assistance in areas where reformist governments need external support,"[41] it is less apparent how such an instrument can

---

Organized Crime. In 1998 Canada ratified the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.* The Convention is aimed at preventing bribery in international business transactions by requiring countries to create the criminal offence of bribing a foreign public official and to provide for adequate sanctions and reliable means for detection and enforcement. In 2000, Canada ratified the *Inter-American Convention against Corruption*, which seeks to promote and strengthen mechanisms within states parties to prevent, detect, punish and eradicate corruption, and to promote, facilitate and regulate cooperation in this effort. That same year, Canada also signed the *United Nations Convention against Transnational Organized Crime* , which includes some limited criminal law and other measures against corruption.

36 Very little information appears to be available on the topic of the impact of international and multilateral anti-corruption measures on Canadian policing in particular.

37 Negotiations on the first United Nations Convention Against Corruption, carried out by an Ad hoc Committee established by the General Assembly, were completed on 1 October 2003. A conference for the purpose of signing the Convention took place in Merida, Mexico, in December 2003. Canada became one of the Convention's signatories on 21 May 2004.

38 A.M. Costa, Executive Director of UNODC, as cited in Highlights of the United Nations Convention Against Corruption, December 2003 United Nations Update at 3.

39 R. Hague, Director General of the Legal Bureau, Department of Foreign Affairs, Ottawa, Canada. Statement given at the *Conference for the purpose of signing the United Nations Convention against Corruption*, Merida, Mexico, December 9 to 11, 2003.

40 Term employed by Dr. Ognian Shentov, Director of the Centre for the Study of Democracy, Sofia, Bulgaria, as cited in December 2003 United Nations Update at 2.

41 *Ibid*.

and may affect corruption within the particular area of domestic law enforcement in a country such as Canada.

Although it is too soon to tell, at the very least, this instrument, along with the following other select international initiatives do promote international co-operation and the sharing of ideas relating to the fight against corruption within countries around the world. In so doing, one would expect that greater accountability and more effective mechanisms to combat police corruption could emerge.

The United Nations' Global Programme against Corruption

Canada is an active participant in the various programs and meetings sponsored by the United Nations. The United Nations Office on Drugs and Crime (UNDOC) launched a Global Programme Against Corruption (GPAC) in 1999. In addition to being involved in the support of the Convention, the programme itself has established preventive, enforcement and prosecutorial measures that can be implemented "at the international, national and local levels".[42] An example of one such measure relevant to police corruption in particular, is the United Nations' Anti-Corruption Toolkit. This toolkit is a "set of continually refined tools and case studies to "fix" corruption problems of all kinds".[43] Chapter V of the Toolkit focuses on enforcement and presents an overview of guidelines for successful investigations, financial investigation, electronic surveillance operations and integrity testing. Interestingly, one of the key recommendations contained within the Ferguson Report referred to earlier[44] relates to integrity testing for the prevention and detection of police misconduct. Integrity tests may involve such measures as the creation of realistic but sham scenarios of drug busts or manufactured offers of bribes that are run at random or that target officers in high-risk positions to make sure they are following official procedures. The United Nations' endorsement of integrity testing can only assist in promoting this anti-corruption strategy, which, although used in the United States and Britain,[45] has not yet been systematically or extensively implemented in Canada.[46]

The United Nations Code of Conduct for Law Enforcement Officials

The United Nations Code of Conduct for Law Enforcement Officials was adopted by the United Nations General Assembly on 17 December 1979.[47] This document states that all those who exercise police powers shall respect and protect human dignity and uphold the human rights of all persons. The Code, among other things, prohibits torture, states that force may be used only

---

42 United Nations Office on Drugs and Crime, "Fact Sheet 1: The United Nations and Action Against Corruption: A Global Response to a Global Challenge."

43 *Ibid*.

44 Ferguson, *supra* note 5.

45 Transparency International, "TI Source Book 2000: Chapter 20: Public Service Ethics, Monitoring Assets and Integrity Testing", online: Transparency International <http://www.transparency.org/sourcebook/20.html> (date accessed: 7 July 2004).

46 R. Boswell, "A Plan to End Police Corruption" *The Ottawa Citizen* (2 May 2004). It is important to mention, however, that the lack of a systematic implementation of such an initiative may in fact be due to the nature of the organisation of policing in Canada.

47 See online: United Nations http://www.uncjin.org/Standards/Conduct/conduct.html#Compend (date accessed: 7 July 2004).

when strictly necessary, and calls for full protection of the health of persons in custody. Commentary is also attached to each of the eight articles of the Code, providing information to facilitate the Code's usage within the framework of national legislation or practice. It is not entirely clear to what extent Canada has taken these guidelines into consideration. Canada is not among the 65 states who replied to a questionnaire distributed by the Economic and Social Council in the 1990s regarding the Code's implementation.[48] There is reference, however, to the Code's provisions in an internal Correctional Service of Canada document entitled "Canada's International Human Rights Obligations with Respect to Prisoners and CSC Employees: Reference Guide".[49] This document notes that "although the Code has not been embodied in domestic law, federal and provincial legislation and regulations, such as the internal regulations of the RCMP, have incorporated standards similar to those set out in the Code."[50]

Canada's implementation of its international obligations vis-à vis corruption in its domestic police forces

As discussed earlier in this paper, Canada has enacted legislation, including provisions within the *Criminal Code*, to deal with issues surrounding police corruption. These enactments have no doubt at times been undertaken in response to Canada's obligations to implement specific international or multilateral instruments to which it became a signatory. Specialized bodies, such as the Office of the Ethics Advisor within the RCMP, and the Commission for Public Complaints Against the RCMP have also been put into place to ensure the integrity of Canada's police forces. Provincial police commissions and municipal police boards also provide oversight of police services.

