

IN THE MOUNTIES WE TRUST:
A Study of Royal Canadian Mounted Police Accountability

by
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Abstract

Police and Canadian citizens often clash during protests sometimes resulting in violent outcomes. Due to the nature of those altercations, there are few other events that require oversight more than the way police clash with protesters and there is a history of such oversight resulting in a number of Federal Parliamentary documents, Parliamentary Committee reports Task Force reports, reports arising from Public Interest Hearings of the Commission for Complaints Against the RCMP, and testimony at various hearings and inquiries which have produced particular argumentative discourses. Argumentative discourses that have a great effect on the construction of a civilian oversight agency of the RCMP is the focus of this thesis. This thesis examines how it is that different discourses, as represented by argumentative themes in these reports, intersect with one another in the process of creating a system of accountability for the RCMP. Through the lens of complaints that arise from protest and police clashes one may conclude that the current system of accountability does not adhere to a practice of protecting the most fundamental rights as prescribed by the *Canadian Charter of Rights and Freedoms*; nor would the currently proposed legislation contained within Bill C-38 alter the system in a substantial way to allow for such protections. The power dynamic between the Commissioner of the Force and the Commission for Complaints Against the RCMP favours the police force in the current and proposed system. In order for the current political landscape to become a climate favourable toward producing a system of

RCMP accountability that truly protects the rights and freedoms prescribed in the *Charter*, a significant shift must occur in different organizations, agencies, and individuals who influence the creation of legislation and policy in this nation. This shift must be characterized by an increase in strengthening the commitment of the RCMP to protect the rights and freedoms as prescribed by the *Charter* rather than its current focus and interest in trying to stem the erosion of public trust and confidence in the Force.

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Chapter 1 - Introduction

The fact that an opinion has been widely held is no evidence whatever that it is not utterly absurd; indeed in view of the silliness of the majority of mankind, a widespread belief is more likely to be foolish than sensible
- Bertrand Russell¹

Tension between the rights of Canadian citizens and the police has existed since the confederation of Canada as a Dominion in 1867. Police have the duty to maintain the peace and investigate crime on one hand. On the other hand, the *Charter of Rights and Freedoms* (1982) provides Canadian citizens with the right to freedom of expression and the freedom of association. When protests occur in this country it is often the case that the duties of officers, such as the Royal Canadian Mounted Police (henceforth RCMP or the Force) and the rights of citizens come into conflict. What should the role of any police officer be during a protest?

For the purpose of this thesis it is important to understand that at times in Canadian history the members of the RCMP and protesters have clashed violently but it is not the dynamic interaction of these two groups that is at question. Rather it is the aftermath of such events which is focus of this thesis. Specifically, by examining several case studies of protests where the RCMP have been in charge of security and policing, the thesis examines how complaints against the RCMP and its members have been handled in order to determine whether or not the complaints system allows for equal opportunity for all involved to air their grievances. Through an analysis of the discourses that have arisen through the complaints process, this

¹ Russell, Bertrand. (1970) *Marriage and Morals*. W.W. Norton & Company Inc. New York, NY

thesis demystifies the arguments and rationale behind the way in which the complaints system is established and the manner in which complaints are handled within this system. It is only after one has fully understood the system of accountability as a whole that one can take the next step to address policy shortcomings and create a system where justice can be attained through complainants against the RCMP. The thesis builds its argument by focusing on three cases where the Chair of the Commission for Complaints Against the Royal Canadian Mounted Police (henceforth CPC, or the Commission) has initiated public interest hearings the conduct of members of the Force in each instance.

Although this thesis will not examine the conduct of individual officers with regard to corruption and misconduct, it is essential to examine the role of the Force and the chain of command during what police would call “public order” situations. Although issues of public order can arise in various ways, this thesis is concerned with those situations that arise from protests. The ability to voice one’s opinion while dissenting from the political norm is one of the fundamental democratic rights protected by the *Canadian Charter of Rights and Freedoms*. If this fundamental freedom cannot be protected then it would be extremely difficult to protect any other freedoms enshrined in the *Charter*.

Theoretical Considerations

Beyond the popular textbook definition of democracy, which can be understood, in its most idealistic form, that power rests with the people so that the majority may rule, modern liberal democracy and the intricacies of modern state politics can be extremely complex. Some have argued that rather than direct democracy, a form of democratic elitism is a more expedient form for arriving at sound political decisions. Following the ideas of Gustave Le Bon (1952), who proposed that the masses were a threat to political stability, democratic elitism proposed that those who gain power make decisions by competing with other politicians for people's votes.

Jones, Newburn, and Smith support the notion that expert and accountable elites should manage and maintain a democracy because the complexity of the political process is beyond the realm of most who live within a democracy (1996). Is it even feasible for a genuine, direct democracy to successfully govern the vast differences that are found across such a geographically, culturally, and historically diverse nation like Canada? Baudrillard argues, "[s]ome theorists questioned the possibility of a workable participatory democracy, and referred to the unrepresentable 'silent majority'" (Jones et al. 1996; citing Baudrillard 1983). As a caveat though, Jones and his colleagues also acknowledge that rather than national democracy, individuals do get involved in issues at the local level, in their workplace, and at the most local level, the family (Jones et al. 1996). If the majorities are silent no more, political dissent may become the norm of the silent majority. One must ask why the vast majorities are silent? Are they apathetic, or do they possess an attitude of disdain for politics for good reasons, yet are reluctant to vocalize them?

No matter where one stands on the form of democracy, it is clear that protest and political dissent are key mechanisms for a fully functioning democracy. These mechanisms offer crucial insight into democracy's capacity to become truly participatory and are a sign of discontent among those not-so-silent masses. But protest is openly oppositional meaning that the interests of some are pitted against the interests of others (or of the status quo) and protest can lead to conflict. As a result, the opportunity to lodge complaints and seek redress is also central to a fully functioning democracy especially when citizens feel that the forces of law and order have overstepped their mandate. As a result, Jones, Newburn, and Smith argue that, "it is vital to have a thoroughgoing and totally independent police complaints system. Police powers to deprive individuals of their liberty and to use force (Bittner 1974) mean that a full effective complaints mechanism – one that is seen to be effective – is a key part of a system of democratic accountability" (1996: 196).

Beyond issues of ensuring the optimal functioning of a democratic system through the revamping of the RCMP complaints system, one could also address these issues from a different sociological paradigm. Conflict theorists, derived from the Marxist perspective, deal with the disparity between those in control and those with less control. Police, by possessing a monopoly on violence, possess the most control as opposed to oppositional protesters. But this disparity undermines the democratic ideal of equality: equality before and under the law.

Separate from the ideas of conflict theory, by employing the perspective of the classical political theorists, one may see the creation of the police force and its existence as necessary for maintaining social order to protect the social contract,

while also protecting citizens' rights and liberties. Employing the work of Hobbes (1991) in this perspective, the sovereign is responsible for maintaining order lest society revert to "the war of all against all" found in the conditions of nature. This perspective, however, implies dissent, which could become violent, would mean that society is reverting to the natural condition from whence it came, and that would not help with the political progress of a nation.

Labeling theory and the perspective of symbolic interactionism, argue that human behaviour is relative, interpretive, and normative. These perspectives could offer some insight into dissent and protest. The process of understanding what is acceptable and unacceptable, depends more on how society interprets and gives meaning to such actions rather than the actions themselves. Conversely the work of Michel Foucault points to the productive capacity of power over the human body, in subjugating and ordering human life. However, this work will examine the handling of complaints after they are made, or conversely, why they are not made. A theoretical paradigm necessary for this study may resemble that of a Weberian perspective on bureaucracy.

Bureaucracy is the most rational form of administrative organization and able to attain the greatest level of efficiency with the greatest reliability (Weber 1968: 223); however, is this true for the efficient disposition of justice? If the system is destined to fail in safeguarding justice, what is there to be said of efficiency? But Weber also suggested that human "passion for bureaucratization [...] drives us to despair" (Ibid: liii) and, for many, it is despair that has come to characterize the Commission for Public Complaints Against the RCMP. Should we fine-tune the

institutionalized goal before we bureaucratize the means of attaining it? Should bureaucracy govern the organization in which complaints are handled, when it may be that the complaints are about confronting existing bureaucracies in which these complaints originally arise; yet without a framework for organization, how would a civilian oversight agency function in accordance with justice?

Then again, must one refer to social theory to accurately capture the political landscape of a nation with regard to one bill before Parliament? The outcome of Bill C-38 may have an effect on the manner in which complaints are filed, adjudicated, the evidence gathered, hearings held, and discipline doled out. In short, this legislation will affect the way in which every Canadian citizen interacts with the national police force. The codified interaction of citizens with the political structure of the institution of police may be changing; this in itself should warrant sociological investigation.

Although one could use the subject matter of this thesis to test the insight and utility of conflict theory, labeling theory, Weberian theory, or any other social theory, that is not the purpose of this thesis. The primary goal of this thesis is to understand how the argumentative discourses made by Federal government, police, and CPC documents produce the legal framework of accountability that is used in Canada to oversee the RCMP.

