

Asper Centre Summer Fellowship – Interim Report

Organization: David Asper Centre for Constitutional Rights

Student: Sarah Strban, J.D. Candidate at the University of Toronto

Position: Mary Eberts, at Olthuis Kleer Townshend LLP

1. Overview

The purpose of this project is to investigate police handling of Indigenous communities and to evaluate Canada's various systems of police oversight. This is to be done within the context of the National Inquiry into Missing and Murdered Indigenous Women and Girls, as Indigenous peoples have reported significant concerns with police handling of their complaints. This project will be used to create a comprehensive, readable guide to navigating each of Canada's police complaint systems, which will be published online by the Women's Legal Education and Action Fund. The results of this investigation will also be turned into a report that will be presented to the National Inquiry itself.

Thus far, my investigation has focused on the police forces that interact most with Indigenous peoples, namely in Ontario, Quebec, British Columbia, and the RCMP. Canada's remaining police forces will be reviewed later in the year by myself and a team of volunteer researchers through the Asper Centre.

2. Orders in Council

To begin this project, I reviewed each of the federal and provincial Orders in Council that set out the National Inquiry's mandate, and summarized my findings in a report. I concluded that the government's vague language leaves room for the commissioners to interpret their mandate broadly, and therefore to conduct a more comprehensive investigation. Even though the Orders in Council do not explicitly call for a review of police oversight systems, they give the commissioners power to review all institutional causes of violence against Indigenous women, which could readily include police oversight. The commissioners are thus encouraged to interpret their mandate broadly, so as to take full advantage of their investigative powers. A complete discussion of the Orders in Council and my recommendations will be included in this project's final report to the Asper Centre.

3. Oversight Bodies

The majority of my work so far has involved researching and evaluating Ontario, Quebec, British Columbia, and the RCMP's police oversight systems. I am attempting to understand these systems from both a civilian and academic perspective; first, I begin by using the online information available to the public, and then follow up afterwards with legal reports and academic commentary. This has allowed me to evaluate each system's transparency and accessibility, while also gaining a more critical academic perspective. The full evaluation metric will be included in my final report to the Asper Centre.

Over the course of my research, I have noticed three preliminary trends that warrant further review. Firstly, the oversight bodies that handle police complaints in fact send those complaints back to the police for investigation. In Ontario, British Columbia, and the RCMP, the police investigate complaints against themselves, with these oversight bodies merely acting as intake. This raises serious concerns about investigatory bias and police reprisals, calling into question the very role of Canadian oversight bodies.

Another concerning trend in police oversight is that police forces often conduct their own disciplinary proceedings internally, with oversight bodies only handling appeal level adjudication. This happens in Ontario, British Columbia, and the RCMP, with the Chief of Police himself often acting as adjudicator. This internal discipline structure raises issues of bias and precludes any meaningful public scrutiny, serving only to weaken public confidence in the police.

A final interesting trend in police oversight is the recent push towards alternative dispute resolution. Oversight bodies in Quebec and British Columbia strongly encourage complainants to participate in conciliation, which gives parties the chance to sit down with one another and have a meaningful conversation. Conciliation is heralded as being more participatory, yielding more satisfying results, placing an emphasis on learning, and better managing scarce resources. While these are all true, I have concerns that this push towards conciliation could be used to shield police officers from formal disciplinary sanctions, or as a way of altering disciplinary statistics. I will explore these concerns in more detail over the second part of this project.

4. Moving forwards

For the remainder of this summer, I will be meeting with key contacts in the police oversight system. This will include the BCCLA, police officers, and various Indigenous groups.