OFFICE OF THE
POLICE COMPLAINT COMMISSIONER

British Columbia, Canada

REPORT OF THE POLICE COMPLAINT COMMISSIONER
PIVOT COMPLAINTS AGAINST VPD – PART II

1. Previous Proceedings

On 1 June 2005 I released what turned out to be Part I of my report into the complaints filed by the Pivot Legal Society (Pivot) on behalf of approximately 50 residents of the Downtown Eastside of Vancouver (DTES) against various members of the Vancouver Police Department (VPD). That report was based on the results of an extensive external investigation into the complaints that had been conducted by the RCMP at my request.

Briefly stated, RCMP Superintendent Handy's investigative report was provided both to Chief Graham of the VPD and to me in November 2004 with additional material being made available to both the VPD and my office over the ensuing months. As is anticipated by the legislated procedure in the *Police Act* I awaited the decision of Chief Graham as the Discipline Authority (DA) of the VPD as to what course of action he would take with respect to the nine complaints that the RCMP recommended be "substantiated". The *Police Act* provides that the role of the DA is to determine if the evidence contained in that report is sufficient to warrant the imposition of disciplinary or corrective measures. Instead of basing his decision solely on the external investigators report, on March 31 2005 Chief Graham indicated that he had ordered his own staff to undertake a "second stage of the investigative process". Ultimately, he concluded that none of the complaints were substantiated.

My review and reaction to both the process undertaken by the VPD and the result of their re-investigation is set out exhaustively in my 103 page Pivot Report, dated June 1, 2005, which can be accessed at the Police Complaint Commissioner's website: www.opcc.bc.ca.

By way of capsule summary, I reviewed all the files and confirmed those decisions where I agreed with both the RCMP investigators and the subsequent VPD investigators who had obtained information from their members that had been unavailable (for various reasons) to the RCMP investigators. There were, however, five complaints where I disagreed with Chief Graham, and gave my reasons therefore. Based on what I regarded as serious legal and jurisdictional misunderstandings in his original letter to me, I invited Chief Graham to reconsider his decision in light of my Reasons for Decision on three of the five complaint

files. Additionally, I referred the remaining two files along with a number of other service and policy matters arising from the complaint files to the Vancouver Police Board for their consideration.

I set out my recommendations found at pp 30 and 31 of that report for ease of reference:

THEREFORE, I HEREBY RECOMMEND:

1. That the Director of Police Services of the Ministry of the Solicitor General and Public Safety, appoint a retired Judge or Justice, or other highly-regarded professional who is familiar with policing issues to preside over an independent and comprehensive audit of the Vancouver Police Department's handling of Police Act complaints, including external complaints. Such audit should address all aspects of the VPD's processing of public complaints against their members, including the diligence and resources committed to such investigations, the VPD's compliance with Police Act requirements, the role of the Vancouver Police Union in the complaints process and compliance by members with the duty to account. Furthermore, the audit should not be limited to the practices of the Internal Investigation Section, but should encompass the management practices of the Chief Constable in supervising, managing and ensuring a proper internal investigation process. The audit in question would also helpfully examine various service or policy issues including the propriety of use of the VPD breaching policy; use of force; seizure of property, provision of Charter rights; use of police notebooks and especially all police officers' duty to account.

2. That the Attorney General and the Solicitor General initiate within the Executive Council immediate discussions to bring forward legislative amendment of the current Police Act as an urgent priority, as reflected in this Report and the OPCC White Paper.

3. In the interim, until such time as legislative amendments are enacted, I recommend that the British Columbia Municipal Police Chiefs agree to create (with the approval of the Solicitor General) an Integrated Municipal Internal Investigation Team. Such a team should be utilized only in certain cases where the nature of the complaint warrants an external investigation. Furthermore, in such cases, the Municipal Chiefs should also designate an external DA from among their number to decide the issue of whether the complaint is substantiated or unsubstantiated. The imposition of corrective measures or discipline may be left to the Chief of the respondent's department if the external DA finds the complaint to be substantiated. This division of labour preserves the independence of the decision concerning substantiation and will thereby enhance the public's confidence in the complaint process. By the same token, allowing the respondent officer's Chief to impose the appropriate corrective measure or discipline maintains the right of the Chief Constable to discipline his officers appropriately with full knowledge of any mitigating circumstances or unique issues affecting the Chief Constable's department.