It is the documents that are the subject of this analysis that will provide the data needed to understand the social forces that are at play in creating oversight of the RCMP. It is only through these documents that one can come to understand the social forces at work. Through the use of discourse analysis, one may see the

manner in which different ideologies, political motivations, and public influences intersect to create the process of a complaints system which brings about accountability for the RCMP and its members. Through this analysis I aim to examine whether justice is or is not being served in such a process. This thesis is not driven by theory; it is a grounded analysis that yields a descriptive examination of the state of RCMP accountability. Within the principles of a liberal democracy police derive their authority from the people, this is known as policing by consent, or democratic policing. The key question in this thesis concerns whether or not members of the RCMP are held to a measure of accountability that requires them to not only account and justify their actions but also take responsibility for them as well. Only when all three of these conditions are met can it be said that accountability has been achieved.

To answer these questions, the analysis will be guided by some principles of critical legal studies. Namely, a notion of constant critique, or doubt as Wolcher (1995) explains, will underlie this analysis. When we utilize doubt and critique as Wolcher proposes, one may understand the true nature of, and proper application of the law and legal rationality (1995). For Wolcher, critical legal studies means “taking very little for granted about what is discussed” (Wolcher 1995: 1783).

Doubt for Wolcher is a proper perspective from which to approach an entrenched idea or ideology, such as modern legal practice. If the entrenched assumption is correct, it will withstand the onslaught of critique. In this case the rule of law is an assumption of Canadian legal acts, the courts, and other legal bodies, which enforce sanctions. For example, for the rule of law to endure critique

and remain a valid assumption of the Canadian legal system, the rule of law must be maintained and upheld throughout all the processes of that legal system. In the context of this thesis if the RCMP are found to be held to a standard of accountability throughout the processes of the handling of complaints that is sufficient in a liberal democracy then it is valid to conclude that the RCMP are held accountable in this system. Otherwise, it is equally valid to conclude that the RCMP are not accountable. It is not taken for granted that because a system of accountability exists, that the RCMP are, in fact, held accountable.

It is Wolcher's notion of doubt, that I will utilize to conduct the analysis of this thesis. Wolcher's notion is best suited for exploration of whether or not the RCMP are truly held accountable. By utilizing the notion of doubt, and by taking very little for granted in examining the documents one can uncover the discourses that operate within this realm. Thoroughly examining the assumptions of each discourse as they arise within the analysis will aid in the understanding of how it is that civilian oversight of the RCMP protects the *Charter* rights of protesters in Canada.

Critical legal studies could therefore be useful in assisting an argumentative discourse analysis. Although a great deal of critical legal scholarship has focused on how the ideas of law are applied in the courts and to the legal profession it can also serve as a useful framework for studying the complaints process and how it operates with respect to the RCMP. In this sense it has been stated that critical legal studies attempts to demystify the perpetuation of social injustice through the legal system, by understanding how social differences affect the application of law. Classical applications of this can be seen to arrive at the analysis of race, gender, and socio-

economic understandings of inequalities that are perpetuated by the legal system. However, this thesis will not employ any specified approach such as race, gender, or socio-economic perspectives, but rather, approach this analysis with the purpose of uncovering the different discourses that influence the creation of civilian oversight of the RCMP. The critical legal perspective that is used in this analysis

conveys the notion that the ideas people hold about the law are constituted in the context of their social existence and, in turn, will affect the reproduction of society. Thus, the ideology of law contributes to legitimize the legal as well as broader social order to establish a condition of hegemony (Deflem 2008: 126).

Different approaches to critical legal studies

[...] have a common image of law as shaped by a wider society, but also as shaper of the society in which it operates. Law does not merely determine a society and more than *vice versa*. At this point, the mutual construction of 'law' and 'society' as historical manifestations is rendered clear, and this effectively contests conceptions of law and society as clearly independent beings, as entities *sui generis* (Pavlich 2011: 9) (emphasis in original).

As Wolcher states a critical legal perspective is “a perspective from which the existence of limits on thought and speech about law can be recognized and accepted” (Wolcher 1994-1995: 1783). Meaning that, from this perspective it is possible to understand not just the law and the application of the law but also the reasoning and actual usage of the law. This is reminiscent of a reading of law that differentiates between the way the law ought to and the way that it does produce justice. Whereas a classical liberal scholar may argue that the law ought to protect individual liberties and the right to self-determination, how the law actually does this for each and every Canadian may be a highly differentiated process. For this purpose critical legal studies “wanted to show how [the] mainstream [legal thought] perpetuates

social hierarchies, even if unintentionally, and to raise consciousness [...] to initiate the elimination of these inequalities” (Pavlich 2011: 120).

It is possible to approach this examination with a preposition of doubt, as Wolcher proposes. In other words, the law is not a certainty.

Critical legal studies seeks to provide an environment in which radical and committed scholarship can thrive in diversity with no aspiration to lay down a ‘correct’ theory or method. The element of cohesion is provided, in the first instance, by a shared rejection of the dominant tradition of Anglo-American legal scholarship, the expository orthodoxy or, more crudely, the ‘black-letter law’ tradition (Fitzpatrick & Hunt 1987: 1).

This notion that the black-letter of the law does not in fact account for many legal decisions is crucial to the perspective used in this analysis. Conversely, if the letter of the law was rigidly followed, then the application of the law would be more predictable. But this notion of doubt and uncertainty encourages one to consider what else besides the law leads one, when applying the law, to certain outcomes. Within the context of this study, I will examine how the RCMP and the CPC interact in producing justice for complainants and accountability for the Force. By employing a critical legal perspective to analyze the content of the analysis this study examines not just the legal framework by which accountability is attained through this process but the discursive arguments that are made by stakeholders in this process.

Francesca Polletta (2000) and Marius Pieterse (2007) have utilized critical legal studies to analyze the social construction of rights discourse in both the American Civil Rights Movement from 1961 to 1966, and the South African Constitutional Court respectively. The consensus from this scholarship is that the

usefulness of rights discourse is limited, but not altogether misleading, in the sense that a narrative of rights discourse is necessary to establish a minimal protection of marginalized and vulnerable enclaves of society (Polletta 2000; Pieterse 2007). Additionally, the writing of Peter Gabel and Duncan Kennedy touches on the principles of critical legal studies, as they suggest that those who are involved in the struggle for improved rights keep their “eye on power and not on rights”, as rights are always “integrated within an ideological framework” (Gabel and Kennedy 1984: 36). Beyond the specific articulation of any one social characteristic such as race, gender, or socio-economic criteria, it is in fact power that will be major focus of this thesis. Where does it lie, how is it used, and to what end is it used? For law to function as a protection of individual rights from the unjust infringement of the state – which is the objective behind the *Charter* – there must be a balance of power between the entities that are involved in the policing of protests and those who protect individual rights.

This is where critical legal studies is particularly useful for this study since it helps demystify the fact that black letter law is not what is put into practice and helps uncover where power lies in the application of regulations and rules that govern the handling of complaints against the RCMP. Drawing from the seminal work of William Chambliss (1964) one can see the early application of a critical legal perspective uncovering the ideologies and motivations for vagrancy laws in the Britain and United States. Similar to this work, although parts VI and VII of the RCMP Act are legislated to form a mechanism of accountability for the Force, how is it that power is distributed within the relationship between the Commission, the

RCMP, and the complainant? It follows from such an examination that one could hypothesize the existence of several types of discourses within the documents examined in this thesis. In this thesis I hypothesize the existence of four distinct discourses (*additive, subtractive, deflective, and accepting*) that will be expanded upon in the third chapter. It is these discourses which operate much in the way that Chambliss discovered that extra-legal structural influences affected the application of vagrancy laws in the UK and the United States (1964).

In keeping with the notion of Chambliss, what social structures govern the application of law in this context of protest policing, and subsequent complaints handling? Additionally, how does this distribution of power effect the application of *Charter* rights? Demystifying the power dynamics ingrained in the system of handling complaints made against the RCMP will draw on the “arguments made in the law and the decisions reached, [which] cannot be structurally distinguished from political discourse. The claim to objectivity in law merely masks its political qualities” (Deflem 2008: 193).

Justice is certainly subjective, as is the case with violence which Judy Torrance has described (1986), but this does not mean that a theoretical paradigm is necessary to understand it in a practical sense. The subjective nature of something like violence makes it difficult to speak objectively about it, but it is not impossible to approach an analysis of it objectively. In conducting the analysis of subjective remarks one must be diligent in interpreting that one arrives at an objective conclusion as to the nature of the discourses that arise. To understand how individuals interact with entities such as the RCMP during protest settings and

the subsequent process of launching complaints a frame of reference shall be utilized that draws on the literature, such as Wolcher's notion of doubt, and taking very little for granted. In conjunction with the notion of Fitzpatrick and Hunt who describe an examination beyond that of strictly interpreting the black letter of the law this will be useful to uncover the discursive themes that exist within the documents that support and challenge the system of RCMP accountability.

In critically examining the policy of the CPC and the law which governs one must be aware of the ways in which discourses are shaped by the stakeholders that influence their formation. In 2004 Tim Prenzler found that beyond the converging opinions among different stakeholders in accountability on the issue of moving towards an external control process to take responsibility for serious cases of alleged misdeeds, the majority of discursive arguments tend to be divergent. To examine the matter at hand, one must return to look further into the context of the present study.

