SUPPORTING POLICE PROFESSIONALISM

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INTRODUCTION

This paper is concerned with professionalism in policing: what it is; why it is important; and how to attain and maintain the "high standards" which are expected of police by both the public and police themselves. While the subject of the paper is police, much of the discussion could apply equally to other professions.

Canadian police want to both be and be seen as professional, not just for their own satisfaction, but to enjoy the public confidence that is necessary for democratic policing to succeed. This is always a challenge. It may be more so now, when police services are experiencing generational change following a period of increased retirements and resulting replacement with less experienced staff. While challenging for any organization, such transitions offer opportunities for police leadership with staff who may be more receptive to new approaches and organizational reform.

While this paper will discuss investigation of misconduct, prevention is preferable to dealing with misconduct after it has been detected. Just as in the practice of law, fostering and promoting a sense of professionalism may be the best way to avoid problems in police services. This paper therefore begins with a discussion of professionalism and the ways to instil and support professional standards, before turning to the necessary elements of successful investigation and sanction of police misconduct.

WHAT IS PROFESSIONALISM?

The three classic professions are the clergy, the law and medicine, known collectively as the "learned professions". Other occupations like to claim professional status, since it connotes a certain prestige. The characteristics of a profession include: expertise; decision-making autonomy; a public-service orientation; a sense of calling; a unique culture; a code of ethics; special status; an organization; and self-regulatory power. [1] All

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[1] Marin, Rene J. *Policing in Canada: Issues for the 21st Century* "Professionalism and Ethics in Policing" (Aurora: Canada Law Book, 1997), at 33

of these apply to Canadian police, except for self-regulatory power, which is limited. But that characteristic is no longer so distinctive, as legislators limit the regulatory autonomy of traditional professions elsewhere. [2]

We might speak of a person or their work as "professional", based on how they comport themselves in their business or how well their work is done. But professionalism involves more than proficiency. The consummate professional will be recognized by three attributes: competence; a sense of honour; and wisdom. Since each of these take time and effort to attain and maintain, not every member of a profession will achieve or consistently demonstrate this state.

Competence, or proficiency, is the first step towards professionalism. It involves learning the tradecraft to demonstrate skill and produce quality in the delivery of products and services of the trade. These may be taught through both formal instruction and by observing and working with experienced practitioners. Since they usually involve proven practices, or standard operating procedures, skill is acquired through practice. A great deal of demonstrated professionalism is simply the product of good habits developed by training, practice and constant correction. In the case of both lawyers and police, this might be summarized as knowing what laws apply in any given situation and how to apply those laws.

True professionalism also involves a sense of honour and duty, requiring ethical awareness and commitment. Justice Rene Marin, then Chair of the RCMP External Review Committee, explained this in his 1991 speech on "Professionalism and Ethics in Policing" to the Atlantic Association of Chiefs of Police:

> Professionalism cannot exist without ethics. The distinguishing feature of professions is the importance they place on the conduct of their members.[3]

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[2] For example, Parliaments have, in recent years, limited the autonomy and self-regulatory authority of the legal profession in England, Wales, Scotland, Ireland and Australia.

[3] Ibid, at 35

Professionals accept that their professional status requires some self-sacrifice, placing public service above personal interest. The code of ethics of a profession provides an ethical foundation. The professional will follow this code in their work, guiding them through the challenges and moral quandaries encountered in the performance of their professional duties.

Finally, professionals will seek wisdom. Wisdom involves both understanding and empathy, gained over time through teaching and experience, including and perhaps especially personal failure and loss. This might be described as going beyond knowing what laws apply and how to apply them – a state of proficiency or competence – to wisdom in knowing why, when and whether the law should be applied. This involves the proper exercise of discretion. [4]

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[4] *Hill v. Hamilton Wentworth* [2007] 3 S.C.R. 129, 2007 SCC 41, at paragraphs 51- 54 and paragraph 73

> 52 Police, like other professionals, exercise professional discretion. No compelling distinction lies between police and other professionals on this score. Discretion, hunch and intuition have their proper place in police investigations. However, to characterize police work as completely unpredictable and unbound by standards of reasonableness is to deny its professional nature. Police exercise their discretion and professional judgment in accordance with professional standards and practices, consistent with the high standards of professionalism that society rightfully demands of police in performing their important and dangerous work.
>
> ….
>
> 54 Courts are not in the business of second-guessing reasonable exercises of discretion by trained professionals. An appropriate standard of care allows sufficient room to exercise discretion without incurring liability in negligence. Professionals are permitted to exercise discretion. What they are not permitted to do is to exercise their discretion unreasonably. This is the public interest.
> (per: McLachlin, C.J. for the majority)

Kelling, George and Cole, Catherine *Fixing Broken Windows* (New York: Touchstone, 1996) at p. 187

> Police discretion means that in any given situation police officers, as any professional who uses discretion, apply the profession's knowledge, skill, and values to that specific situation. The problem is that when police knowledge, values, and skills are uncodified, as they are in too many departments, officers cannot counter effectively either the claims of litigators or the naivete of judges about police street practices.

WHY ARE PROFESSIONAL STANDARDS IMPORTANT FOR POLICE?

Standards provide a measure for accountability. Police officers are appointed to a public office and exercise extraordinary authority over their fellow citizens. This responsibility requires accountability. Accountability is achieving by imposing high standards of conduct on police, including through a discipline code which police officers voluntarily accept upon their appointment to this public office.