I ALSO REFER:

1. The recommendations by the RCMP in their Final Investigation Report for a reconsideration of the VPD use of force policy and the "breach policy" to the Vancouver Police Board;

2. To the DA the opportunity to reconsider three files[1] that were determined by him as DA to be "unsubstantiated" to be "substantiated" by him in light of my observations in this Report; and

3. To the DA reconsideration of two files[2] which the RCMP recommended be re-categorized as service or policy complaints regarding the use of knee-strikes in the determination of appropriate use of force.

2. Subsequent Developments

On 11 August 2005 the Solicitor General appointed former BC Court of Appeal Justice, Josiah Wood, Q.C., to conduct an audit which extends to the handling of complaints by all of British Columbia municipal police services, including the VPD, and make recommendations to government for legislative amendments to the *Police Act.* Mr. Wood's review will look at how municipal police departments comply with public complaints, the practices of internal investigation sections and management practices of chief constables in supervising, managing and ensuring proper internal investigation processes.

3. Response by the Vancouver Police Department to OPCC Report

In complete fairness to Chief Constable Graham and his staff, I note that they appear to have taken my 1 June, 2005 Report seriously and agreed to review the issues discussed in that report and to reconsider their position with respect to the five files that I had singled out for reconsideration.

On 8 August, 2005, Chief Graham wrote to me and enclosed his response on the five files that he had been requested to reconsider. In the cover letter accompanying the five appendices containing his decisions, he advised, *inter alia:*

> … I noted that one of your main concerns was the issue of the Vancouver Police Department's (VPD) cooperation during external investigations. I agree that there are areas where the VPD could and should have done better. We are in the final stages of incorporating new policy, to shorten and strengthen time lines for our members to comply in providing duty reports/statements, and also to further clarify our expectations of our members when they are part of an investigation. I would support consideration towards amending portions of the Provincial Police Act clarifying members' responsibilities on supplying statements or reports.
>
> To ensure a complete understanding of why every VPD member did not provide statements and reports in a complete and timely manner, I wanted to provide you further information. It is not fair or accurate for the public to be left with the impression that VPD members did not want to cooperate. You raised many valuable and timely issues, so it is in an atmosphere of cooperation and trust that I outline additional facts that are needed to understand all the dynamics in this investigation and bring closure to the issues that arose.

In keeping with the cover letter, Chief Graham reviewed the five files I had singled out in my earlier decision by way of a request for reconsideration.[3] He concluded that the two files the

[1] Appendix I – Complainant DM; Appendix II – Complainant EA; Appendix VI – AA;
[2] Appendix VIII – Complainant MT; and Appendix IX – Complainant DB.

RCMP had recommended be re-characterized as service or policy complaints regarding the use of knee-strikes in the determination of appropriate use of force, would indeed be so re-characterized. These were sent to the Vancouver Police Board for review and decision.

With respect to the remaining three files, where I requested Chief Graham to reconsider whether or not the files should be deemed to be substantiated rather than unsubstantiated, Chief Graham took my observations into consideration and concluded in retrospect that two of the three files were in fact substantiated. One of those files resulted in Chief Graham directing the officers to be given the corrective measure of special training on Breach of the Peace arrests, and management advice on the importance of documenting arrests, especially where force is applied. Chief Graham determined that the other file he found to be substantiated should result in "no corrective or disciplinary measures", however he did confirm that the VPD training unit should prepare and deliver relevant training to the members and that the respondents are to be briefed on the outcome to assist in their future work as police officers.

With respect to the third and final file in issue[4], Chief Graham had to make a decision respecting the credibility of the complainant, the three young witnesses and the two police officers involved in the allegation. The RCMP had concluded that the complainant and the three young witnesses were credible. When asked about the matter during the external investigation, the VPD officers had no notes to assist them other than their recollection that one of them recalled a comment by one of the three young witnesses that the complainant AA offered to sell them drugs. However, it should be noted that in an interview with the RCMP, all three witnesses denied making any such statement to the respondent officers.

Chief Graham eventually had to decide the issue as to whom he believed, and to make his finding of credibility on a balance of probabilities. I am advised that the VPD "conducted routine data base checks of the three youth witnesses which revealed fairly extensive contacts (mostly drug contacts in 2003,2004 and 2005) with the police, mostly in Burnaby". Chief Graham took this new information into account when assessing credibility.