Chapter 2 - Literature Review

Man was born free, and he is everywhere in chains.
- Jean-Jacques Rousseau²

Situating the current study in a proper context is vital to understanding any findings one might observe. To accomplish this, the thesis must first examine the different constructions of civilian oversight as they exist, but rather than just a cursory glance at the differences and similarities one must pay attention to the ways in which each approach to accountability creates a unique power relationship between a police force and the overseeing body. Following this examination of different systems of accountability this thesis will delve into the current framework of the RCMP complaints process. In order to understand the current system of RCMP accountability, it is crucial to acknowledge and grasp the existing literature of the subject.

Civilian Oversight

What is civilian oversight and how it is defined? Are there different forms of civilian oversight that this type of accountability can entail? Before the relationship between the Federal government and civilian oversight of the RCMP is examined,

² Rousseau, Jean-Jacques. (1968) *The Social Contract*. Translated by: Maurice Cranston. Penguin Books Ltd. Harmondsworth, Middlesex, England.

this is the question that must be answered. The bulk of academic literature examining civilian oversight of police forces originates from American scholars and studies of American police forces (Buren 2007, Clarke 2009, Lersh 1998, Perino 2006, Stone 2007, Walker 2001, Worrall 2002), while a smaller number of studies focus on Canadian police forces (see Cooley 2005, Landau 1994, Landau 1996, Lewis 2000, Stenning 2000, Watt 1991), and a small but prominent amount of research originates from Australia (see Prenzler & Ronken 2001, Prenzler 2004, Prenzler & Lewis 2005). In contrast to the vast amount of literature written with regard to the British police force, (Marshall 1978, Jones, Newburn & Smith 1994, King & Brearley 1996, by no means an exhaustive or complete list), the only literature dealing with the British police complaint systems was written by Graham Smith (2004), and Robert Reiner (1991).

The literature is nearly unanimous when it comes to detailing what is meant by the term “civilian oversight” of police forces. Scholars observe this process as independent, civilian controlled, and transparent in nature. Independence refers to the relationship that any civilian agency has with regard to the police force it is investigating. Most notably, the force subject to investigation should relinquish any control over complaint investigations and the civilian agency should not take any direction from the force (Prenzler 2004).

Tim Prenzler and Carol Ronken refer to three different levels of independence that civilian oversight could possess and the different abilities either civilian agency could possess under each banner (2001). They suggest “internal affairs,” “civilian review,” and “civilian control” as the three broad categories that

could define an oversight agency. Internal affairs, they described as nearly complete in-house handling of complaints against a police force, meaning, that police receive complaints directly, police investigate their own officers, and police in one place or another on the force's hierarchy, determine punishment. The process is rather closed off to the public and the complainants themselves may have little and sometimes no input into the process besides providing testimony or a written or oral statement to an investigating officer, if an investigation is ever conducted. The internal affairs model is seen as the least independent of the three models and also the least civilian controlled. The only form of transparency that could occur in a liberal democracy in this circumstance would be judicial action, in a circumstance where a complainant sues an officer or the whole force, or where there are criminal actions found on the part of the officer and charges are laid. Conversely, "[v]irtually every significant review or commission or inquiry in English-speaking countries in the last few years has condemned the record of police investigations, often in extremely strident language, and the pattern is increasingly repeated throughout the world" (Prenzler & Ronken 2001: 157 citing: IACOLE 1998; 1999). Much of the debate tends to stress the inability of police to investigate their peers; however, there are a select few who in some cases believe that it is only police who can investigate police. They are the only ones who can break through the "blue wall of silence" (Watt 1991: 350) and gain access to the brotherhood of police officers.

Civilian review is the second model that Prenzler and Ronken describe in their study. Under this model, police would largely be responsible to conduct investigations into complaints and would still be responsible to impose disciplinary

action. There is, however, the additional role of a civilian review, which in many circumstances provides an audit and/or appeals function. Case files may be audited to ensure that the police investigations are conducted properly. Additionally, complainants themselves may appeal decisions following an investigation's findings, be they unsubstantiated complaints, or unsatisfactory disciplinary action. At times this review agency may find it fit to conduct either joint or independent investigations, to overturn police decisions after an initial investigation, to re-open an investigation, or to call for parliamentary committees to hold hearings; the degree of action available to such an agency will be decided by the authority given to its mandate, set out in law. This added transparency in the complaints process helps add to public confidence in the system to the extent that the review process ensures quality investigations and a valid disciplinary system (Prenzler and Ronken 2001: 162).

Critiques of this system tend to point out the inability of civilian review agencies to achieve their stated goals, whether it is through the lack of legal mandate or the actions of conservative, appointed directors who can be seen to be protecting police interests (Prenzler and Ronken 2001). The former head of the Commission for Public Complaints Against the RCMP, Paul Kennedy, raised serious concerns as to the capacity of any oversight agency to ensure adequate accountability (Waterloo 2010). Other critiques that Prenzler and Ronken also make point to the employment of former or current police serving on committees or investigations, as problematic (2001). Civilian review agencies can be used as political scapegoats for those in power who want to be seen to be progressive but do nothing to change the status

quo. In both these ways, politicians gain votes. By creating review agencies, liberals are likely to feel acknowledged, however, without giving the agency enough power to make any substantive change, politicians are less likely to lose any votes from moderate conservatives.

The third model shifts power in the opposite direction from the first model, from the police having complete investigation and disciplinary decision-making, towards a “civilian control” agency. This model implies no or minimal police involvement in the investigation and disciplinary process. It has, however, been argued by some that police should have some involvement in the complaints process so that they feel they have a say in the process and are not alienated from it altogether (Landau 1994, Prenzler 2004, Walker 2001). This model exemplifies a shift in power from police to civilians, thus adding an element of independence to this model. The general idea is that an independent agency to handle complaints brought against a police force would provide reports to the citizen who launches the complaint, to the commissioner of the police force under question, and also to the public through the intermediary of government (Prenzler and Ronken 2001).

Prenzler and Ronken’s criticism of this model which gives lay people, who are unfamiliar with police culture, direct access to it, believing that police would close ranks to protect a member of the force (2001). Congruent with this critique is a belief that only police are able to investigate other police and are the best people suited to do such a task. Conversely, Prenzler and Ronken also believe investigation is a general skill that can be taught and learned by anyone (2001).

The role of civilian control in this third model implies control over the process of investigation and final control of disciplinary action. In many respects, any of these three models would theoretically work if each worked harmoniously with and if any conditions which lead to organizational friction could be abated. Stone (2007) addresses three distinct avenues of accountability, which are: internal, governmental, and societal. These three models of complaints based accountability that Prenzler and Ronken (2001) describe fall under what Stone (2007) calls the societal avenue of accountability. It is organizations at these three different levels which, when working together to compliment one another, bring accountability and transparency to fruition and also offer the best form of accountability and transparency. Social organizations become adversarial when their mandated goals are not the same. Civilian review agencies argue for more access to information in the complaints process and argue that the investigations are jaded. Civilian control agencies are challenged by police unions at every turn trying to make their tasks as difficult as possible in an effort to protect their officers' rights. Christopher Stone (2007) argues that it is the structural interdependency of police accountability mechanisms, and their harmonious interaction, that is key to making police accountable, rather than the perfection of one agency or organization at any one level.

To a degree Stone is correct in his assessment of structural interdependency; no one organization operates in a vacuum devoid of cause and effect reactions to decisions and repercussions.

[T]he debates in the field often pitted one form of oversight against another. For example, rather than seeing internal accountability

mechanisms and external complaints authorities as complementary, public policy debates pitted advocates for internal control against those who supported independent oversight. Some people favored civilian review boards, others favored special prosecutors and still others favored stronger internal affairs bureaus within police agencies. Today, in contrast, partisans on all sides generally concede that neither internal nor external oversight can maintain a culture of integrity without the other form of oversight as well (Stone 2007).

This realization is not, however, an argument that advocates forgetting about how it is that an organization can be run effectively. Even though the majority of influence upon an organization's efficiency may be external to an organization, this does not mean that internal organizational efficiency and effectiveness are invalid objectives to strive to achieve, but rather, that these issues need to be addressed with the context of external factors. In the case of the current state of the RCMP Act, what is the point of having an agency to make recommendations upon the conclusion of complaint investigations, if the Commissioner who receives these recommendations is not obliged to take action?

The discussion of police oversight and disciplinary efficiency has brought some scholars to try to quantify the effectiveness of different types of systems. Due to the nature of this task, one key question must be asked: How exactly is the effectiveness of a system of complaints to be accurately measured? Is the answer in the number of complaints filed, the number of complaints cleared, the ratio of these two, complainant satisfaction with the process or outcome, or a wholly different measure? Within the limited research on this topic, authors agree that quantifying success or efficiency is a very difficult task (Buren 2007, Landau 1994, 1996, Prenzler 2005, Walker 2001). A very concise insight into this question can be found

in the concluding section of Samuel Walkers 2001 publication, *Police Accountability The Role of Civilian Oversight*, where he writes: “The effectiveness of an oversight agency depends on its formal structure and the powers it possesses, the activities it engages in, the quality of its leadership, the support it receives from the public and the responsible elected officials, and the attitude of the law enforcement agency it is responsible for overseeing” (187).

