

YUKON HUMAN RIGHTS COMMISSION SUBMISSION TO POLICE REVIEW

Human Rights Dimensions of Policing

Constitutional and International Obligations

The *Canadian Charter of Rights and Freedoms* provides for constitutionally protected legal rights related to arrest, detention, proceedings in criminal and penal matters, treatment or punishment and self-incrimination. (Under Legal Rights, in the *Charter*.) Section 12 of the *Charter* states: "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment."

Canada has an international obligation to protect human rights because of various international conventions to which it is a signatory, such as the *International Convention on the Elimination of All Forms of Racial Discrimination*, *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* and the *Convention on the Rights of Persons with Disabilities*, as well as the *Universal Declaration of Human Rights*.

According to the Yukon's *Human Rights Act* preamble "the Yukon Government [and this would include the Department of Justice which is responsible for providing policing services for Yukoners] has a responsibility to encourage an understanding and recognition of human rights that is consistent with Canada's international undertakings and with the initiatives taken by Canada and the provinces, and that it is just and consistent with Canada's international undertakings to recognize and make special provision for the unique needs and cultural heritage of the aboriginal peoples of the Yukon." [Emphasis added.]

In addition in section 1 of the *Act*, one of the three objectives in the Yukon's human rights law is "to promote recognition of the inherent dignity and worth and of the equal and unalienable rights of all members of the human family, these being principles underlying the *Canadian Charter of Rights and Freedoms* and the *Universal Declaration of Human Rights* and other solemn undertakings, international and national, which Canada honours." It is because of this objective that the Commission believes it has a role to play in this policing review.

Article 5 of the *Universal Declaration of Human Rights* says that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 16 of the *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* says that "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity..."

In 1975, Canada officially agreed to consider embodying the United Nations *Standard Minimum Rules for the Treatment of Prisoners (SMRs)* into both federal and provincial/territorial legislative frameworks. Canadian laws and policies reflect a broad acceptance of the document's underlying principles and standards. Some of these principles as outlined in the Corrections Services Canada website (www.csc-scc.gc.ca/text/pblct/rht-drt/07-eng.shtml) include:

- living accommodations which are appropriately heated, ventilated and cleaned
- appropriate bedding and clothing regularly laundered
- access to the same medical services as the general public enjoys
- **prohibition of** corporate punishment, solitary confinement and other **cruel, unusual, and or degrading treatment** (emphasis added)
- opportunities to remain in contact with friends and family.

One of the fundamental human rights principles that is reflected in the 95 individual articles that form the SMRs is that the prisoner's sense of dignity and worth as a human being must be respected and maintained throughout the time that they are imprisoned.

In addition the Code of Conduct for Law Enforcement Officials adopted by the UN General Assembly resolution 34/169 of 17 December 1979, outlines the following articles: (see <http://www2.ohchr.org/english/law/codeofconduct.htm>)

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Both the *Code of Conduct* and the *Standard Minimum Rules for the Treatment of Prisoners* are the minimum human rights standards which the RCMP must meet in their policing work in the Yukon.

As well, the *Charter* and the *Convention on the Rights of Persons with Disabilities* recognize the right to freedom from torture, and from cruel, inhuman or degrading treatment or punishment when people are interacting with the police.

The *Charter* and these conventions and guidelines also emphasize the importance of protection against discrimination by the police, and require that government provide effective protection against and remedies for resolving discrimination.

The Human Rights Duty to Accommodate

A growing and very important area of human rights is the obligation of employers and service providers, such as those providing police services, to

“take measures to eliminate disadvantages to employees, prospective employees or clients that result from a rule, practice or physical barrier that has or may have an adverse impact on individuals or groups protected under the *Canadian Human Rights Act* or identified as a designated group under the *Employment Equity Act*. ... In the provision of services, the provider must implement whatever measures necessary to allow clients to access its services...

The duty to accommodate recognizes that true equality means respecting people's different needs. Needs that must be accommodated could be related to a person's gender, age, disability, family or marital status, ethnic or cultural origin, religion or any of the other human attributes identified in the two federal acts.”

(Canadian Human Rights Commission Fact Sheet Duty to Accommodate - http://www.chrc-ccdp.ca/preventing_discrimination/duty_obligation-en.asp)

The Commission believes this obligation has implications for the way that services are provided to the general public and to those in police custody. It is well established in human rights law that drug and alcohol addictions are a form of disability and that people addicted to drugs and alcohol are therefore entitled to protection against discrimination based on their disability and to accommodation of special needs related to their disability when they interact with and are in custody of the police. Similarly, people with Fetal Alcohol Spectrum Disorder or mental health issues may require accommodations or adjustments during arrest, custody, incarceration and during contact with the police as a result of their disability in order to have equal access to police services and equal, non-discriminatory treatment when in police custody.