Faced with conflicting accounts, Chief Graham would have had to find that the officers fabricated the evidence that the youths had made a comment regarding drugs, in order to find that the officers unlawfully detained and searched the complainant. He elected not to make that finding of fact based on the evidence he had available. He therefore maintained his earlier decision that the allegation was unsubstantiated.

Despite his finding the complaint was unsubstantiated, Chief Graham nonetheless noted that it would have been beneficial if the police officers had made proper notes of the incident and submitted the appropriate reports documenting their contact with the three witnesses and the subsequent search of AA. He thus reiterated his previous recommendation that both officers receive "managerial advice" regarding the applicable policy.

In my role as Police Complaint Commissioner it now falls to me to either confirm the decisions of Chief Graham, or to arrange for a public hearing. I have no middle ground available to me under the legislation as presently framed. The public interest is the sole test in deciding whether to order a public hearing. As the *Police Act* makes plain, the public interest is not

[3] See Report of the Police Complaint Commissioner re: Pivot Complaints against VPD dated 1 June 2005
[4] See Appendix 6 of the 1 June 2005 Report at pages 74 –80 regarding complaint of AA against VPD members M and MAC.

simply a question of whether the Police Complaint Commissioner completely agrees with the Discipline Authority's decision. The serious step of ordering a public hearing is a function of many factors, several of which are listed in s. 60(5) of the *Police Act*.

4. Pivot's objection to the reconsideration process

I should observe that Pivot Legal Society has taken the position that I ought to have made my decision about whether to call a public hearing in conjunction with my first report, rather than referring the five files back to Chief Graham. In correspondence dated 7 June 2005, a director of the Pivot Legal Society indicated:

> We respectfully disagree with your decision to send five complaints back for further review. The Act does not grant that power and in providing for public hearings, explicitly creates a next step whereby shortcomings in the DA's decision can be reviewed. There is no need to imply into the scheme a power to send a complaint back to the DA to reverse a decision.
> ...
> Respectfully, we believe it is unreasonable and outside the scope of the *Act* to have the Police Chief review these complaints again as DA. We therefore do not consent to this diversion of the statutory process, and urge your office to order a public hearing in those cases.

Pivot wants me to call a public hearing in each case, rather than having given an opportunity to the DA to reconsider his position based on my observations and legal analysis. They in effect would have me call five different public hearings rather than resort to persuasion as a first option.

I took, and continue to take, a different view, as reflected in my first report, at p. 28:

> In the particular circumstances here, I have decided to defer the decision whether to arrange one or more public hearings. I do so on the basis that I believe that Chief Constable Graham fundamentally misapplied the statute and failed to understand and properly exercise his jurisdiction when he arrived at his March 31, 2005 decision. The fundamental jurisdictional error lay in (a) his understanding of what is a substantiated complaint; and (b) his apparent belief that if a complaint is substantiated, formal discipline must necessarily follow in each and every case.
>
> In my view, a Discipline Authority is not *functus officio* when he has made a determination under section 57.1(b) that is tainted by a fundamental jurisdictional error.[5] Where such an error has been made, there is good legal and practical reason to give the Discipline Authority an opportunity to reconsider the matter prior to my making a decision whether to order a public hearing. Reconsideration may make a public hearing unnecessary. Alternatively, it will provide a better foundation for a decision whether to hold a public hearing....

The foregoing reflects my view that one must of necessity recognize more general administrative law principles to enable the **spirit** of the legislation to work, even if the **letter** of the legislation is silent on the issue. It was in keeping with a strong desire to make the existing legislation work in the public interest that I opted to in effect give the DA "a second chance" to make what I deemed to be a properly and legally informed decision. The Vancouver

[5] *Chandler v. Alberta Association of Architects,* [1989] 2 S.C.R. 848.

Police Department has accepted this process, again in keeping with the spirit of the legislation, and in an attempt to make our current legislation workable.

In this instance, the process I undertook resulted in the Discipline Authority coming to a new appreciation respecting four of the five complaints in question. Only one file remains where the Discipline Authority maintains that no disciplinary or corrective measures are warranted.