> 77. Perhaps the most forceful commentary on the standard of conduct required of a police officer is found in a case referred to by counsel for the Respondent, that being *Gemmell and Kojima and Vancouver Police Department*, supra, [B.C. Adj., July 27, 2005] where the adjudicator, quoting from a previous decision, stated at page 17;
>
> > "As members of the Force, we are expected to act in an exemplary manner and, at all times, our conduct must be beyond reproach. The Board directs Constable M's attention to the fact that the nature of our profession, as peace officers, demands that we set ourselves a much higher standard of conduct than what is expected of a member of the general public, and that we are willing to live by a much stricter code of self-discipline. We must be mindful that our everyday actions, both on the job and in private life, are judged by the public in our role as peace officers. …
> >
> > "Society expects and deserves a high standard of honesty, trustworthiness, and integrity from its police officers. … A police officer is a person occupying a position of trust, and has a special role and status in the community which confers upon him or her elevated levels of power and authority. A breach of the contract of trust loses society's confidence, and impairs the ability of our Forces to effectively function within the community." [5]

These higher standards apply to conduct both on and off-duty. [6]

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[5] *Roberto Siguenza v. Chief of Police, Regina Police Service*, 30 July 2007, Hearing Officer Alma Wiebe, Q.C., at page 52
- upholding dismissal of a police officer who attempted to form an intimate relationship with a young woman soon after he arrested her for shoplifting as a young offender

[6] Griffiths, Curt Taylor, Whitelaw, Brian, & Parent, Richard B. *Canadian Police Work* (Toronto: ITP Nelson, 1999) at 416

> Off-duty officers must conduct their personal lives in a manner that does not jeopardize the integrity of the police service in which they are employed. The individual officer has an obligation to maintain a healthy and balanced lifestyle that will ensure that he or she is mentally alert and physically able to work effectively when on duty.

Both police and the public they serve want a professional police service. [7] The motto of the Saskatchewan Federation of Police Officers, for example, is "Professionalism in Service". [8]

All of us want to feel respected. Many police officers are attracted to policing, at least in part, by the public status of and public respect for police. That respect was earned in the

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[7] Ibid. at 431

> Police officers consider themselves to be professionals, and to ensure that this perception is shared by members of the general public, it is important that officers give close attention to their behaviour. Among the fundamental attributes of a professional police officer are the following (Justice Institute of British Columbia, 1996, 3):
>
> - *appropriate demeanour*. Officers should avoid sarcasm when dealing with the public and should never make light of a person's situation.
> - *ignoring verbal abuse*. Officers should not respond in any manner to verbal abuse or use profanity or obscenity themselves.
> - *using no more force than necessary*. Officers should always use the lowest level of force response possible. The Force Options Model (discussed in Chapter 8) illustrates that when resistance ends, so does the force being applied by the police officer.
> - *providing reasons for compliance*. Officers should never threaten or argue with an individual. Rather the officer should clearly and calmly articulate why compliance is required, allowing the individual a reasonable time to respond to the request before action is taken.
> - *using discretion whenever possible*. Officer should exercise common sense and discretion whenever possible and understand that it is impossible to enforce all of the laws all of the time to the fullest extent.

[8] Saskatchewan Federation of Police Officers website www.saskpolice.com

> *Constitution and Bylaws of the Saskatchewan Federation of Police Officers*
> Article 4 – Objects
> 4.1 To advance the cause of police work as a profession and to support and encourage the Federation's membership in the pursuit of their individual police careers.
> 4.2 To advance police work as a profession in the eyes of the public on a local, provincial and national level, and to that end to institute, support or maintain such public relations programs, charitable programs and philanthropic programs, and to such extent as the membership of the Federation may decided, from time to time, provided that any such program is approved by the membership of the Federation.
> 4.3 To secure by all proper and legal means the elevation of intellectual and social standards of the members of the Federation.
> 4.4 To give collective expression to legislative requirements and present these requirements to the elected representatives of the legislature.
> 4.5 To establish all benefits of a social nature pertaining to the welfare of the Federation members.
> 4.6 To make recommendations to the Saskatchewan Police Commission on all matters of mutual interest to the Federation members.

past and will be preserved in the future by dedicated public service and demonstrated professionalism. The public, in turn, want their police to act professionally. How do we judge actions as professional? Through standards of behaviour and police methods which are accepted, by police and the public, as both effective and legitimate. [9]

Sir Robert Peel, then Home Secretary of the United Kingdom, in 1829 stated the concept of policing by consent of the public. This concept and the principles of policing which support it have governed policing in those Commonwealth countries, including Canada, which adopted the British form of democratic policing. The second of Peel's "Principles for Policing" recognizes the dependence of police upon public approval and respect.

> To recognize always that the power of police to fulfill their functions and duties is dependent on public approval of the existence, actions and behaviour, and on their ability to secure and maintain public respect. [10]

The fifth principle states how police should act to secure that public approval. Commitment to professionalism and public service, as servants of the law, is the best way for police to earn and keep public respect.

> To seek and preserve public favour, not by pandering to public opinion, but by constantly demonstrating absolutely impartial service to law, in complete independence of policy and without regard to the justice or injustice of the substance of individual laws; by ready offering of individual service and friendship to all members of the public without regard to their wealth or social standing; by ready exercise of courtesy and

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[9] ***Clothier v. Langlois*** [1990] 1 S.C.R. 158 at 181
- considering scope of police power to search upon arrest

> As we have seen, the common law gave the police only such powers as were consistent with the protection of individual rights. The courts have always held that a proper balance between these two fundamental components is vital, as illustrated by the observations of Williams J. in 1853 in *Leigh v. Cole*, *supra*, at pp. 330-31:
>
> > On one hand, it is clear that the police ought to be fully protected in the discharge of an onerous, arduous, and difficult duty -- a duty necessary for the comfort and security of the community. On the other hand, it is equally incumbent on every one engaged in the administration of justice, to take care that the powers necessarily entrusted to the police are not made an instrument of oppression or of tyranny towards even the meanest, most depraved, and basest subjects of the realm.
>
> (per: L'Heureux-Dube, J. for the Court)

[10] Marin, Rene J. *Policing in Canada: Issues for the 21st Century* "Professionalism and Ethics in Policing" (Aurora: Canada Law Book, 1997), at 179

> friendly good humour; and by ready offering of sacrifice in protecting and preserving life. [11]

These principles are as true today as when first stated almost two hundred years ago.

POLICE MISCONDUCT

Sir Robert Peel laid down his Principles of Policing for the London Metropolitan Police, established in 1829. That police service is the origin for Canada's municipal police, just as the Royal Canadian Mounted Police ("RCMP") derive from the Royal Irish Constabulary, also established by Sir Robert Peel in 1822. This great reform did not proceed without difficulties. Indeed, most of the early police recruits quit or were dismissed for cause. [12] While some resigned, chafing under the strict discipline, other were dismissed for drunkenness, laziness, or brutality.

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[11] Ibid.