The degree to which any civilian oversight agency of a police force will be effective will depend on the way in which the agency is structured. Tammy Landau succinctly stated: “the main thrust of the reform literature is that [...] ‘success’, is legislatively defined” (1996: 294). Ideally, the civilian oversight agency that worked perfectly would strive to have no complaints launched against the force it oversees. Two conclusions one could make from this would be that every person who interacts with this police force is satisfied with their treatment at every step in the criminal justice system operated by the force, or everyone who would wish to complain feels utterly acquiescent with the system and feels that complaining would achieve nothing.

An oversight agency’s ability to “clear” complaints, much like any police department clears cases of theft or homicide, says nothing about the quality of care in each case. If an oversight agency, upon review of police investigations of complaints, agrees with every disciplinary action taken by a police force, or conversely the lack of disciplinary action taken if a complaint is unsubstantiated. This only shows that such an agency is efficient at sorting through the paper work of complaints, and proves nothing in regards to the quality of a complaint’s

investigation or adjudication. Conversely, if an oversight agency disagrees with every action taken by an internal police investigation, this shows that the force is either too complacent with its officers' conduct or is complicit in the structural circumstances which lead to behavioural misconduct by officers.

Coming full circle, the discussion comes back to the question of what are the goals of external and independent oversight. In many respects, why is external and independent oversight of police departments necessary unless there is a societal drive or need to reduce or combat the structural tendency of some police forces to abuse the rights and freedoms of the public and of private citizens? Not only are individual complainants seeking justice for their suffering but the system as a whole in many cases needs to be shored up with public confidence, reminiscent of the remark made by Lord Hewart nearly 90 years ago in *Rex v. Sussex Justices ex parte McCarthy*, that it is not only necessary that justice be carried out, but that justice must also be carried out in full view of the public in a transparent manner that is subject to a valid form of accountability.

The ideal democratic police agency should protect the rights and freedoms of citizens, not be the agency that directly impedes these. Regardless of form, the function of an agency mandated to hold the national police force accountable for its actions should include this as a cornerstone of its mandate. If the rights of a nation's citizens are ignored, a national police force no longer operates on the critical principle of democratic equality for all.

In many respects, the civilian control model of independence resembles the fully independent police model set forth by Kent Roach (2007) in his essay "The

Overview: Four Models of Police-Government Relations.” In keeping with the nature of Lord Denning’s comments in a 1968 British challenge to law enforcement, Roach states that, “police were independent from government not only with respect to law enforcement decisions such as initiating a criminal investigation and laying charges, but also with respect to issues of police deployment” (2007: 55). The ability to police, independent of government involvement, should follow the line of Justice Hughes’ (2001) recommendation in the 1997 APEC report calling for “statutory codification of the nature and extent of police independence from government with respect to [...] the provision of and responsibility for delivery of security services at public order events” (451). However, police do not operate in a vacuum devoid of politics.

Ultimately, the ideal oversight agency of a national police force should offer fair and just mechanisms for review or investigation of misconduct, or analysis of police policy. It should hold the rights of the citizens in the same regard as the officers alleged to have conducted an abuse of power, derived from the principle of equality, equality before and under the law, as well as from a regard for basic human decency. How such a state is achieved is a rather complex debate; however, one holds the goals of such a system above the ideal that justice should be seen to be done. Justice must also be done. Justice in this context is governed by the legislation enacted to create the Commission for Public Complaints Against the RCMP, which is currently found in the *Royal Canadian Mounted Police Act* in Parts VI and VII.

Current Legislative Framework

Part VI of the RCMP Act covers topics specific to the creation and organizational aspects of the Commission, and part VII gives specifics for the handling of complaints (1985). All these aspects are covered from section 45.29 to 45.47 of the Act (Royal 1985); however, Bill C-38, which proposes to amend the *Royal Canadian Mounted Police Act*, would create a new complaints agency and will lengthen this legislation from section 45.29 to 45.87. There are in addition, some significant differences between these two pieces of legislation, consequently changing the manner in which complaints are handled.

In passing this bill, Parliament would create a new civilian oversight agency, the Royal Canadian Mounted Police Review and Complaints Commission (Hence forth known as the RCC). It would retain many of the similarities to the CPC and likely absorb the CPC staff and physical assets but would represent a face-lift of current RCMP oversight. Bill C-38 would change the powers, duties and functions of the Commission, information provisions, it would broaden the ability of the RCC to reject complaints, and it would change the way informal resolutions are handled. The bill would also broaden the ability of the RCC to investigate complaints or issues of public interest, but the legislation would also constrain the RCC in many of its other abilities (Bill C-38 2010).

Substantively, the *Royal Canadian Mounted Police Act* would be longer due largely to the addition of a section entitled "Information Provisions" (sections 45.37 to 45.46) (Bill C-38 2010). This section outlines the abilities of the Commission to access information held by the RCMP, including "privileged information," and the

manner in which this information may be utilized in a hearing, recorded, and protected from third parties and from dissemination. The Commission has the right of “access to any information under the control, or in the possession, of the Force that the Commission considers is relevant to the exercise of its powers, or the performance of its duties and functions” (Bill C-38 2010: Section 45.37(1)). This ability to access any information that the Commission deems relevant, signifies a shift of power away from the Force towards the Commission. It is however important to note that under the current RCMP Act and proposed legislation that the Force is still the initial investigating body of most complaints, which is a point of contention for many academics and the public alike.

Under the current legislation, it is only once the initial investigation has been completed that a complaint may be referred to the Commission by a complainant for review. Section 45.41 of the current legislation deals with the referrals of complaints to the Commission (Royal 1985). Within subsection two of this section, “Material to be furnished” article B states that only “such other materials under the control of the Force as are relevant to the complaint” shall be forwarded to the Commission for further review” (Ibid: Section 45.41(2)(b)). The contention of many is that the ability to determine what is pertinent and relevant to the review of the complaint is held within the Force, the exact entity that is meant to be under review.

Despite the proposed changes, the current system of complaints processing leaves the Force in control. The Commission is in a position only to review complaints that are referred to it by unsatisfied complainants, or decisions rendered by the Commissioner. The Commission is in the position to independently institute

a hearing of inquiry into a complaint if the Commission “considers it is advisable in the public interest” (Royal 1985: Section 45.43(1)); however, this is generally only the case in extreme and rare occasions. Any recommendations made by such a hearing or final report of the Commission and presented to the Commissioner are not required to be implemented. There is no mechanism in place to ensure that the independent review conducted by the Commission and the subsequent recommendations are undertaken by the Commissioner and put into RCMP policy. The Commissioner, if he or she does not agree with the recommendations of the Commission, is only required to state in writing why he or she disagrees. Surprisingly, it is extremely easy for the Commissioner to dispose of complaints by means of refusing to investigate, citing that the complaint may be better handled by another mechanism in legislation: “the complaint is trivial, frivolous, vexatious or made in bad faith” or that “further investigation is not necessary or reasonably practicable” (Royal 1985: Section 45.36(5)).

Conversely, it is noteworthy to observe that several sections of the current legislation offer hope for the system. No member of the Force is eligible to be appointed to or be a member of the Commission. This combats what Andrew Goldsmith calls “occupational alignment”; “the tendency for prospective solidarity to extend beyond one agency to another that works cooperatively with it or in a common field” (Prenzler 2004:89 citing Goldsmith 1996: 38). The opportunity to launch a complaint is also promising. One does not have to be the subject of unwarranted actions by an officer in order to launch a complaint. Section 45.35(1) states: “Any member of the public having a complaint concerning the conduct, in the

performance of any duty or function [...] of any member or other person appointed or employed under the authority of this Act may, whether or not that member of the public is affected by the subject-matter of the complaint, make a complaint” (Royal 1985). Even if the complainant is not directly affected by the actions of an officer, he or she still retains the right to launch a complaint, feasibly on someone else’s behalf or because of something he or she has witnessed and to which he or she has taken offense.

Rights and freedoms are not absolute in Canada, and at times they may be curtailed, yet what is allowable or what is a justifiable limitation of those rights and liberties is a question worth asking. Through a long history of case law in Canada, there has arisen just such a mechanism; it is referred to as the Oakes Test. Section 1 of “[t]he *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society” (Canadian 1982). The precise language used in this section places the onus on the prosecution to provide “convincing evidence that limiting that right or freedom is necessary” for the court to make a determination of whether the limitation of any right is in accordance with fundamental justice (Mackenzie & Plecas 2001: 35). The right for me to swing my fist stops at my neighbour’s nose; the rights spelled out in the *Charter* are not absolute and may be limited. The right to assemble and to protest is protected; however, the extent to which a protest or assembly infringes on someone else’s rights will need to be balanced, and any action taken by the state will need to be scrutinized by the Oakes Test.