This process having unfolded, I am now squarely faced with the difficult decision as to whether I should arrange for a public hearing with respect to any of the files referred back to Chief Graham. The Pivot Legal Society on behalf of their clients, has requested that I order a public hearing into all nine complaints originally deemed substantiated by the RCMP[6], because they were dissatisfied with the decisions by the Discipline Authority. As already noted, however, I had already confirmed all but five of the complaints in my 1 June 2005 decision and my views have not changed respecting those complaints.[7]

5. Public hearing considerations

As already noted, section 60 (5) of the *Police Act* states that in deciding whether a public hearing is necessary in the public interest, I must consider all relevant factors including, without limitation, the following factors:

60(5)(a) the seriousness of the complaint;

60(5)(b) the seriousness of the harm alleged to have been suffered by the complainant;

60(5)(c) whether there is a reasonable prospect that a public hearing would assist in ascertaining the truth;

60(5)(d) whether an arguable case can be made that

(i) there was a flaw in the investigation,

(ii) the disciplinary or corrective measures proposed are inappropriate or inadequate, or

(iii) the Discipline Authority's interpretation of the Code of Professional Conduct was incorrect;

60(5)(e) whether a public hearing is necessary to preserve or restore public confidence in the complaint process or in the police.

While all of the factors listed in s. 60(5) must be considered and weighed in each individual case, some factors will obviously have greater weight and more resonance than others depending on the particular circumstances before the Police Complaint Commissioner.

[6] Pivot Letters to OPCC dated May 10, June 7, and October 3 2005
[7] See PCC's Pivot Report dated June 1, 2005, page 31

Having given careful consideration to each of those factors in the present case, I have concluded that it would not be in the public interest to arrange a public hearing for any of the 5 cases referred back to Chief Graham.

Three significant factors militate against holding a public hearing in respect of any of these complaints.

First, I do not believe there is a reasonable prospect that a public hearing would assist in ascertaining the truth: s. 60(5)(c). I am not persuaded that after the thorough investigation conduced by the RCMP, supplemented by the additional information provided by the Vancouver Police Department[8], any further information would be forthcoming during a public hearing that would allow an adjudicator to come to a better conclusion about the truth of what happened in any of these incidents.

Second, I do not believe that a public hearing is necessary to preserve and restore public confidence in the complaint process or in the police: s. 60(5)(e). While public confidence in the police and the complaint process were very much at issue during and following the RCMP's report, it is my assessment that my first report, and the events that have since unfolded, have addressed and will address those factors much more effectively than a public hearing could do. In particular, as already mentioned, I am confident that the government's decision to accept my recommendation that there be an audit of the VPD's handling of *Police Act* complaints, presently being conducted as part of an overall review of municipal police departments by former BC Court of Appeal Justice Josiah Wood, Q.C., will have a beneficial effect on the present police complaint process, and will also helpful guidance for necessary amendments to the *Police Act* to be considered by government, a subject on which I have also written extensively.

I am also greatly encouraged by a significant change in attitude exhibited by both VPD senior management and the VPD Internal Investigations Section since my June 2005 Report was released. I am now encouraged that a combination of a change in managerial direction, a change in staffing, and a significant change in the type of cooperation now being exhibited by those involved in police complaint investigations will benefit the public interest, particularly if supported by appropriate legislative amendments to clarify points of legal ambiguity and to better support the purpose of the *Police Act*. Principal among these are a legislated and binding duty on every police officer to cooperate with investigations, which proposal has received wide support from those who have commented on my White Paper, including chiefs of police.

Thirdly, I am gratified to see that the Vancouver Police Board has favourably responded to my request that it review both the "use of force" policy (especially relating to knee-strikes) and the policy on "breach of the peace". Their new breach policy related to me by the Vancouver Police Board in correspondence dated 7 October includes a clear statement on what does and does not constitute a breach of the peace or an apprehended breach of the peace. It clarifies that arrests made under this policy are not to be used as a mechanism to control or monitor people that officers may regard as dangerous or prone to criminal activity.

Further, I have been informed by Mayor Larry Campbell, the Chair of the Vancouver Police Board, that the VPD is undertaking training for all patrol officers on the new policy and

[8] See PCC's Pivot Report dated 1 June 2005

developing a training manual to ensure that police officers have consistent and clear information about breach of the peace provisions. I have also been assured that there will be a monitoring process in place to ensure the new policy is being effectively and consistently implemented.

The above factors militating strongly against arranging a public hearing, I have given careful consideration to whether the remaining factors listed in s. 60(5) outweigh those factors and commend a public hearing.