[12] London Metropolitan Police website: www.met.police.uk/history/175 years ago

> In the first few days many officers were dismissed, either for non-appearance or for drunkenness. Later, when a register (preserved in the National Archives) was set up with warrant numbers, the first 466 warrant numbers were allocated to those who had been dismissed. Of the first 3,247 men recruited in the first six months, no fewer than 1644 (51%) were dismissed, the most common cause being for drunkenness. 149 of these were later re-instated

Emsley, Clive *The Great British Bobby: A History of British Policing from the 18th Century to the Present* (London: Quercus, 2009), at 43 and 85

> The discipline appeared to be too militaristic to many outside the force, and many police recruits had difficulty adjusting to something that was so alien to the practices of most early nineteenth-century civilian labour. In 1834 the Commissioners admitted to a parliamentary select committee that many men resigned after only two or three days, that drunkenness was a problem and the cause of most dismissals, and that of the 2,800 constables serving in May 1830 only 562 remained in the force.
> (at 43)

> As in the Metropolitan Police, a high percentage of recruits resigned or were dismissed within a matter of months, weeks, or even days. They absented themselves from their beats, got drunk, consorted with prostitutes, tipped off friends and acquaintances about police action, abused their superiors.
> (at 85)

Misconduct remains an issue for police services. While police discipline codes provides a list of several offences, the most common forms of misconduct can be categorized under discreditable conduct, neglect of duty, and abuse of authority.

Discreditable conduct is a general offence encompassing any conduct which would diminish public respect for the officer or the police in general. [13] Off-duty misconduct may fall under this offence, sometimes involving alcohol abuse. Discreditable conduct may range from the most serious to minor offences. Dishonesty is the most serious misconduct for a police officer, justifying dismissal. Police may lie for various reasons, including to avoid the detection or consequence of prior misconduct by themselves or other officers. This deceit may occur deliberately and repeatedly or as a panicked response, sometimes influenced by a misguided sense of loyalty, which is quickly regretted and soon admitted. While either seriously compromises the offending officer, the former form of deception will demand dismissal, while the latter may be treated more leniently. The Supreme Court of Canada's 2009 judgment in *R. v. McNeil*, [14] requiring limited disclosure of police discipline records to impeach police witnesses, re-focused, but did not change that basic requirement of absolute honesty. Honesty and integrity are fundamental requirements for a police officer. [15]

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[13] Marin, Rene J. *Policing in Canada: Issues for the 21st Century* (Canada Law Book, Aurora, Ont. 1997) "Investigation of Police Behaviour: Internal Affairs", at p. 57

> The issues of whether a member's action is disgraceful and would bring discredit on the force are not ones which are determined by a parade of witnesses who will testify to their shock or lack of it. The members of the adjudication board, having made their decision about the facts in issue, must then, using their knowledge of policing in general and the force in particular, decide:
> (a) whether the conduct was disgraceful; and
> (b) whether a reasonable person, fully aware of all the facts, including the realities of policing in general and the force in particular, would view the conduct as bringing discredit to it.

[14] *R. v. McNeil*, 2009 SCC 3

[15] *Chief Reimer v. Daryl Gartner* 22 March 1994, at page 18, Saskatchewan Police Commission, per: Laing, R.D., Chair

> Integrity, honesty and professionalism are individual.
>
> The acts of misconduct committed were all wilful and deliberate. The acts reflect a lack of judgment, integrity and professionalism and occur against a background of a

Neglect of duty usually involves negligence in the performance of duties, whether resulting from lack of care or laziness. Police professionalism can be fairly judged by the quality of routine work.[16] A lack of professionalism may be evident in failure to make accurate notes and reports, poor testimony or even failing to attend court when called. Such failures by police officers may also indicate supervisory neglect in failing to detect and correct unprofessional work of subordinates. Less frequently, it may indicate a lack of proper training.

Abuse of authority may involve rudeness, bullying or brutality. While stress may be a factor, police leaders must watch for such conduct as an indication of an authoritarian or self-centred personality which lacks empathy or respect for others, especially marginalized persons with whom police come into frequent contact. Training may also be a factor, fostering a sense of hyper-vigilance and over-reaction or teaching combat techniques which produce complaints. Abuse of authority may also be exhibited in double-standards, involving police officers breaking laws with impunity or seeking or providing favourable treatment for themselves, other police officers or other "friends" of the police, including misuse of police discretion to defeat the course of justice. Such abuse of discretion can amount to criminal obstruction of justice. [17]

> conviction for dishonesty. They indicate that Constable Gartner does not understand that integrity, "honesty" and professionalism are required of a police officer or, alternatively, he understands it and chooses to ignore it. In either event, the demonstrated lack of these qualities which are a basic requirement for continuation in any type of employment but particularly so for a police officer, renders him no longer "fit and appropriate" or suitable for continued service as a police officer.

[16] An excellent police procedural setting out proper police practices for Canadian police is *The Law Enforcement Handbook*, now in its fourth edition, by the late Desmond Rowland & James Bailey, with Detective Stephen Rowland: *The Law Enforcement Handbook* Fourth Edition (Toronto: Nelson, 2009)

[17] *R. v. Roy John Rodgers*, 17 September 2010, S.D. Loewen, J. SKPC, at paragraphs 43 and 47

> This is not a two-tiered justice or multi-tiered justice system and the police in this case appear to have been favouring their friend, a fellow police officer, by the breach in question.
> (at paragraph 47)

R v. Beaudry, [2007] 1 S.C.R. 190; 2007 SCC 5

Most people appointed as police officers are persons of good character with good values. The formal value statements adopted by police services express good values. Police officers who engage in misconduct act in opposition to these positive values and contrary to professional standards. Why?

While individuals should be held responsible for their acts and omissions, we should also acknowledge factors which influence people to act for better or worse. Both police and the public sometimes avoid recognizing these influences by discounting officers caught breaking the rules as "bad apples". [18] Philip Zimbardo, a renowned American social

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- upholding criminal conviction of police sergeant for obstruction of justice for impeding investigation of off-duty police officer arrested for drunk driving

Bergen v. The Queen 2005 SKCA 6; affirming *R. v. Leibrecht and Bergen* 2004 SKQB 244
- upholding conviction of police Inspector for attempting to obstruct justice after the Mayor was arrested for drunk driving in Prince Albert

[18] See below, for example, news reports about the sentencing of Benjamin (Monty) Robinson for obstruction of justice.