The test consists of two main steps. First, as spelled out in the pivotal case *R. v. Big M Drug Mart Ltd.* (1985), the reason by which state action is taken must be “of significant importance to warrant overriding a constitutionally protected right or freedom” (Bickenbach 1998: 52). It must be reasonably necessary to limit the rights or freedoms of any number of people and beyond that anything frivolous or trivial in nature in order for limitation to be reasonable. Second, once it is established that the objective to be achieved in the first step is reasonable, then the prosecution must show that the action taken in limiting any rights or freedoms is reasonable and demonstrably justifiable. A proportionality test is conducted to demonstrate that the means of limitation reflect the reasonableness of what is sought under the first step. Within this second and final step, there are three main components.

First, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Secondly, the means, even if rationally connected to the objective in the first sense should impair ‘as little as possible’ the right or freedom in question: *R. v. Big M Drug Mart Ltd.* (1985). Third, there must be proportionality between the *effects* of the measures which are responsible for limiting the *Charter* right or freedom, and the objective which has been identified as of ‘sufficient importance’ (Bickenbach 1998: 52) [emphasis in original].

If at any point in the test a component or step is not satisfied, the action imposed by the state is deemed to be of no force or effect. Therefore, the Oakes Test strikes a balance between individual rights and the public order.

It is common for the Oakes Test to be applied in the setting of a court case by judges and juries deliberating on the case’s merits. Police operate with independence from the political realm; however, they do not operate in a vacuum.

During planned protests and instances where the police have an opportunity to communicate with event organizers, the police may develop a strategy or plan to deal with concerns that they have. Yet, police must take the *Charter* rights of all protesters into account. Even though they are given operational independence, police forces in Canada are accountable for the decisions made and actions taken. Being held accountable to the judicial branch of government is only one form of accountability to which the police are held. In addition to this there should also be a substantively just accountability mechanism in place that can adequately hold the police to account. A substantively just accountability mechanism would 1) hold officers or the Force to account, 2) it would demand officers to justify their actions or the Force to justify its policies, and 3) it would hold those responsible for their actions or policies.

Yet, despite what may exist in the current legislation and the proposed changes that are on the books, from the beginning of the CPC, the emphasis has been towards “external review and investigation of police conduct was emerging as an essential safeguard for free and democratic societies” (Commission 1998). Over twenty years later the same commission is seeing a growing public trust deficit in the RCMP. A trust deficit can only be “eliminated by increasing transparency and accountability of RCMP activities by means of an enhanced regime for civilian review of RCMP activities” (Commission 2009: 34).

Chapter 3 - Methods

[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions, and have profound unsettling effects as it presses for acceptance of an idea.

- Justice Potter Stewart³

In the 2009 to 2010 period, the Commissioner for Public Complaints Against the RCMP received nearly 4000 complaints, inquiries, and alternative dispute resolutions (Commission 2010b). If the number of complaints that the CPC received annually increased this would say nothing about the functionality of the system of accountability that governs the RCMP, or whether or not justice is served in this system. Likewise a decrease in these numbers says equally little. Incidents such as the one described later that concern an event where RCMP officers fired rubber bullets at four young men in Quebec City with no warning are a powerful example of how the RCMP accountability can malfunction. The numbers alone cannot account for the irregular reaction of the Commissioner to recommendations. Additionally, the dismissive attitude of the Commissioner in reaction to a recommendation from the CPC implies gross disregard for the *Charter of Rights and Freedoms* which is not reflected in the statistics of founded or unfounded complaints. Rather it is the dismissive nature of the Commissioner's response to founded complaints and his

³ Edwards V. South Carolina, 372 U. S. 229 (1963)

refusal to act in accordance with the principles of justice that exemplifies the systems malfunction.

Despite this, the number of complaints has risen from 1,258 in 2007-2008 to 1,692 in 2008-2009 and continued to increase to 1,802 in 2009-2010, which shows a steady increase in the number of official complaints launched by members of the public (Commission 2010b: 20). Understanding that this increase is seen in a time period where very little has changed about the system of RCMP accountability, the increase in the number of complaints received annually could be attributed to what Paul Kennedy termed a growing “trust deficit” between the Canadian public and the RCMP (Commission 2009: 34). The report continues by stating that

one must confront the fact that the seeds of distrust are built into the genes of democracy and the arrival of its touch is merely a question of time. [...] Failure to address this issue increases the risk that distrust will become the dominant characteristic of the public-police discourse. The RCMP, its members and all Canadians deserve better (Ibid).

If the system of RCMP accountability can protect an extremely vulnerable segment of society it should be able to routinely provide accountability in any facet of RCMP interaction with the public. In selecting protests as the focus of the case studies used in this thesis, this should stand as a test of one of the most politically vulnerable segments of society.

Drawing from the protest literature that was examined earlier with regard to the increased militarization of police and the ever more controlling tactics utilized by police in the policing of public order, there is an ever increasing intrusion into the freedoms of protesters in Canada. In combination with the remarks of the Auditor General that the increasingly intrusive powers of the police should “be subject to a

level of review proportionate to the level of intrusion” (Fraser 2003: 33), as the police are increasingly involved in intrusive tactics and the exercise of power to intervene into the Canadian public’s ability to protest, the RCMP’s conduct in this area should be the attention of greater scrutiny. Following from this it is extremely important to scrutinize the way in which complaints arising from protest have been handled throughout the stages of the current system of RCMP accountability.

How then does one go about analyzing a system of accountability through organizational mandates, laws, and legal frameworks of governance in the context of protest policing? Would a quantitative analysis of the number of times a phrase or word appears in the text of a document prove anything? What is supported and what is denied must be understood to fully determine what is given credence in this study. If a policy does not allow officers on the front line of policing public order to respect the *Charter* rights of protesters, the policy must be repealed to ensure that officers can make such accommodations. The actions of officers, whether it is an individual discrepancy or a systemic policy contradiction, may result in *Charter* rights infringements of the protesters. This study will examine how the police are held accountable when the rights of protesters are infringed, or allegedly infringed upon. Through an examination of the different discourses that influence the system of complaints against the RCMP, this study will examine how the RCMP are held accountable.

Three specific events are utilized as case studies. Several criteria were used to select cases. First, each was an event investigated by the CPC. Secondly, each had been the result of confrontation between police and protesters. After conducting a

search of major Canadian newspaper sources via the Lexus Nexus database, several protest events were found where complaints had been launched against the RCMP. Some events had to be rejected because no investigation was conducted, as was the case with Howard Epstein's complaint regarding the G-7 protest in Halifax, Nova Scotia, alleging unnecessary use of tear gas and Sharon Anderson-Earle's complaint alleging excessive use of force (Sun 2002). There was also a complaint made against the Sûreté du Québec (Quebec Provincial Police) regarding the treatment of protestors by police at the 2007 August 20th Montebello Trilateral Summit of Stephen Harper, U.S. President George W. Bush, and Mexican President Felipe Calderón (Johal 2007), but this also had to be rejected because the complaint was made against the Sûreté du Québec and not the RCMP. There were also several events where reports were made about protests and where the RCMP was present, but no official complaints were made. These cases also had to be discarded from this analysis. In general, complaints arising from protests seem to be quite rare. The CPC keeps no systematic data on the context of a complaint's origin beyond the report that is made by a complainant. Nevertheless, the CPC consistently cites the most popular reasons for initiating a complaint is "attitude other than abusive language [and] criminal investigation quality (RCMP) other than note taking" (Commission 2009). In fact, to my knowledge, the three chair initiated complaints that are utilized by this thesis are the only instances of complaints arising from a protest. Whether a complaint is mundane or politically charged both are worthy of a fair investigation. Trust can be lost and earned both on the individual level when a complainant is satisfied, or not, with how a complaint over a traffic ticket is

delivered, and in the way in which a public interest hearing is conducted over a highly politicized and publicized matter such as the APEC Conference in 1997. And, in fact, both instances are handled (at least the law and policy state they should) as one and the same.

In this context of discourse analysis one can imagine discourse as the expression of power within the RCMP accountability system. Where each stakeholder in the process has a goal and an ideological commitment to the process, these can often be at odds with the goals and commitments of other stakeholders. It may in fact be the case that the RCMP and the CPC are at odds as over the definition and perception of proper public order policing. And yet, as each stakeholder has a relative degree of power via-a-vis other stakeholders involved, the system of accountability may exert a structure of power over the parties involved. The law is quite clear with regard to how complaints are to be handled, but in following this process one might ask if there is a relationship of power that may tend to benefit one stakeholder over another. In drawing from one dynamic where there is a clear relationship of power, the policing of public order, this thesis may be able to find another relationship of power within the system of complaints investigation.

Scholars who study protest policing and the policing of social movements agree that police hold the monopoly on violence and coercive control. Thus, for example, from the literature on the escalating force and negotiated management models of protest policing it is clear that despite the clearly divergent and unique approaches to policing the targeted groups of protesters both these methods exert a great deal of social control upon individual and groups of protesters. And yet

despite the resiliency of protesters to adapt and find innovative methods for subverting the control tactics, the balance of power always remains with the police. Whether or not the control tactics are legitimate or illegitimate it seems that the police continue to hold the trump card within this dynamic. In analyzing the system of RCMP accountability it would also be advantageous to understand if a similar dynamic exists and if so how, but to do this one must first deliberate on the process by which this analysis will be conducted.