For people in what has been called the “drunk tank” in the local RCMP detachment, their needs if unmet, can be fatal or life threatening. The RCMP in its 2006 Annual Report of RCMP In-Custody Deaths reported “...that over 70% of in-custody death subjects were using alcohol and/or drugs at the time of the apprehension” and that for some of these subjects “the effects of alcohol and/or drug abuse compound pre-existing medical conditions with lethal results.” This finding was one of the reasons that the Chair of the Commission for Public Complaints Against the RCMP initiated a complaint into the conduct of the RCMP officers involved in the arrest and detention of Raymond Silverfox on December 2, 2008, despite the RCMP’s own ongoing investigation into the same matter.

Data collection

Although matters related to the RCMP fall within the jurisdiction of the Canadian Human Rights Commission, the Yukon Human Rights Commission has received information and inquiries over the past years from members of the public concerned with RCMP conduct. The data will be summarized in terms of the nature of the inquiries and the alleged complaints against the police. It should be noted that these are stories containing allegations only and not matters that were investigated or proved. Some of the people making inquiries were referred to the Canadian Human Rights Commission and/or the RCMP Complaints Commission, although the Yukon Human Rights Commission is unaware of the number of people who actually contacted these agencies.

The data collected was from inquiries made to YHRC from April 1990 to March 1992, 1993, April 1994 to December 1999, and January 2004 to Sept 1, 2010.

Unfortunately we did not have enough time to review inquiries between January 2000 and December 2003. During the early years of the Commission, the inquiries related to the RCMP may not have been recorded, because they were considered outside this Commission’s jurisdiction and thus the numbers may not reflect all of the inquiries made during that period. Inquiries are calls, visits or letters made or sent to the Commission and may include requests for information or advice on how to handle a situation, or an opportunity for the person to determine whether or not the Human Rights Commission is the right agency to take their complaint in order to get it resolved. The Director of Human Rights determines what inquiries will be referred into our system for intake based on criteria laid out in the Yukon *Human Rights Act* and relevant caselaw.

According to the data collected, there were 41 inquiries during the period indicated above. Eighteen of the complaints were referred to the Canadian Human Rights Commission. Of the 41 complaints, only 4 were related to employment and the remaining 37 related to services provided by the RCMP. The 4 related to employment involved someone not being accepted into the RCMP for training, 3

related to alleged mistreatment or harassment of employees in the workplace. The 37 remaining inquiries dealt with the following issues:

- 21 alleged mistreatment or unfair practices by RCMP
- 9 discontent with response or way a situation was handled by RCMP
- 7 allegations that no action or follow-up occurred as a result of a complaint

Full details on the incidents are not always available (particularly in the older Commission records) such as the ancestry of the person (First Nations or not), whether or not they were from someone in a rural community or from Whitehorse. However, from the data that did identify the gender of the inquirer, 26 males and 12 females made inquiries. Ten inquiries were from rural Yukon and eight from Whitehorse. The human rights grounds that were recorded as possible reasons for the alleged discrimination were: ancestry, disability, sex, ethnicity, nationality, sexual orientation and past criminal record/charges.

The Commission also wishes to highlight two areas of concern from its recorded inquiries from this calendar year. The first concerns allegations of racial profiling of First Nations patrons in a Whitehorse bar by RCMP undercover officers brought to our attention by a staff member waiting on bar patrons. She alleges that coworkers told her that they had also seen RCMP officers target First Nations persons who were not intoxicated and not known drug dealers. The inquirer also alleged that other patrons who were not of First Nation ancestry were not targeted by RCMP officers. She also alleges that she and her coworkers were worried about retaliation by the RCMP if they complained about this but felt it was “not right”.

The second area concerns the issue of public safety for members of Yukon’s gay and lesbian community who have alleged that they were assaulted or threatened with assault because of their sexual orientation. In one case, a gay man alleged he was knocked unconscious outside a bar due to his sexual orientation and then taken to hospital. He said the police investigated but charges were dropped. Another woman reported that a lesbian immigrant reported being sexually assaulted and the RCMP told her that the assault had never happened because the man (alleged assailant) was telling the truth and the RCMP thought it was funny that a lesbian was sexually assaulted by a man.

The personal stories that follow reflect more detailed cases about alleged mistreatment or unfair practices by the RCMP.

Personal Stories collected

The Commission also received six phone calls during a two week period in August, 2010 in relation to our offer to collect personal stories of people’s experiences with the RCMP. The Commission believes that it was important to provide a neutral body

to collect experiences and opinions from the public, without any fear of retaliation. It should be noted that these are stories containing allegations only and not matters that were investigated or proved. Four people chose to share their stories and they are summarized as follows:

Person A:

A First Nations man was interviewed on August 6, 2010 and his comments were recorded by the YHRC Intake Officer. He lives in Whitehorse but is a member of a First Nation from rural Yukon. (Only the major points from the call have been provided.)