Mr. Robinson was an RCMP Corporal and the senior officer on-scene with three other RCMP officers involved in the tasering death of Robert Dziekanski at Vancouver International Airport on 14 October 2007. His actions were criticized by the Braidwood Commission on the Death of Robert Dziezanski in its Report of May 2010 titled *Why? The Robert Dziezanski Tragedy*. He and the other RCMP officers involved continue to face perjury charges related to their testimony at the Inquiry.

In October 2008, after drinking at a Halloween party and while driving off-duty, Mr. Robinson caused the death of motorcyclist Orion Hutchinson in a motor vehicle collision. Mr. Robinson left the scene of the collision, drove home and drank more alcohol, effectively defeating any breath alcohol testing. He was charged with obstruction of justice and convicted on 23 March 2012. He resigned from the RCMP on 20 July 2012, a week before his sentencing on the obstruction conviction, for which he was sentenced to a one-year conditional term, including house arrest for one month.

- Luk, Vivian "Disgraced ex-Mountie avoids jail sentence" *Regina Leader-Post* , 28 July 2012, D7: "Robinson has been cited as an example of the bad apples the force has been unable to fire.";

- Burgmann, Tamsyn "Mountie involved in Dziekanski's death quits force" The Globe and Mail, 21 July 2012, A-8: "Veteran RCMP officer Corporal Benjamin (Monty) Robinson, whose involvement in Robert Dziezanski's death and unrelated conviction in a fatal accident made him an example of the bad applies the Mounties have been unable to fire, has voluntarily left the force."

See also a news report quoting RCMP Commissioner Paulson referring to "bad applies" within the RCMP, at http://news.nationalpost.com/2012/06/21/tories-announce-bill-to-give-rcmp-new-powers-to-discipline-rogue-officers/:
- Quan, Douglas **"**Tories announce bill to give RCMP new powers to discipline rogue officers**"** Postmedia News, 21 June 2012: "Even Paulson himself has acknowledged in recent interviews,

psychologist, in his book *The Lucifer Effect*, discusses the problem with blaming misconduct occurring within organized groups or organizations solely on "bad apples". He points out that we must consider not only the "bad apple" (dispositional – the individual offender and his/her character), but also the possibility of "bad barrels" (situational – the environment, including group norms for behaviour) and "bad barrel makers" (systemic – those who create the environment, especially leadership).

> Aberrant, illegal, or immoral behaviour by individuals in service professions, such as policemen, correctional officers, and soldiers, is typically labeled the misdeeds of a "few bad apples". The implication is that they are a rare exception and must be set on one side of the impermeable line between good and evil, with the majority of the good apples set on the other side. But who is making the distinction? Usually it is the guardians of the system, who want to isolate the problem in order to deflect attention away from those at the top who may be responsible for creating the untenable working conditions or for a lack of oversight or supervision. Again, the bad apple-dispositional view ignores the apple barrel and its potentially corrupting situational impact on those within it. A systems analysis focuses on the barrel makers, on those with the power to design the barrel. [19]

Without an imbedded ethic of professionalism and professional standards to follow, the standards adopted by individual police officers may vary, depending on their commitment to individual values, the values expressed by the group, or those of the organization. Conflict between these distinct sets of values is problematic at best. [20]

> and in an open letter to Canadians, the force's disciplinary process is often bogged down in bureaucracy and that punishment handed down to the force's "rotten apples" sometimes just "does not cut it.""

[19] Zimbardo, Philip *The Lucifer Effect: Understanding How Good People Turn Evil* (New York: Random House, 2007), at p. 10

[20] Maguire, Dr. Stephen & Dyke, Dr. Lorraine *Professionalism in Policing* 14 February 2012, published on the the CACP website: www.cacp.ca and also reported at http://newsroom.carleton.ca/2012/02/14/carleton-professors-unveil-findings-of-exhaustive-three-year-study-of-police/

> **Managing Ethics**
> Informal organizational practices are part of organizational culture and may not align with organizational values. The result is confused messaging about "the way things are done around here".
> (CACP Professionalism in Policing Research Project: Recommendations, at p. 4)

Worse, a police subculture can arise which undermines and opposes formal values.[21] It is necessary, therefore, to be proactive in stating ethical values and supporting ethical conduct. [22]

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[21] Desroches, Frederick J. "The Occupational Subculture of Police" ***Police, Race and Ethnicity: A Guide for Police Services*** edited by Brian Criderman, Chris O'Toole, Angie Fleras (Toronto: Butterworths Canada, 1998) , at pp. 121 – 132

> A subculture refers to a group of people who participate in the dominant culture but nonetheless differ markedly in their beliefs, habits, behaviours, attitudes, and values. These divergent attitudes and behaviour patterns will sometimes supercede those of the surrounding culture in defining what is considered right or wrong. It thus becomes difficult to understand the actions of people without understanding the values imposed by the dominant culture and their own subculture.
> (pp. 121 – 122)

[22] Maguire, Dr. Stephen & Dyke, Dr. Lorraine *Professionalism in Policing* 14 February 2012, supra

> **Ethical Leadership**
> …failure to be proactive about ethics has the same organizational consequences as unethical leadership.
> (CACP Professionalism in Policing Research Project: Recommendations, at p. 5)

HOW TO ATTAIN AND MAINTAIN PROFESSIONAL STANDARDS?

While not exhaustive, five factors are critical in attaining and maintaining professional standards in policing: leadership; selection; training; supervision; and investigation and sanction of misconduct.

1. Leadership

Leaders perform a key function in any organization, but especially so in the police service, where the chief of police exercises a high degree of operational independence, including over the appointment, promotion and discipline of subordinates, and where a traditional command structure prevails. There is no one model for police leadership, which must respond to the demands of changing times and circumstances, including public expectations. But there is also no substitute for excellence in leadership, which must be based on personal integrity, experience and ability. Leaders influence the organization for better or worse both now and for the future, primarily through their personal example, decision-making, and selection and promotion of personnel, who may remain long after the current leader departs.