Unfortunately, given the apparent dearth of material available on the impact of international anti-corruption instruments on Canadian policing, it is difficult to provide any objective assessment of this issue. In more general terms, however, it can be stated that Canada's participation in international negotiations and discussions on the issue of corruption promotes good governance, transparency and accountability, which in turn promote international trade and economic development.[51] Its participation in such international fora also undoubtedly provides it with ideas and mechanisms to better address and combat corruption issues within its own borders.

CONCLUSION

A number of mechanisms exist within Canada to address police corruption, however, each of the internal, criminal and civil systems are remedial in nature. Thus, while a victim may find some satisfaction in the resolution of a disciplinary or criminal proceeding, it is difficult to imagine

---

48 United Nations, E/CN.15/1996/16/Add.2 at page 3.

49 Correctional Service of Canada, Working Group on Human Rights, "Canada's International Human Rights Obligations with Respect to Prisoners and CSC Employees" (undated). This document was made available to us by Brian Tkachuk, Director, Corrections Programme, The International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR), Vancouver, B.C. (see ICCLR's website for contact information: www.icclr.law.ubc.ca). Mr. Tkachuk is on secondment to ICCLR from the Correctional Service of Canada.

50 *Ibid*. at 16.

51 Government of Canada, "Working Together to Combat Organized Crime: A Public Report on Actions under the National Agenda to Combat Organized Crime, online: Public Safety and Emergency Preparedness Canada <http://www.psepc.gc.ca/publications/policing/combat_org_crime_e.asp >(date accessed: 7 July 2004).

any amount of damages that would serve to truly compensate someone who has been the victim of a malicious prosecution or a wrongful conviction and imprisonment.

The true measure of success for these mechanisms must be in whether they are effective in combating and preventing the problem of police corruption and improper police conduct in the prosecution of criminal offences. Internal disciplinary sanctions, criminal convictions and sentencing may have some general deterrent effect on some police officers. Yet police corruption continues.

The other measure of success is whether these mechanisms assist in the detection and/or reporting of this type of behaviour. It is unknown whether the true extent of police corruption is known in Canada. Certain high publicity cases come to light, but victims of police corruption may be afraid or unwilling to come forward. People similar to Mr. Dealer -- who are involved in criminal activity -- but may themselves be the victims or pawns of organized crime -- and are nonetheless victims of police corruption, may feel that they will have no voice, or that they will never be believed. This may be a particular problem in a country where a police officer is one of our most visible symbols.

It is perhaps for this reason that any Canadian solution for police corruption must focus on preventative rather than remedial measures. While the range of preventative measures exceeds the scope of this paper, provisions similar to the United Nations' Anti-Corruption Toolkit, including integrity testing for the prevention and detection of police misconduct, and improved governance, including effective whistle-blower protection mechanisms should be considered.

The Canadian Young Lawyers Group of the International Society for Reform of Criminal Law (Vancouver, British Columbia)

Elizabeth Campbell is currently a prosecutor with the Crown Counsel Office in Vancouver. Prior to July 1999, she practiced law at Harper Grey Easton from 1997. From September 1996 to June 1997 she served as Law Clerk, Supreme Court of B.C. From May to August 1993 and again from January to June 1996 she interned with a public interest law firm in Durban, South Africa. Ms. Campbell was granted a B.A. (Honours), Queens University, 1991; a Master of International Relations, Queens University, 1992; and her LL.B., University of Victoria, 1996. She was called to the British Columbia Bar in 1998.

Nicola Mahaffy is currently a prosecutor with the Crown Counsel Office in Vancouver. From July 2001 to May 2002 she worked as a lawyer for the United Nations Mission in Kosovo, most recently in the International Prosecutor's Office, and returned to Vancouver in June 2002. She had earlier qualified as a Solicitor in England and worked for a short time with the law firm Kingsley & Napley. Ms. Mahaffy has co-authored a paper on the protection of witnesses in the International Criminal Court (1999). She was granted a B.A., University of British Columbia, 1990 and her LL.B, University of Calgary, 1995. She was called to the British Columbia Bar in 1996 and admitted as a Solicitor of the Supreme Court of England and Wales in 1998.

Dwight Stewart practices criminal, regulatory, and constitutional law at Miller Thomson in Vancouver. He has also been counsel to members of the Canadian Armed Forces in proceedings by Court Martial. Mr. Stewart was called to the Bar in British Columbia in 1995, and in the Yukon Territory in 2004. He was granted his B.A. (Honours), from the Royal Military College in 1991, and his LL.B. from Queen's University in 1994. Mr. Stewart is also an adjunct professor at the University of British Columbia Law School where he teaches Trial Advocacy.

Monique Trépanier is an Articling Student with the law firm of Anthony G.V. Tobin, and expects to be called to the Bar in British Columbia in late August 2004. Previously Monique was the Program Coordinator and Researcher at the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR) in Vancouver. She graduated from the University of British Columbia with a B.A. (Honours) in History with International Relations in 1995 and completed her LL.B. at the University of British Columbia in 2003. Monique is one of the contributing authors of the ICCLR's International Criminal Court Manual for the Ratification and Implementation of the Rome Statute, 2nd ed., 2003, and author of a paper on Trafficking in Women for Purposes of Sexual Exploitation (Canadian Woman Studies/les cahiers de la femme, 2003 Vol. 22, No. 34).

Elizabeth, Nicola, Dwight and Monique also wrote a paper for the 2003 ISRCL Conference in the Hague, NL on "the Treatment of Victims and Witnesses in the International Criminal Court as Compared to the Canadian Criminal System."