The first two of the remaining factors are the seriousness of the offence and the seriousness of the harm alleged to have been suffered by the complainant. It is of course true that every public trust complaint against a police officer is serious, and this is especially so from the perspective of the complainant. I do not wish to underplay or minimize this. However, the *Police Act* clearly requires me to make an independent judgment about "seriousness" in the context of deciding whether a particular matter warrants a public hearing, with all the attendant time, expense and impacts on all involved. I recognize that in one of the complaints, the harm *alleged* to have been suffered is serious. However, with regard to this complaint, I am not satisfied that there is sufficient evidence to support that part of the complaint, as alleged. With respect to the other two complaints, I cannot conclude that the specific complaints and harms alleged to be suffered in these events are so serious as to override the two factors I have described above. While I agree they are serious, and not trivial, factors 60(5)(a) and (b) are a neutral factor in my deliberations.

The final factors are set out in s. 60(5)(d), and require me to consider whether an arguable case can be made that there was a flaw in the investigation, inappropriate or inadequate discipline or an incorrect interpretation of the *Code of Professional Conduct*. I will consider each factor in turn.

With respect to the first factor, I accept that an "arguable case" might be made that, consistent with comments made in my first report, there was a "flaw" in the first investigation because despite the professional efforts of the RCMP, certain VPD officers did not cooperate fully or at all.

As to the first factor, however, I must consider all the facts presently before me, including the facts uncovered by the RCMP and subsequent investigative results. When I examine the evidence in its totality, it is my view that the investigation was, in the end, thorough and complete. While the road to those results was a difficult and expensive one - and is a process I hope can be avoided in future by appropriate legislative amendments - I am in the end satisfied, and have a high level of confidence, that a public hearing would not add more in terms of getting to the truth.

I see the second and third factors in s. 60(5)(d) as being related in this case. The first asks whether there is an arguable case that Chief Graham proposed inadequate or inappropriate disciplinary or corrective measures, and the second asks whether he incorrectly interpreted the *Code of Professional Conduct Regulation*.

The issue presented by these factors is triggered in the two cases where Chief Graham found the complaints to be substantiated. In one case, he proposed "special training" and "management advice". In the other, he proposed no discipline.

The first question arising from Chief Graham's proposed discipline or corrective measures concerns whether "management advice" is even available as a disciplinary or corrective measure where a Discipline Authority has found a complaint to be substantiated: s. 60(5)(d)(iii). I note that "management advice" is not expressly listed as a disciplinary or corrective measure in s. 19(1) of the *Code of Professional Conduct Regulation*. This being so, I recognize that there is an ambiguity, and that an arguable case might be made that, unless a Discipline Authority intends to choose "no discipline" (which options was selected by Adjudicator Collver in a previous public hearing), the Discipline Authority is required to choose from one of the options listed in s. 19 of the *Code*. But while "arguable", I do not necessarily believe this is the better interpretation, for two reasons. First, the regulation making power speaks of the *Code* establishing disciplinary or corrective measures as *guidelines*: *Police Act*, s. 74(2)(p)(ii). This strongly suggests that they are not exhaustive. Second, when one views s. 19(1) in light of the overall purpose and context of s. 19 and the *Police Act* as a whole, it is difficult to see a policy reason why discipline authorities should be unduly fettered in designing disciplinary or corrective measures tailored to the circumstances before them. Section 19(2) of the *Code* expressly reinforces the idea of flexibility:

> 19(2) If the Discipline Authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the police officer concerned takes precedence over one that seeks to blame and punish, unless the approach that should take precedence is unworkable or would bring the administration of police discipline into disrepute.

While I am of the view that the scope of a Discipline Authority's power to impose disciplinary or corrective measures is yet another area in which the *Police Act* would benefit from clarification, I do not see this legal issue, either by itself or in conjunction with other factors, as being so important as to outweigh the factors against arranging a public hearing.

Accepting that management advice is a legally valid option, the final question is whether an arguable case can be made that the selection of this option was inappropriate or inadequate: s. 60(5)(d)(ii). Questions of whether a particular disciplinary or corrective measure is appropriate or adequate will, given the nature of this subject area, always invite debate. As such, it is difficult ever to find "no arguable case" with respect to this factor. This being said, however, I do not find that such arguments would in this case be strong in light of the substantiated facts on which they are based. On this point I take particular note of the fact that "no discipline" is not only a remedy contemplated by the *Police Act*, but was also the remedy selected by a public hearing adjudicator in a case whose facts were arguably more serious than those here[9]. Thus, while an "arguable case" regarding the factors in s. 60(5)(d), including this factor, would be sufficient in some cases to tip the scale in favour of ordering a public hearing, it does not do so here. I take particular note, as quoted above, that the *Code of Professional Conduct Regulation* under the *Police Act* requires the Discipline Authority to utilize an approach that "seeks to correct and educate" the police officer rather than one that "seeks to blame and punish", unless that approach is either unworkable, or would bring the administration of police discipline into disrepute.[10]