The *CACP Professionalism in Policing Research Project*, the outcome of a three-year study published in February 2012, emphasizes the importance of police leadership being both seen and heard:

> What we found, generally speaking, is that discretionary behaviour, manifest in management and leadership practices, is the strongest driver of sustaining front line officer commitment to professionalism. To a great degree, these management and leadership practices can be easily improved by more effective communication. Unquestionably, the better informed the front line, the more committed they are to professionalism.
>
> In the recommendations below there are three key messages:
> 1. Spend more time communicating about your agency's programs and expectations.
> 2. Demonstrate support for employee's well-being and development.
> 3. Consult on and clarify the basis on which decisions are made. [23]

[23] Maguire, Dr. Stephen & Dyke, Dr. Lorraine *Professionalism in Policing* 14 February 2012, supra, at p. 1

It is important to recognize that leaders exist and can emerge at all levels of the police service, with the ability to influence others for better or worse. Frank Serpico became an iconic figure of the 1970s for his refusal to go along with and ultimately to testify to police misconduct in the New York Police Department. He later described the situation in the New York Police Department as harbouring a force of whom ten percent were corrupt, ten percent were honest, and the remaining eighty percent wanted to be honest. In his testimony before the Knapp Commission on Police Corruption, he summed up the situation he had faced as a police officer in New York City and the need for systemic reform:

> Through my appearance here today I hope that police officers in the future will not experience the same frustration and anxiety that I was subjected to for the past five years at the hands of my superiors because of my attempts to report corruption.
>
> I was made to feel that I had burdened them with an unwanted task. The problem is that the atmosphere does not yet exist in which an honest police officer can act without fear of ridicule or reprisal from fellow officers.
>
> We create an atmosphere in which the honest officer fears the dishonest officer, and not the other way around. I hope that this investigation, and any future ones, will deal with corruption at all levels within the department, and not limit themselves to cases involving individual patrolmen.
>
> Police Corruption cannot exist unless it is at least tolerated at higher levels in the department. Therefore, the most important result that can come from these hearings is a conviction by police officers, even more than the public, that the department will change. [24]

2. Selection

There is probably nothing as important to the long-term health of a police service than good selection practices. Good people will make things work, even in the face of poor process, but good process can never make up for poor hires. Any employer or manager knows that good hires pay dividends, while bad hires can be a long-term problem. This

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[24] Mass, Peter *Serpico*, (New York, Bantam Books, 1973) at page 303

is especially the case with police officers, since they enjoy security of tenure, once past the probationary period.

While people can be taught, within the range of their individual capacity, and do change over time, the fundamental aspects of personality and character are formed by the time someone becomes a police officer. Experience has shown that when police services have high turnover or other factors that create pressure to increase hiring, some problem officers hired during this period emerge years down the road, likely the result of laxer selection procedures and relaxed hiring standards. Given the challenges of police work, it is vital that only the best are appointed. Careful attention to selection not only reduces the incidence of problem officers but also enhances organizational performance. [25]

Since people tend to hire in their own image, who is doing the hiring is very important. And since it is an axiom of both psychology and policing that past behaviour is the best indicator of future behaviour, complete background checks are essential. If police employees are not available, police services should contract with retired reputable police officers to go beyond the calls to applicants' references to make further inquiries in applicants' neighbourhoods and with people who know them to ensure all that can be learned about a candidate is known before a decision is made to hire.

Once someone is hired, police services can still use the probationary period to correct mistakes in hiring. Since police recruits are usually in training and on probation, this period provides a good opportunity for close assessment. But supervisors may be reluctant to recommend firing for various reasons, including the pressure of meeting

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[25] Murphy, Christopher "Thinking critically about police resources" *Thinking About Police Resources* (Toronto, University of Toronto, 1993) at p. 52

> Though most resource debates seldom go beyond the right "number" of police officers, it is the right number of the "right kind of people" that may be most important. The selection of police officers is too often underestimated as a critical resource issue. The growing complexity of police work and the uncertainty and ambiguity over its objectives have complicated the recruiting process. The kinds of skills, attitudes, personality traits and life experience required for new styles or strategies of policing (ie. Community policing, problem solving) require police officers who may be very different from their predecessors. Effectively recruiting these kinds of people may require new recruiting philosophies and procedures.

staffing demands, reluctance to admit a mistake in the hiring, and because of the subtle emotional and real financial investment in the candidate the longer he or she remains.

3. Training

A great deal of professionalism is simply the result of good habits, in which proven practices are routinely performed, without much thought or effort. These habits must usually be instilled through training, practice and constant correction, until they become second nature and automatic. Even then, good habits will slip unless refreshed through future re-training or correction. Training also prepares police officers to work through moments of crisis that might otherwise overwhelm them, allowing them to reflexively rely upon standard responses and procedures in which they have been drilled. Police recruits receive this training first at the Police College and, following graduation, through assignment to field training officers. These are formative experiences which should have lasting and positive effect.

National and provincial police colleges are intended to promote uniform standards of policing, reflecting current law and best practices. Ideally, the College will also be responsible for the procedure manual mandated for the police services whose officers it trains. Police College training and policy should then be consistent with actual practice amongst the police services in which the police services will work. Trainers should routinely review those mandated procedures, both to ensure their teaching conforms to mandated procedures and to recommend revisions to reflect changes in law or best practices. This provides a mutually reinforcing cycle of policy development, teaching, review, and revision, so that teaching reflects current policy which reflects professional practice.

As discussed at the outset, training must go beyond the development of skills to inform students of the philosophy of democratic policing and the public policy rationale for our laws. The Saskatchewan Police Commission spoke to this in a 1982 Report:

> At the Saskatchewan Police College the opportunity is taken to see that the recruits are made aware of the role that is played by police, the need for a

> responsible police agency as a fundamental part of the social structure, the importance of being honest police officers and the responsible role each of them is called upon to play in the basic social and economic structure of this country. [26]

Field training officers can be a great influence. Young and inexperienced employees will naturally emulate their trainers and, if they respect them, their early partners and supervisors. Most people, if they start well, continue in that mode. Field training officers should reinforce College training, not contradict it. This requires that field training officers themselves be carefully selected, representing the best operational officers, and that they too receive Police College training designed for field training officers before they take charge of recruits.