To assess RCMP accountability, three cases that have been selected for analysis. They are all cases in which 1) there was a protest, 2) a complaint was launched against the RCMP, and 3) the complaints were investigated as part of a public interest hearing. The first case concerns the 1997 Asia Pacific Economic Conference (APEC) that was held on the campus of the University of British Columbia. The conference itself drew major media coverage and lasted for several days and also involved several months, if not more, of planning and strategizing on the part of police and protesters alike. Fifty-two complaints, falling into 17 categories were launched. The second case is on the 2001 Summit of the Americas (SOA) protest in Quebec City. This event lasted a few days, however, it differed from the APEC Summit. There was only one complaint launch by Svend Robinson, a Member of Parliament at the time, who alleged a) two instances of excessive use of force on the part of the RCMP, b) ill preparedness of the RCMP for the injuries of protesters suffering from the use of tear gas and rubber bullets and other crowd control methods, and c) the unjustified use of power and authority. The third and final case focuses on the events surrounding Saint-Souvier and Saint-Simon, New

Brunswick on May 2nd to 4th 1997. Similar to the APEC events, this document also contains multiple complaints of various types. The report documents the evidence that spanned three days of events between protesters and the RCMP. These protests were not organized and planned to the same extent that the APEC and SOA protests were. These were more spontaneous in nature, arising from the reaction to the news of school closures in the two cities.

Protests nonetheless can be seen as an extreme display of political activity and expression to return to the discussion of democracy from the first chapter; how is it that protests are informative to this analysis? Without being able to protect the most fundamental freedoms under the *Charter* there would be little hope for any other rights that Canadians enjoy. As the McDonald report states: “Canada must meet both the requirements of security and the requirements of democracy: we must never forget that the fundamental purpose of the former is to secure the latter” (McDonald 1981a: 43). The rights of Canadians are only allowed to thrive when the police of this nation uphold them in every duty they perform. That being said, it is also important to understand that the police are fallible, and when they make mistakes an adequate system of accountability must be in existence to hold them to account and conduct fair, independent, and impartial investigations.

When examining investigations of the CPC, it would be advantageous to also examine documents, processes, and commissions that influenced the creation and molding of the agency as it stands today. The critical documents are the Marin Report, the McDonald Report, the Brown Report, and the specific sections of law

within the Royal Canadian Mounted Police Act which governs the CPC.⁴ Conversely, this analysis will try to determine the current state of the complaints process and the proposed process encapsulated by Bill C-38. Such reports previously specified, as well as reports from the CPC, documents from the Federal Parliament, and the Parliamentary Committee on Public Safety and National Security, all play a part, if only a small one, in shaping legislation, and policy creation that affect the nature of the handling of complaints.

In one sense, archival analysis that may be introduced by analyzing public statements or conducting interviews will reduce bias on the part of those involved with the process. Personal statements by individuals connected with the documents could shed light on the compilation of documents or offer insights that may not become salient after reading. However, they may also bias the analysis of documents, by not letting those documents stand for themselves. In another circumstance the document stands juxtaposed to a statement that could be made by an individual connected with the documents. In this case, the document may offer a less biased description of events than a personal statement, especially from someone with political bias or political aspirations. The basis for conducting such analysis is not to pull in every source or type of information that could possibly have relevance, but to propose a concise limit to the research and to operate within it. One with greater resources could conduct a similar analysis with other sources or even from a different perspective. This could be the objective for a future study.

⁴ Parts VI and VII of the *Royal Canadian Mounted Police ACT* 1985

This research is the first of its kind to my knowledge. Some have looked at the effectiveness of civilian oversight agencies of police forces (Prenzler & Lewis 2005), while others have examined the acceptance of civilian oversight where there has been none or only limited forms of it in the past (Landau 1994). This is to be an exploratory, non-reactive analysis of government documents, commission reports and legislation, examined through the three cases of public interest hearings investigations conducted by the Commission for Public Complaints Against the RCMP.

The analysis that will be conducted for this work will consist of document analysis (Marx 1984) with elements of archival research (L'Eplattenier 2009). Marx writes about uncontrollable contingencies as a form of data discovery. He writes: "the mishap at three mile island shows the failure of equipment and regulatory policies; the fire at the Las Vegas MGM Grand Hotel exposes fire and building code violations" (Marx 1984: 86). So too, the apparent violation of *Charter* rights during the APEC summit in 1997 could provide a possible glimpse into the preparedness of security at such an event, as could the apparent over-reaction of the RCMP during the peaceful and rather spontaneous march on the 4th of May in Saint-Souvier and Saint-Simon, New Brunswick. Document or content analysis Marx states, can uncover such contradictions or inconsistencies at the interaction of policy and practice.

How would it be possible to reach the conclusion that events such as these are failed attempts at proper policy practices? Largely, this is a subjective task each individual conducts, taking into account the context of the event and any relevant

evidence. Violence, to pick a term relevant to the debate, is a term that is very subjective in definition. To some, violence is a “behaviour that results in physical injury to people or damage to property” (Torrance 1986: 68) but this is still limited, and does not include the subjective nature of the definition. Some may believe the actions of police at the APEC summit were justified when they precipitously opened up canisters of pepper spray against protesters and bystanders in order to clear the road at Gate 6; for others this was a violent action that caused harm to all those caught by the spray (Hughes 2001: 350-351). The distinction Judy Torrance makes in her book *Public Violence in Canada* (1986), is that the way in which we perceive the legitimacy of the action taken will undoubtedly influence one’s perceptions of the actions as violent or not. Ultimately, this will affect one’s perceptions towards the event as a form of discovery or not. If the actions are seen as illegitimate, then this event will form the basis of data discovery, whereas the perception of legitimate action will not give any grounds for one to imply that the policy of police action and security has any need for change or revision. The *Charter of Rights and Freedoms* as well as the application of the Oakes Test, facilitates this role of deciding the legitimacy of actions taken that infringe on fundamental rights. This is a well established test that can be applied and has been used in many Canadian court cases since its creation in 1986 *R. v. Oakes, 1986 SCR 103*. However, very recently a case was decided (*Vancouver (City) v. Ward, 2010 SCC 27*) which carries implications for *Charter* infringements by police officers.

Vancouver (City) V. Ward illustrates this very point that the actions of officers carry weight and that there are repercussions for the unjust infringement of *Charter*

rights. Although the Oakes test was not applied in this case, the Supreme Court came to the conclusion that the actions of the officers to protect the Prime Minister were unjustified given the circumstances and thus the arrest of Cameron Ward was a breach of his freedoms. This case establishes that most fundamentally, the police forces, and those who employ them, are responsible for their actions. This is only one avenue that accountability can exist within.

A critical legal study, much like the Oakes test, is an impartial examination of discursive documents, for the purposes of this thesis. Applying the notion of doubt, proposed by Wolcher (1994-1995), the analysis will compare instances of alleged misconduct from the three cases of public interest hearings by the CPC to the argumentative discourses found to emerge from the documents that are analyzed. When practices of policing protests and argumentative discourses are juxtaposed one can understand how the discussion of Marx's uncontrolled contingencies as well as data discovery become relevant. The critique offered by Wolcher's notion of doubt is similar to the Oakes test because it weighs the appropriateness of each argument against the rights of protesters and the principles of a liberal democracy. Because Stone (2007) believes that the courts cannot alone sustain a functional system of accountability, he argues that two other avenues, *social*, and *internal*, should support the *governmental* avenue of accountability.

The *governmental* avenue of accountability (Stone 2007) seems to be functioning properly but under the mandate of the CPC, it was possible for the RCMP to withhold certain information it believed was not pertinent to the investigation of a complaint being conducted by the CPC. Conversely, those conducting the

investigation for the CPC believed that there was a necessity to gain access to more information than was available (Commission 2005). As the new legislation stands now, Bill C-38 will allow the RCC to have equal power to that of “a superior court of record to compel and enforce the production of oral and written evidence relating to a complaint” (Bill C-38 2010). In addition to this new ability to compel testimony and evidence, the reports of the Commission are all to be made public. As the Marin report suggests, the Federal Police Ombudsman, an office never actually created, was to have the power to review the Force and the CPC, specifically focusing on the implementation of recommendations made by the CPC to the Force. It was the ombudsman’s duty to report and make public any findings of public interest. As the office had no power to compel action, its principle was to inform those who had the power, that an issue required action (Marin 1976). Likewise, this seems to be the only tool currently at the disposal of the CPC to rectify any inadequacies or injustices in RCMP policy or in its members. However, the ability of the RCMP to withhold information in the past may have skewed the number of complaint investigations with which the CPC found fault during the process of review. Why the RCMP would withhold information is an integral question to ask. What information was withheld may also come to light if there is a vast discrepancy between the evidence provided by the complainant and witnesses, and the evidence provided by the RCMP as discussed before with uncontrollable contingencies. These discrepancies are exposed through document analysis. Discourse analysis will be the focus of this study, while document analysis and archival analysis as referred to above, may be helpful in drawing all of the relevant material together and organizing it.