[9] Public Hearing re Constables Forster and D'Onofrio (Guns 'N Roses)
[10] See s.19(2) of the *Police Act* Code of Professional Conduct Regulation

As discussed in my earlier decision respecting this matter, the conduct of the officers[11] with respect to the incidents in question is not such as to disqualify them from an approach that seeks to correct and educate. In each case, the officers appeared to have been mistaken about the authority they had in the specific circumstances of each case to either utilize the breach of peace policy or whether they had legal jurisdiction to effect an arrest. This is especially significant in the light of senior management's initial view that it was appropriate for their officers to utilize a "liberal interpretation of the law" in carrying out their duties. Fortunately, VPD senior management, upon reflection has changed their approach to this controversial issue and have taken the necessary steps to ensure that their officers are made aware of the amended procedures to be invoked for breach of the peace situations.

I recognize that a less sympathetic view may be taken of the officers' failure to properly document their arrests in one of the cases. However, I do not think that management advice was clearly inappropriate to deal with this circumstance, particularly as I would regard it as advice forming part of the discipline record of the officers involved.

Accordingly, I am of the view that the disciplinary and corrective measures imposed by the DA in each of these incidents is in within the range of measures that are in keeping with the approach that seeks to correct and educate the officers. I am, in these circumstances, not persuaded that the approach would bring the administration of police discipline into disrepute.

For the reasons given, I am not inclined to order a public hearing on the issue of imposed penalties on the officers involved in these complaints, because I do not believe that it would be in the public interest to do so. Accordingly, I hereby confirm the discipline imposed in those two cases.

In weighing all these factors in the context of these files, I have of course given special consideration to the file in which Chief Graham has maintained the view that no discipline default has been substantiated. This case in my view is a borderline case for calling a public hearing. Although cost alone is not a determining factor, it is a consideration that I need to take into account in deciding what is in the public interest. I must also consider the nature of the complaint and where it fits in the sliding scale of seriousness. Although violations of personal property rights are significant, I suspect that most British Columbians would not equate the improper search of one's backpack with an assault where bodily injuries are sustained. Nevertheless, the principle involved is a serious one, and were there indications that such conduct will likely be repeated in the future, the scale might well be tipped in favour of holding a public hearing.

Accordingly, in all of the circumstances, I do not believe that it is now necessary or in the public interest to hold a public hearing into any of the files referred back to the Chief Constable. I therefore confirm the decisions of the DA regarding those complaints.

---

[11] In the case of complainant DM, the officers thought the complainant was a suspected drug dealer and transported him out of the area. Some time later that evening they found him back in the area whereupon it is alleged that they grabbed him, handcuffed him, and transported him out the area again.
In the case of complainant EA, the officers had witnessed EA urinating in an alley near a bus stop. After a heated discussion arose between the complainant and the officers during which time EA produced identification, the officers purported to arrest the complainant and issued him with an improper bylaw ticket. The arrest in my view in those unique circumstances was without lawful jurisdiction.

6. Vancouver Police Board and the Use of Force policy

As mentioned earlier in this Decision, on 17 October 2005, I received correspondence from Mayor Larry Campbell in his capacity as Chair of the Vancouver Police Board (VPB). That correspondence attached the Breach of the Peace Amended procedure (2.03) that in my view adequately addressed the concerns I raised about the inappropriate use by VPD members of provisions of the criminal code concerning arrests for breach of the peace. The new policy[12], combined with proper training should have a decided beneficial effect on the types of complaints that emanated from the investigation of the incidents in the Downtown Eastside of Vancouver.

In that same correspondence, the Chair of the VPB indicated that:

> In your June 1 2005 report, Pivot complaints against VPD, you referred to the Vancouver Police Board the recommendations of the RCMP's Final Investigation Report that the VPD's policies on breach of the peace and use of force be reconsidered.
>
> Our review of the policy on use of force is ongoing; we will report to you when it is concluded.