4. Supervision

Front-line supervisors are critical in any organization, but especially so in policing, where police officers are expected to both work independently, with minimal opportunities for close supervision, and to exercise powers and make quick decisions with significant implications. A lot of things can go wrong quickly and turn out badly if the wrong decisions are made. The *CACP Professionalism in Policing Research Project* concluded "that appropriate supervision is the key predictor of maintaining integrity of front line officers. It is of the utmost importance that supervisors receive appropriate training at the earliest opportunity." [27] Supervision is more important than ever at this time since, as the Report notes, a "surge in retirements" in recent years has resulted in relatively inexperienced patrol officers. [28] This relative inexperience also applies to front-line

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[26] *Report of a Public Inquiry into the Moose Jaw Board of Police Commissioners and Moose Jaw City Council*, Saskatchewan Police Commission, 27 July 1982, at p. 22

[27] Maguire, Dr. Stephen & Dyke, Dr. Lorraine *Professionalism in Policing* 14 February 2012, supra, at p. 7.

[28] Ibid, at 9

> The average age of experience of front line patrol officers has declined dramatically in the last decade as a wave of new recruits has replaced a surge in retirements. Supporting the development of young officers is of paramount importance. Supportive supervision is the most important predictor of integrity of front line officers. Supportive supervision presupposes close and regular face-to-face contact with officers so as to provide the

supervisors, who may lack adequate training. This can result in the proverbial situation of the blind leading the blind. [29] The Report notes that "management training is one of the top three characteristics that differentiate ineffective from effective managers." One result can be ineffective or improper supervision at a time when it is most required, impairing both individual and organizational performance and professionalism.

Occasionally, police methods which are not consistent with policy and training, are adopted by police officers. If unchecked, these unsanctioned methods can become common practice over time. New officers reasonably assume the current practice is approved and fall into the same ways. It can then come as an unpleasant surprise when a judge comments adversely on improper practice or serious charges are jeopardized because of practices that are not defensible.

Front-line supervisors should be the early warning line of defence against unprofessional conduct, by detecting improper practices and correcting them immediately. There are reasons why this does not always occur. As mentioned above, police officers, especially patrol officers who most frequently deal with the public, do not work under close supervision, so detection may be delayed. Even so, most police misconduct does not go undetected for long. Whether is reported or corrected is another matter, however.

The close relationships and bonds that develop between police officers are generally positive. But they can also contribute to unprofessional conduct. Much has been written about the "blue wall", in which group solidarity takes precedence over the duty to report wrongdoing by fellow officers. [30] Some supervisors may also put personal relationships

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> foundations of mutual trust and a shared commitment to policing. Corrective action arising within such a context is more likely to sustain a commitment to professional self-development.

[29] Ibid, at 7

[30] Desroches, Frederick J. "The Occupational Subculture of Police" ***Police, Race and Ethnicity: A Guide for Police Services*** edited by Brian Criderman, Chris O'Toole, Angie Fleras (Toronto: Butterworths Canada, 1998), at 124

with subordinates ahead of their supervisory duty, so that misbehaving officers are actually shielded by those responsible for their performance. Failure to report or act makes these other officers complicit in wrongdoing.

It is an axiom of management that "each time you let something go, you set a new and lower standard." When breaches occur and no corrective action is taken, standards slide. If formal rules and sanctioned procedures, set down as standing orders in police procedure and administration manuals, are not being applied, they should either be repealed or enforced. The worst situation is when the formal rule remains, but police supervisors or police leaders ignore or tolerate its breach by subordinates. Just as nature abhors a vacuum, informal, unsanctioned practices develop to replace the formal rule or procedure. Eventually, those informal practices and lower standards become the norm, eroding police professionalism and contributing to conflict and contradiction within the organization. [31]

Even when supervisors do take corrective action, they may be reluctant to document the reasons or action taken. Annual performance evaluations do not always reflect reality and in some cases are simply misleading. Since police officers pass through a succession of supervisors, lack of documentation may allow officers with recurring problems to continue for years before being identified by senior police commanders. By then, the subject officer may be beyond rehabilitation, even though their official record indicates

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> Since they depend on one another, a common characteristic of police occupational subcultures is the code of silence over police misconduct. It is often noted that police cultures throughout the world enforce norms against informing on one another and that ostracism of officers who violate the code is common.

Griffith, Whitelaw & Parent *Canadian Police Work* (Scarborough: ITP Nelson, 1999) at p. 105

[31] Duhigg, Charles *The Power of Habit* (Doubleday Canada, 2012) at 159 – 160

> Destructive organizational habits can be found within hundreds of industries and at thousands of firms. And almost always, they are the product of thoughtlessness, of leaders who avoid thinking about the culture and so let it develop without guidance. There are no organizations without institutional habits. There are only places where they are deliberately designed, and places where they are created without fore thought, so they often grow from rivalries or fear.

that the finally detected misconduct appears to be out of character and inconsistent with a superior work history.

5. Investigation of Allegations

Professional Standards Sections

Major police services have Professional Standards Section which are responsible for investigating allegations of misconduct, whether generated internally or by public complaints. The establishment of these Sections does not remove the primary responsibility of supervisors and managers for identifying, investigating and correcting misconduct. This must be emphasized to avoid supervisors thinking or claiming the excuse that it is someone else's job.

Most police services have changed the name of this unit from "Internal Affairs" to "Professional Standards". The name change reflects both a realization that police conduct is not simply an internal issue, but a matter of public concern, and that professional standards are the measure for police professionalism and public service. The name change was probably also motivated by a desire to overcome the stigma associated with assignment to Internal Affairs. That stigma may remain and requires recognition and effort to overcome.

While all police officers are trained and become familiar with investigation of public offences, professional standards investigations are different, involving administrative rather than criminal law and procedures. Perhaps more importantly, these investigations can challenge the objectivity of investigators. If investigators are reluctant to do the job or over-identify with the officer under investigation (often referred to as the "subject officer", as opposed to witness officers), the investigation will suffer. This can be seen where the investigation is strictly limited to the complaint/allegation only, ignoring other evidence of poor police practices. It may also be seen in interviews of subject officers who are not asked hard questions or are provided with excuses by the interviewer.

Because of the traditional stigma, police officers may wish to avoid assignment to Professional Standards Sections, concerned that doing the job well will harm their career and relationships within the police service. This fear is not misplaced and has occurred. That is especially unfortunate because assignment to these Sections should offer a special sense of honour and pride as a guardian of police professionalism.