Re: Police Relations

He started out by saying that he thought the questions posed by the Police Review Committee (PRC) were ludicrous and not effective. They were just there to gather positive information and not the negative. He explained that there is a Liaison Worker that is supposed to help citizens from his First Nation with their complaints about the RCMP, but he doesn't think it is effective because they have no authority, are powerless and have no legal power.

The RCMP are busy responding to incidents – it is nothing like the good old days when they walked around or rode around and had a relationship with the community. Now the RCMP only get 6 months of basic training and then they are put on active duty. The interviewee thought they require more than 6 months of training. Other professions like doctors and engineers have a minimum of 4 years of university as a start for their training.

Re: Problem officer

He believes that when the RCMP have a problem with an RCMP member in a community they move the member to a new community without explanation to those affected. The problem is never disclosed to people living in the area. If people living in the area want information on the RCMP officer, the RCMP won't give it. They are a power within themselves – the problem still exists today. The next community never will know the problems that pre-existed.

Re: Use of RCMP Complaints Commission

He said that if you go to the RCMP Complaints Commission they refer the complaint back to the RCMP and they will investigate themselves. An exercise in futility. The caller provided examples such as the Vancouver Airport incident and Ian Bush case in northern B.C. where the officer claimed self-defence. In the Yukon if you have to go to a coroner's inquest the RCMP hire the best criminal lawyer available but the family of the victim can go to Legal Aid only to be told that they can't have a lawyer. The victim and their family go unrepresented unless they have lots of money.

Re: Systemic problems

He said that to go into a coroner's inquest you need someone to do an investigation and you also need someone who is a legal expert present but you have to have the money to do that – you might even have to hire a Vancouver lawyer. This is a very serious systemic problem -- the families of the deceased will never have as much money for legal issues or investigations as the RCMP. The Coroner's Office has a government lawyer – when a case comes up the YTG lawyer is representing the deceased and the coroner. The Crown Prosecutor is mostly there to observe, more or less.

"There should be a public inquiry into the Silverfox death, not a police review. If there isn't a public open inquiry then distrust continues. No credibility in the system. Should be that someone's job is on the line or charges possibly. Only then would change happen."

Re: Police Review Process

The interviewee said he went to the session last night [the public meeting for the Police Review] – approximately 60 people attended – no First Nations people got up to talk at the microphone. With the Police Review he is worried that nothing will come out of the review – he can't see any change in authority – nobody says that and unless there is power and authority to make changes there are no results.

An example of a change could be for a non-criminal person to have investigative and legal help at a coroner's inquest. For First Nations people there is no help – the authorities have top quality help but the victim has nothing. The Government should provide a separate person for the family at a coroner's inquiry or inquest.

With this Police Review he thinks that lots of people won't show up – but both the Government and the RCMP don't want a public inquiry into Silverfox. Politicians will use the information gathered during the Review as leverage to say they've taken steps to prove they did something, instead of nothing. Unless people's jobs are on the line or criminal charges are a possibility the interviewee asks will there ever be any credibility whatsoever in the system?

Re: Questions and Comments of the RCMP

1. Why is there no RCMP policy on when to remove restraints when CPR has to be administered?
2. What is the current policy on members and first aid training? All RCMP should have to take advanced First Aid and pass or not be able to keep their jobs.
3. There needs to be more training for guards in the RCMP holding cells. For extremely serious incidents those in question should have to answer to a public and open inquiry with their jobs on the line or criminal charges or both. (He also mentioned that internal military-type trial by RCMP would take forever and be seen to be a closed system.)

4. With respect to if you have a mental health diagnosis in the Yukon – essentially you are put in Whitehorse Correctional Centre. When we start imprisoning our mentally ill because of a lack of facilities that is a human rights issue. A review of Whitehorse General Hospital and the RCMP or an audit of the mental health system is long overdue. He recommends experts from the Brockville Mental Health Centre.

Person B:

Telephone interview with a Francophone woman from a rural community on August 9, 2010.

Re: RCMP Training

RCMP should have more than 6 months of training. Believes they should have a minimum of 2 years for entry level constables with 2 years of law. They need training in understanding of cultural differences.

She alleges that the RCMP who were investigating her complaint about the RCMP just laughed at her and she felt they have a bias and are racist against First Nations, women and people who “live in the bush”. She also said that there is no access to services in French and she was treated rudely.

Re: RCMP Treatment

She says that the service in the community is poor. She alleges there is a rude receptionist, phones are forwarded to Whitehorse, or they say they lack authority to do anything about the complaint or failure to act on complaints. She is trying to get help for her friend in a maximum security prison in B.C., when the person should be in a medium security prison. She believes they withheld evidence and lied. She also mentioned the Carcross case where a person was killed in a car accident when in the custody of the RCMP. She said the RCMP driver “was transferred out of the Territory and fined \$1000. That is not justice.”