I have recently been informed that the Vancouver Police Board has completed its review of my recommendation that it examine the use of knee strikes[13] within the "Use of Force" policy presently utilized by the Vancouver Police Department. I am gratified to see that the Police Board has recommended that the VPD Force Options Training Unit ensure that the lesson plan for knee strike application procedure:

a) reminds officers that the target zone for knee strikes is a large muscle group such as the thigh, unless the torso is the only target present or a strike to the torso is dictated by a situational assessment; and

b) includes the fact that knee strikes can potentially crack or break the ribs if delivered to a subject in the prone position.

The Police Board has also required the VPD Force Options Training Unit to include knee strike scenarios in the next scheduled in-service training cycle.

I am satisfied that these instructions will alert officers to the increased risk of more serious injury, which may include damage to the ribs, and therefore that the use of such strikes, along with consequent unintentional injuries, will be reduced. If this proves not to be the case, officers who act contrary to their training will of course continue to bear individual accountability under the *Police Act*.

In short, I commend the Vancouver Police Board with respect to its review of the service and policy issues that I identified, and for its helpful and responsible decisions.

[12] See attached Policy 2.03 Breach of the Peace provided by VPB on 17 October, 2005
[13] See Appendices 8 (MT) and 9 (DB) to my 1 June Report

In my view, the implementation of these policy changes will go a long way to resolving some of the underlying problems.

After referring the issue to the VPB for review of their policy my involvement in this matter was concluded. I had already determined[14] that in the case of complainant MT that: "I would not in all of the circumstances conclude on the basis of clear and convincing evidence that the complaint has been substantiated, however I would agree with the RCMP that the complaint had a service and policy component related to the use of knee-strikes that should be referred to the Vancouver Police Board."

Similarly, in the case of complainant DB, I stated[15] that: "Although this file raises grave suspicions that the officer committed a disciplinary default, after taking everything into consideration, I do not have sufficient evidence to transform that suspicion into a conclusion that the complaint regarding the use of force is substantiated."

7. Recent Media Release by Pivot.

On 3 November 2005 the Pivot Legal Society released their press release upon which I reluctantly find myself compelled to comment. In a document entitled "Pivot Complaint Backgrounder", Pivot unfortunately has left the mistaken impression that the language used in the remainder of the article was authored either by myself or Chief Graham. It was not. The inference is made by the improper use of a colon in the following sentence –

> ***This week, the Office of the Police Complaint Commissioner released the Chief's "reconsideration of three of his earlier findings**:*

The paragraphs following this bolded introduction used language to describe the circumstances of three complaints and in the process left I what consider to be the impression, on the part of a reasonable person reading it, that these were findings released by either the Chief or myself. In fact, these summaries were authored by Pivot and were merely a re-statement of the allegations, rather than the findings by the Chief or my own findings. While I do not suggest Pivot intended this, I do suggest that greater care be taken in future to clearly distinguish Pivot's views from those attributed to this office.

Secondly, I am concerned that Pivot has released the names of three complainants in full. I have been extremely careful to ensure that the identities of the complainants and third parties has remained confidential, having identified them only by initials. This precaution was taken especially in light of Pivot's own insistence on maintaining the confidentiality of the complainant's names and identities. As is our practice, we shall continue to keep the names of complainants, respondents, and third parties confidential. We will only publish the names of complainants and respondents if the matter goes to a public hearing. This will avoid a chilling effect on appropriate reporting and disclosure.

[14] See 1 June Report, Appendix 8 pages 94 and 95
[15] See 1 June Report Appendix 9 page 104.

8. Conclusion

In all of the circumstances of this complex and protracted matter, I am satisfied that the public interest would not be served by holding public hearings with respect to any of the outstanding complaints in question. I am further satisfied that the audit by Josiah Wood QC, currently underway will, in conjunction with the work I have published in respect of these complaints and the urgent need for legislative reform, identify any additional issues that need to be addressed respecting the police complaint process, so as to enhance public confidence in the police complaint process. I am persuaded that the review by the Vancouver Police Board into both the use of force policy and the breach of the peace policy will result in improved police practices that will benefit the public in general and the citizens of Vancouver in particular. I therefore confirm the decisions made by the Discipline Authority in each of these complaints and am closing my file.

Dated this 8th day of November 2005,
City of Victoria, BC

Dirk Ryneveld, QC
Police Complaint Commissioner.

Return to PCC Decisions