Because of both these realities, it is important that police leadership provide strong support both to the Section and the personnel assigned to Professional Standards Sections, including ensuring specialized training before and continued training during their assignment to reinforce their commitment to professionalism. Such training can be difficult to find. The Southwestern Law Enforcement Institute Center for Law Enforcement Ethics in Plano, Texas offers excellent training and support for this challenging work.

Internal or External Investigation?

Justice Horace Krever observed, in his 1980 *Report of Inquiry into the Confidentiality of Health Records in Ontario*, that police independence must be balanced by effective external oversight:

> In a democratic society, no police force, no matter how generally well-respected, should be allowed to be a law unto itself. To rely solely upon a police force's integrity and self-discipline is to permit that force to become a law unto itself. [32]

Since that time, federal and provincial legislators have put in place civilian oversight and external accountability regimes for police services.

While police are usually in the best position to investigate and determine allegations of misconduct occurring within their police service, that ability may be impaired by

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[32] Krever, Justice Horace, *Report of the Royal Commission Inquiry into the Confidentiality of Health Records in Ontario* (Ontario, 1980) Vol. II, p. 48

personal relationships and loyalties between police officers. To address this concern, oversight agencies have been established with authority to either oversee conduct investigations by police or to do the investigations themselves. This is a good model, incorporating the advantages of internal investigation, including local knowledge of people and practices, with critical, independent review and capacity for external investigations. Contrary to some opinions, police chiefs usually welcome external oversight and capacity for external investigation. Even if a police service has a well-functioning Professional Standards Section, there are some allegations that police chiefs would prefer to have investigated from outside to avoid perceptions of bias.

Some critics of internal investigation support a fully independent, external model, including going so far as to bar retired police officers as investigators. In the author's opinion, there is no substitute for the knowledge and experience of capable police officers, whether current or retired, although these units may benefit from investigators with other backgrounds.

Kinds of Investigation

Investigations may take different forms, whether performed by Professional Standards Sections or external oversight agencies.

1. Administrative Conduct Investigation

This investigation occurs when the chief of police or police oversight authority becomes aware of allegations of misconduct on the part of an identifiable police officer, whether discovered internally or upon receipt of a public complaint. The primary purpose of this investigation is to determine if the allegations against the subject officer are well-founded and, if so, to provide the commanding officer with admissible evidence on which he or she may take administrative action, usually of a disciplinary nature. The goal of the investigation is neither to clear the member nor to establish cause for discipline, but rather to gather relevant evidence and find the facts, insofar as possible.

If the allegations or investigation indicates a criminal aspect, the administrative investigation is usually suspended until the criminal investigation is completed, both to avoid jeopardizing the admissibility of evidence in the criminal case and to ensure that the administrative investigation is not unduly limited by legal considerations appropriate to criminal jeopardy.

As an administrative investigation, rather than a criminal investigation, serving officers are required to cooperate in the investigation, including answering questions of the investigators. [33] This duty to cooperate applies whether the police officer is the subject of the investigation or a witness. Officers who fail to cooperate may be disciplined for insubordination or dereliction of duty. If the investigators are from an outside agency without command authority over the subject officer, then a ranking officer from the subject officer's police service should be designated to serve as liaison to the outside investigators.

While the investigator should identify relevant rules and policies and possible discipline offences, it is not the role of the investigator to determine whether or what disciplinary action should be taken. Once completed, the administrative investigation report is provided to the commanding officer to decide, often with legal advice, whether and what

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[33] Ceyssens, Paul, *Legal Aspects of Policing*. (Saltspring Island, B.C.: Earlscourt Legal Press, 2012) at 5.5(c) "Duty to Cooperate".

disciplinary action is warranted, having regard to the evidence, the subject officer's record and the nature and circumstances of the discipline offence.

2. Criminal investigation

Police statutes may mandate the investigation of any allegation of criminal wrongdoing by police officers. The purpose of this criminal investigation is to determine the facts and to gather all available evidence in a manner in which it will be admissible in court. The police officers who is under investigation enjoys the same rights and protections as any other citizen suspected of criminal wrongdoing, including the right not to cooperate with the police investigation. To avoid perceptions of bias, the investigation report should be provided to the Crown Prosecutor for separate determination of whether to recommend criminal charges. This decision is made on the two-fold test of: 1. whether there is a reasonable likelihood of conviction; and 2. whether it is in the public interest to prosecute.

3. Review of previous police investigation

This is a form of file review or audit. While more intensive and exacting, the purpose is not unlike the daily reviews that supervisors make before declaring reports submitted by subordinate officers. If the review reveals need for further investigation or other steps, recommendations may be made to take those steps to ensure a proper investigation, with follow up review to ensure proper completion. In the case of an outside review, it is more of a forensic review of the previous investigation to provide an outside opinion of its adequacy. One high profile example is the reviews of police investigations into the disappearance of women in Vancouver, British Columbia, commissioned after the arrest and 2007 conviction of serial killer Robert Pickton raised public concern over the adequacy of those investigations. [34]

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[34] These reviews were the subject of testimony at the *Missing Women Commission of Inquiry* established on 27 September 2010 by the Government of British Columbia, with direction to provide a final report to the Attorney General by 31 October 2012. Its chair is the Honourable Wally Oppal, Q.C. The Commission's website is "www:missingwomeninquiry.ca".

Scope of Investigation

One should be aware of the intended scope of a professional standards investigation. As noted above, the scope of an investigation may influence the result. A good rule of thumb is that a quarter to a third professional investigations will find improper police practices. Yet investigations of credible agencies may indicate much lower rates of sustained allegations. [35] This may be attributed to the scope or intent of the investigation.

There may be good reasons for limiting the scope of investigation, for example, if a complete review is not sought or to reduce the draw on resources in the face of competing priorities. It may also be limited for questionable reasons, including to avoid adverse findings which may be the source of further embarrassment or criticism.

Professional Standards' investigations should not be confined to the complainant's specific allegation, but rather should consider all aspects of the subject officer's performance, with a view to identifying any disciplinary default or other performance issues. The investigators should also look beyond the question of individual misconduct for indications of systemic causes or organizational issues that may have contributed to the complaint or events under investigation. This is essentially a risk management exercise. The purpose of this aspect of the investigation is to provide the commanding officer with the opportunity to implement appropriate measures to reduce the likelihood of any recurrence or to mitigate against future injury to persons, property or reputations. For example, an administrative investigation may conclude that the subject officer did not commit any disciplinary default, but still find that the manner of police service was flawed. This could occur where there was out-dated policy direction, a lack of appropriate training or inadequate deployment of resources.