Other integral documents to analyze when examining this quasi-jurisdictional process of the complaints policy are the transcripts of parliamentary debates and parliamentary committee meetings, where debate and formulation of the law mostly takes place. Once again, these documents are all public, accessible through the Canadian Parliament website and Publishing and Depository Services. It is interesting to note, however, that a document which outlines the “Speaker’s Permission Regarding the Reproduction of the Proceedings of the House of Commons and its Committees” states that any reproduction of a transcription from proceedings of the House of Commons or any Parliamentary Committee must be “accurate and is not presented as official” (Speaker 2010). All parliamentary debate and question and answer sessions are electronically recorded to form a permanent record that is publicly available.

Police culture may come to form a great hurdle that must be overcome by any investigative body when conducting investigations of a police force or a member within it. One must take into account the culture of police and be cognizant of the professional protectionist attitude police forces take to outside interference (see: Prenzer 2004, Prenzler and Lewis 2005, Prenzler and Ronken 2001). Susan Watt is also aware of the police culture to protect its own and close ranks when threatened; she terms this the “blue wall of silence” (1991: 350). Needless to say it is the task of the CPC or the investigative body to collect and compile the necessary data from the police force. Conversely, if the police force is the investigating body, as it is in many cases of RCMP complaints investigation, this culture may transgress from investigating to their full capacity and the letter of the law and display an

unwillingness to probe too deeply, or show an unwillingness to include all relevant information in a case-file as has been a criticism of the RCMP in the past. Adequate note taking has been repeated as a CPC recommendation for RCMP policy change, but it has yet to be fully implemented (Commission 2008, 2009). It has also been alleged that RCMP officers, at times, take less than sufficient notes, which makes the investigation or review of complaints arduous or altogether impossible (Commission 2010b). One who is dealing with reports where there may be gaps in the officers' notes must be aware of such information deficiencies or information gaps in testimony or evidence.

When one does not know what is missing but knows something is missing, how does one figuratively read between the lines? Alternatively, where something is missing or omitted, one must ask the question why is it missing or omitted? What is the context of the report in the area in which something is being omitted? But Ultimately, who benefits because it is missing?

Given the state of the phenomenon being examined, for the purposes of this analysis, non-reactive research on a host of documents that affect the RCMP complaints process will be studied from multiple locations and avenues of availability. In no way is this analysis intended to be the final decision on the RCMP complaints process as a whole. This analysis is based only on a specific set of criteria from which to examine the handling of complaints launched against the RCMP as a result of the RCMP's conduct during several protests.

The documents that will be utilized in this study represent a moment in time, a climate of politics, national policy, and a local response. By letting the documents

speak for themselves, they shed light on a segment of national attitudes towards the process of public complaints handling by the RCMP and the CPC. Logically, political debate in Parliament and parliamentary committees affect the way in which laws are created and how they are put into practice. This legal framework in turn affects the policy of the institutions which they govern, such as the CPC. These organizational policies then affect the goals and outcomes which the organization is mandated to achieve, in this case justice through public complaints made against the RCMP. The publication of complaints in turn adds to the public debate over issues such as police accountability. It is thus clear how the influence in such circumstances comes full circle to illustrate the interconnectedness of the policy, law, organizational mandates, and public debate.

Public debate informs the nature of discourse that this study will analyze. Discourses then manifest themselves within parliamentary debate and legal frameworks, which are subsequently followed by policy and organizational mandates. In this manner, the discourse analysis will follow the logical flow of influence that recognizes the complaints investigations as the product of discourse. Yet, it is necessary to understand that the final reports that are made public as a result of complaints being investigated in turn influence public debate. A complete list of the documents that have been included in the analysis of this study may be found in Appendix 2.

There are other issues of a political nature that arise from each unique case of a complaint such as, the issue of the involvement of the Prime Minister's Office (PMO). The PMO took direct action to intervene in the day-to-day operations of the

RCMP in planning security around the APEC Summit (Hughes 2001: 151-152).

Individual statements in each document do not represent the document as a whole and each statement represents an individual's position or perception of events; the precise context of a statement declares, at that particular time, a description of the events, relations, or interactions at that moment and in that specific context.

To assume that every section of a document over 500 pages long is characteristic of the public's reaction to the document as a whole would be to commit an ecological fallacy of sorts. By assuming every portion of a document is represented by one section could lead to the misrepresentation of the whole document since each section may, in fact, be unique. This is not the purpose of this study. Regarding the length of documents and the compartmentalized nature of the documents, it is understood that often part of each document may be incongruent with other parts for multiple reasons. In addition, one might ask can a single document have a single effect on a social phenomenon, which consists of so many distinct parts? Rather, it is the purpose of this analysis to determine the effect that each discourse has on the formation of the system of accountability surrounding the RCMP through Federal parliamentary debate, parliamentary committee documents, policy, legal frameworks, organizational mandates, and CPC documents. Each complaint will be framed contextually with the evidence provided by the documenting of said complaints. Therefore, this analysis will examine the sections of documents, which affect the treatment of protests pertaining to *Charter* rights, such as freedom of assembly and freedom of expression.

Naturally, this creates a bias in the process of selecting what evidence to examine because even before the complaints investigation begins, each party, complainant or police, is preparing to present its most positive projection of itself, or its organization in order to gain favour during the investigation. Police may wish to hide or offer a skewed interpretation of events. Likewise, protesters may offer a skewed and selective interpretation of events as they perceive them. This does not make analysis impossible but one must be aware of the motives of each party within the investigation. In raising the question of bias, one must also be cognizant of one's own bias. This, one hopes, can be suppressed by allowing the documents to speak for themselves and recognizing when an analysis is reading into the documents something that is not there. Naturally, conducting such an analysis will require an interpretation of evidence; however, interpretation is distinctly different from the introduction of bias in at least two ways.

Interpretation may offer a connection between statements made and outcomes observed. For example, in Hugo Gorringe and Michael Rosie's work at the G8 in Scotland where they observed that although context is important, the police response to a protest had as much of an effect on the outcome of protests as did the protesters themselves (2008). Whether the police response was a show of force or a soft hat and a warm face, Gorringe and Rossie (2008) saw that regardless of the nature of the protest, the police response dictated whether violent or peaceful police-protester interactions ensued. Continuing with this example, when conducting an analysis as the one undertaken here, one could draw a connection between a police force's overreaction to the threat posed by a protest and the

outcome of violent interaction between protesters and violence by drawing on Gorringe and Rosie's work. Although this sort of analysis will not draw any causal linkages, it will be integral to understanding the nature of the complaints against the RCMP concerning their handling of protests in Canada.

Interpretation can also take the form of shedding light on contradictory statements of policy and observations of practice and the documents may well speak for themselves the loudest because in this case the only role analysis takes on is one of recognition: to be aware and to recognize that two, or more, pieces of evidence are not congruent. Whether it is a protester's testimony and the nature of the complaint that are inconsistent, or police policy and their observed conduct that broke the policy boundaries, one need only be aware and diligent to shed light on these instances. Discovering why these inconsistencies occur may be an arduous, even impossible task. In this case one can only make others aware of the inconsistency. Another study at a future date may determine a cause for such actions, but this falls beyond the scope of the current study.

Inconsistencies such as the possibility described above could be the product of divergent discourses which influence the system of complaints against the RCMP through policy, laws, parliamentary debate and other means but the term "discourse" is not used with a single definition in mind. Discourse analysis can be understood through the use of metaphor. Think of it as searching for the man behind the curtain as Dorothy, the Tin-Man, the Lion, and the Scare Crow reach Oz in the film *The Wizard of Oz*. In this case the characters readily observe the Wizard as projected by the large transparent face known as The Wizard of Oz; however, it

takes Toto to uncover the man behind the wizard with his hands on the levers and switches which control the large transparent face. In this manner, discourse analysis will examine the available documents in order to uncover, as Toto did, the manner in which these documents are created and the discourses which interact through these documents to form the system of complaints within the RCMP. Yet in this case there is no wizard literally controlling the documents with levers and buttons but goals, ideologies, motivations, values, and power relations that could potentially influence the people and organizations exerting influence upon these documents. This is the formulation of what will be known as “discourse” in this study.

Van Dijk describes discourse analysis as analyzing “various levels of *structure*” (1997: 2; italics in original) that govern the composition of, in this case, textual documents. This study will focus on the discourses which lead to greater accountability within the RCMP complaints process or those that favour less regulation on the actions of the RCMP or its members. In many respects this is also a form of structure, if one could conceptualize an ideology such as conservatism, for example, in the Federal government as a structure which may exert influence on the parliamentary debate. This debate then influences the creation of legal frameworks, policy and organizational mandates which govern the process of making and processing complaints against the RCMP. Understanding that an ideology such as conservatism may manifest itself in the policy and mandates of organizations it is quite likely that this study will analyze discourse as levels of structure.

The examination of the discourses which call for greater accountability and

those which would rather see the RCMP operate in a realm of opaqueness, may find more than one discourse on each side of the issue and there may also be one or more discourses which remain neutral. Discourse, as represented by different types of arguments, may be analyzed in this study as an avenue to discover the different intersections at which discourses interact in efforts to create laws and policy. Depending on the argument being purported, this will have differing effects on the process and ultimately the final product and composition of civilian oversight of the RCMP. This study expects to find argumentative themes that may arise from different discourses.