In Watson Lake, she said the woman who had complaints against the RCMP was made to “look like a slut or a whore”. The RCMP officers should have had jail time.

Overall, the caller had a very negative view of the RCMP and has no confidence in their service or the justice system.

Person C:

Telephone call on August 11, 2010 at 11:45 a.m. from an anonymous male.

He said, “I want to make a complaint about the RCMP”.

Intake officer explained that we didn’t have jurisdiction to take complaints about the RCMP – that we were gathering information for our own written submission to the Police Review.

He said he really wanted to make a complaint. Intake officer explained that he had two options – one would be to use the RCMP complaints line and file a complaint with the RCMP. He was adamant that he didn't want to do that because he thought that it was useless. He also believed that the second option of making a complaint to the CHRC was useless as well. He wanted us to know that he received a "real thumping" by the RCMP and was disturbed about it and wanted to let us know.

Person D:

Female caller from Whitehorse area on August 11, 2010

Re: Deaths under RCMP custody

She said she was upset about the 7 deaths – 5 men and 2 women while in the custody of the RCMP. She was deeply offended by the case of the Carcross woman who died when the RCMP vehicle in which she was riding, rolled and she was ejected. The officer was speeding and the woman was in the back in handcuffs and with no seatbelt. There were other ways in which the officer could have dealt with situation.

"A \$200 fine for a traffic infraction – that was all that happened to that constable. If it were you or I, we would be charged with a much bigger crime. It happened on the Carcross Road and I am from that area so it affected me." She also alleged that "the constable stood in the bedroom and watched her dress instead of giving her privacy to dress. Because he had the authority he stood there and watched. She tried to grab some clothes so he said he had to put her in handcuffs."

The caller said that the Whitehouse case, of a First Nations man killed on the same weekend, is another situation. She said, " Officer lied in court. The coroner's report showed he had been tasered five times, but the officer said three times."

Re: Fear of retaliation by police

She wanted the Commission to know about these situations and that families are outraged. She said that it traumatized her and that she was afraid to write a letter because she had a son who was living on the street and she was worried about retaliation against him if she spoke up. She said that she has heard many people talk about retaliation and that they are scared to report in case of retaliation by the police.

Re: RCMP discipline

The caller also spoke about the most recent case in Watson Lake involving the RCMP constables: "I heard what she said in court. What I heard the RCMP testify in their own words was terrible. They are on leave-with-pay in Watson Lake. They haven't had their discipline hearing yet."

The caller reviewed the RCMP Discipline Policy and was not impressed. They can accept the member's resignation and nothing further is done. With sexual assault convictions they didn't lose their job. Once they are pensioned off, they can't do anything about it.

At the same time, she heard about a young woman drunk in a snow bank, she was picked up and offered a warm blanket, hot drink... and she asked the RCMP "why did you do this, I wanted to die." They talked to her about life. RCMP officers were very kind, helpful and nice to her.

YHRC Recommendations

There are many issues identified in the inquiries and the personal stories that people shared. The Commission's recommendations focus on those dealing with human rights.

1. The Commission recommends an urgent and immediate independent expert review of policy and procedures of the RCMP in relation to their duty to accommodate the needs of people in custody in relation to their disability (including alcohol and drug addiction, mental health disabilities, FASD) or their religion, sex or any of the other areas protected under human rights. This expert should have human rights expertise.
2. The Commission recommends an independent expert review of policy and procedures of the RCMP to ensure the implementation of human rights protections and obligations as outlined in the UN *Standard Minimum Rules for the Treatment of Prisoners*, and within human rights international conventions, the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act*. The expert should have human rights expertise.
3. The Commission recommends there be an independent complaint process, outside of the RCMP, to investigate complaints against the RCMP, including civilian oversight and representatives with human rights expertise. This process should be independent, accessible and effective but should not remove the jurisdiction of a human rights body to investigate human rights matters.
4. The Commission recommends there be mandatory orientation for all RCMP serving in Yukon about First Nations culture and history, including the impact of colonization and residential schools.
5. The Commission recommends on-going training on issues related to violence against women, sexual harassment, FASD, homophobia, racial

profiling and other human rights issues. There should be a requirement that in order for officers to maintain their active status, they must attend training in these areas regularly. This should be provided at least once a year as part of paid professional development time with appropriate resources provided if needed.

6. The final recommendations of the Police Review Committee should be in the form of action items with deadlines, so that a public committee representative of the stakeholders can monitor progress on these action items and provide an annual progress report to the Yukon public, tabled in the Legislature, on the actions taken.

(The Yukon Human Rights Commission wishes to acknowledge the research assistance of Christiana Lavidas, University of British Columbia law student who volunteered over 60 hours to review our inquiry files during the summer of 2010.)