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[35] For example, the Saskatchewan Public Complaints Commission, in its *2010/11 Annual Report*, at p. 13, reports "substantiated" findings in only 5% of public complaints against Saskatchewan municipal police services determined by the Commission. The rate for the Regina Police Service was closer to 10%, while the rate for the similarly sized and situated Saskatoon Police Service, which had about a third more public complaints, was 0%.
Report available at www.publications.gov.sk.ca

If a Professional Standards Section is to live up to its name, it should be conducting such a full review. This task, of course, requires both commitment and resources, knowing it will sometimes produce unwelcome news. But only if that occurs, can problems be identified and reforms made.

Challenges in discipline proceedings

At one time, chiefs of police and the RCMP Commissioner had almost unfettered authority to discipline or dismiss police officers. Over time, this changed, with procedural safeguards introduced to ensure fair treatment of officers facing discipline or dismissal. Also, as noted above, police officers enjoy security of tenure, intended to protect police independence. This protection and the procedural safeguards can, however, also impair or prevent effective and expeditious disciplinary action.

Both RCMP Commissioner Robert Paulson and his predecessor, William Elliott, complained publicly and with reason about the difficulty and delays in disciplining and dismissing RCMP officers, resulting in announced legislative changes to streamline the RCMP disciplinary process. [36]

Police discipline proceedings may also be undermined by police witnesses whose testimony is shaded to favour the subject officer or by introduction of criminal or arbitral procedures or law into what is a distinct form of administrative proceeding most similar to professional conduct hearings.

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[36] Quan, Douglas "Tories announce bill to give RCMP new powers to discipline rogue officers" Postmedia News, 21 June 2012

Dimmock, Gary "RCMP disciplinary process can take years, cases show", Regina Leader-Post, 18 September 2010, A10

- citing, amongst others, the case of RCMP Cst. Kevin Gregson, found guilty on 13 March 2012 of murdering Ottawa police officer Eric Czapnik on 29 December 2009: "An Ottawa Citizen investigation revealed that the 43 year-old Mountie was at war with his superiors for much of his 12-year career. Gregson was on paid suspension for several years as he fought the RCMP's snail-like disciplinary system."

Unlike collective bargaining, which involves the legitimate compromise of private interests of both employers and employees to reach an agreement, police discipline is concerned with the public interest in maintaining public confidence in policing. This paramount public interest should prevail over the private interest of individuals. For that reason, police discipline is removed from the scope of collective bargaining. The rationale for this exclusion was well-expressed by Justice Wilson, then of the Ontario Court of Appeal, in a passage from her dissenting judgment which was quoted with approval by the Supreme Court of Canada.

> I think it would be quite inconsistent with the concept of an exclusive responsibility to permit the board to bargain collectively in this area. The board should not be permitted to derogate from its statutory duty either by contract with the police association or by delegation of its essential decision-making functions to the chief of police and the Legislature, in my view, has not permitted either. The maintenance of an efficient police force is far too important to be the subject of a diffused or fragmented responsibility or to be used as a quid pro quo at the bargaining table. [37]

While less of a concern for larger police services, chiefs of police of smaller police services may also be deterred from exercising their disciplinary authority by the cost of contested discipline proceedings.

Risk Management Reviews and Audits

Finally, police leaders should not wait for signs of trouble before investigating. Good risk management practices should and do include routine review of certain events and periodic audits of performance of organizational units.

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[37] (1979) 24 O.R. (2d) 715 at 730, 99 D.L.R. (3d) 356 at 371 per: Wilson, J.A. (upon which the Supreme Court of Canada commented favourably in its unanimous judgment reversing the majority decision, [1980] 2 S.C.R. 727 at 733; and again in ***Regina Police Assn. Inc (Shotton). v, Regina (City) Board of Police Commissioners*** 2000 SCC 14, [2000] 1 S.C.R. 360, at paragraph 31)

see also: Ceyssens, Paul *Legal Aspects of Policing*, supra, at para. 5.1(a) "Rule Against Opting Out of Statutory Scheme"

Formalized peer review, through internal review boards of experienced officers, should be routine for certain events, such as more serious uses of force or deployment of weapons, even if not used, injuries to prisoners and police, vehicle pursuits, and damage to police vehicles or private property. These reviews provide a second line of defence, after the front-line supervisor, to identify and correct problems before they become more serious or widespread. They are also almost always better accepted and more effective than external reviews, since the advice comes from peers and is directed towards correction, not punishment. The societal benefits of these peer review mechanisms may justify limiting production of their reports in other proceedings, similar to the protection accorded investigations by hospital review boards.

As much as possible, these should be separated from internal and criminal investigations, to encourage officer cooperation and reduce officer resistance resulting from their use in potentially punitive processes or in Crown disclosure. Where misconduct is indicated, that concern should be referred to Professional Standards for separate inquiry.

Police services are also well-served by regular audits of operational units to see whether current practice accords with policy and best practices. These can pay great dividends in improving performance, especially if the auditors work with the unit under review. Routine and on-going audits can also improve efficiency and eliminate problems before a crisis demands correction. Again, these are most effective when directed to identify areas for improvement, rather than seeking to assign blame for current problems. Over time, such regular audits can produce real gains for everyone and become welcomed by police units under review. [38]

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[38] Marin, Hon. Rene *Policing in Canada: Issues for the 21st Century* (Canada Law Book, Ontario, 1997) at 31 – 46, chapter 4 "Professionalism and Ethics in Policing"

> To my mind, if you want to achieve intelligent cuts, you must audit on a periodic cycle all areas of operation and management and they, in turn, must justify their continued usefulness. Only then will you achieve some savings in management.

CONCLUSION

Canada is well served by its police services. Even so, one should not be complacent about the importance and need to support an ethic of professionalism in policing.

Since both police services and police officers want to both be and be thought of as professional, it is an attainable goal. While professionalism requires individual commitment, police leaders must also take steps to reinforce and support that individual commitment. The measures identified in this paper are means to that end. And given the importance of police to civil society, it is a goal worth supporting.

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