It is hypothesized that four distinct types of arguments exist within the documents to be analyzed. As seen from the literature that analyzes civilian oversight of policing such as Landau (1994, 1996), Prenzler and Ronken (2001), and Prenzler (2004) where similar argumentative themes were seen to have existed, it follows logically that these themes could be repeated here. Although these studies were not designed as discourse analyses in order to illustrate argumentative themes, as the authors' evaluated different systems of police accountability and the corresponding basis from which arguments could be launched against the different types of systems, these argumentative themes began to emerge. This is not to say that these authors also recognized the emergence of these themes but from their works I have come to find similarities among the nature of arguments regarding policing oversight. For instance, Landau describes the criticism that the *British Police Act* underwent as a product of it only allowing civilian oversight to supervise investigations of serious bodily harm and not conduct their own investigations. Had

the *British Police Act* allowed a civilian oversight agency to conduct independent investigations many believe this would have been a more desirable alternative. Conversely, Prenzler identifies that there is still a great deal of support, albeit among chief constables in England and Wales, that “police investigators were in the best position to penetrate the police culture and use their inside knowledge to advantage” (2004: 97) and thus, negates the necessity for a civilian oversight body. Furthermore, Prenzler also discovers the Rampart Independent Review Panel that argues that “weak civilian oversight continues to hamper effective and ethical policing... The Police Commission’s lack of power over discipline undermines its authority” (Prenzler 2004: 105; citing RIRP 2000: 16, 21). Arguments such as these form the basis of my hypotheses.

Drawing from the types of arguments used in other scholarly studies, I have found some grounds from which to hypothesize that four distinct themes of arguments may exist within this study. First, there may be those arguments that fall under the discourse, which demands greater substantive and rigorous accountability (*additive*). Second, there are other arguments which support less accountability for the RCMP (*subtractive*). Third, those who would argue that to some degree the issue of accountability does not hinge on the complaints process and would rather see efforts made on other priorities; these types of arguments would form another discourse (*deflective*). The final discourse would be formed by arguments that would accept the accountability process as it stands now, arguing that nothing in regard to the complaints process needs to change (*accepting*).

Ultimately, what will be looked at for the purpose of analysis will be the way in which these different discourses come to be represented in the textual documents and the way in which they relate to other social elements. As Fairclough describes: the way in which “different discourses structure the world differently” (2003: 129) should be evident in the documents to be analyzed. Furthermore, identifying “the particular perspective or angle or point of view from which they are represented” should also be possible as well as identifying the main themes as they are represented by text (Ibid: 129).

Those who come to be represented by the *additive discourse* would likely argue that there is more that can be done to properly hold the RCMP and its member to account. They may also likely argue that the complaints system is not strong enough and that the RCMP is allowed too much power in controlling the system. This discourse may also maintain that the system does not allow justice to be served and that the Canadian public is left without proper recourse in the event someone or a group of people are mistreated by an officer of the Force or by a policy of the Force.

Conversely, those representing the *subtractive discourse* may argue that officers of the Force need to be afforded more protection and due process, likely citing that police often are put in difficult positions and asked to make difficult decisions everyday, or similar rhetoric. This discourse would also likely call for legislation and change that makes it more difficult for complainants to achieve some recourse when they perceive they have experienced misconduct.

Two less dichotomous discourses that are hypothesized to exist are the *deflective* and *accepting discourses*. Those who come to be represented by the *deflective discourse* may likely argue that there are greater points of importance that need to be addressed before addressing the complaints system, as the problem of accountability is actually manifested within another realm altogether or, in fact, that there is no issue with RCMP accountability. A recent example of this may be seen by the extent to which post Toronto G-20 and Muskoka G-8 political rhetoric attacked the black-bloc, thugs, anarchists, and vandals to deflect attention away from the issue of violent protest policing tactics used on non-violently protesters, in some way inadvertently justifying the police by side-stepping any form of accountability.

Alternatively, there would be those who come to represent the *accepting discourse*. This discourse would be represented by those who would argue that the process of accountability as represented by either parts VI and VII of the RCMP Act, pre-Bill C-38, or post-Bill C-38 are sufficient in offering justice to those who seek recourse from instances of misconduct, and that this process also offers the accused officers the proper protections.

In all the writing of discourse analysis, there is a tendency to focus on text and talk as a form of linguistic analysis (see Fairclough 1992; Van Dijk 1997). This methodology tends to lean heavily on the grammatical structure of sentences, word usage, and the word order. This is not the purpose of my analysis. This analysis will be less focused on the construction of reality through text and grammar as Fairclough outlines. Rather, I will use whole chunks of text as exhibiting a goal and a motivation that produce intended and unintended consequences for the legislation

that governs the system of complaints within the RCMP and the policy forms the institution of oversight in Canada.

It is the goal of this research to uncover the discourses involved in the process of the development of the RCMP complaints process, how discourses interact and clash in order to exert influence on the process of change. But what is a discourse and how does one go about uncovering them? Foucault (1991) outlines a set of criteria for which one may detect what he terms “discursive formations.” Although the definition of “discourse” used by Van Dijk and Fairclough and the definition used by Foucault are not symmetrical, they are also not incompatible. A discursive formation exists if four elements are present. First, “[i]f the statements in it refer to one and the same object. Secondly a discursive formation exists if there is a regular ‘style’ to the existence of statements[.] Thirdly [...] if there is a constancy of concepts employed [and] [l]astly, [...] if the statements all support a common ‘theme’, what Foucault in his later works will call a ‘strategy’, a common institutional, administrative or political [...] pattern” (Cousins and Houssain 1984 84-85). This falls in line with what Fairclough has written on discourse as a perspective from which to observe the material world, which relies on the position of the observer within the world, to form, not necessarily a semblance of how the world is but how the world ought to be (2003). Naturally, different discourses and ways of observing the world exist and compete in order to form what becomes the dominant worldview; and in the process they come to define and redefine continuously how discourses relate to one another (Fairclough 2003). This point relates specifically to what Van Dijk writes on context and ideology as integral to the

production of discourse and the relation of power in many different facets of discourse. Van Dijk is focused on the analysis of discourse as analyzing “various levels of *structure*” (1997: 2; italics in original) that govern the composition of, in this case, textual documents.

Even as Foucault states that he is not interested in the legitimation of discourses through communication, rather he is interested in “the conditions of their singular emergence” (1991: 59), his framework is a useful methodology for examining discourse. However, where Foucault is concerned with emergence, the present study is focused on the intersection of competing discourses. This lends more pertinence to Van Dijk’s understanding of goals, aims, context, ideology, and power that exist within and between discourses. Discourse is still quite an ambiguous term used vaguely to describe, as Van Dijk has alluded to, levels of structures. However, in the present study discourse is thought of as something more likened to political ideology. Discourse analysis could in this study help answer the questions such as: how, why, and for what purposes are certain arguments formulated? Whether or not it is as simple to draw a dividing line between conservatives and liberals in Canadian politics, as it is to distinguish those who are *additive* or *accepting* from those who are *deflective* or *subtractive*? It would be very telling if the discursive arguments that arose from the RCMP were represented by the *deflective*, rather than the *additive discourse*. Through this analysis one can also see from which discourse it is that each organization and each document represents. Only after this has been done, can we observe the relationship between the different political actors on this issue of RCMP

accountability. Before one embarks on an analysis such as this it is useful to examine the history of the Force and some of the major influential Commissions that have influenced the composition of RCMP accountability.

Chapter 4 - Findings

Disobedience is the true foundation of liberty,
the obedient must be slaves.
- Henry David Thoreau⁵

To begin to understand the current structure of accountability of the RCMP it is integral to recognize how this system has been created and how the RCMP have adopted such a system historically. From the very beginning of the Force, as a small number of officers stretched out over what are now the Prairie Provinces, from Ontario to British Columbia, to the now internationally recognized modern police force, one must examine how accountability took shape and has been influenced by the political climate at any given time. The existing, formalized accountability system has taken a number of years to solidify into the system that is in effect today. And even today there are forces acting upon that system of accountability that may produce change in the future. Here I will examine the historical context from which the current system of RCMP accountability has been derived and analyze the current state of affairs through a discourse analysis of arguments put forth by different stakeholders of this system. Within this one must also utilize the framework as was introduced in the first chapter from which to examine the documents in order to demystify the legal doctrine and uncover the discourses at the heart of the system that governs RCMP accountability.

⁵ Fischer, David Hackett. (2005) *Liberty and Freedom*. Oxford University Press Inc. New York, NY.

History of the RCMP

To create an accurate history of the RCMP, one must begin with the years surrounding Confederation. The Constitution Act of 1867 gave the Federal government criminal legal jurisdiction across the nation. Civil law remained a provincial legal jurisdiction due in part to the unique nature of French linguistic, religious, and educational requirements (Chapman 1978: 62-63). Implementation and enforcement of both criminal and civil law was, however, the responsibility of the provinces while the power to create and to repeal laws for the peace, order, and good governance of Canada remained in Parliament at the federal level.

In 1873, two years after British Columbia joined Confederation, the Federal Government created a force of 300 men under the banner of the North West Mounted Police.⁶ In 1873, Ontario and Quebec, along with the Maritime Provinces that had joined Confederation by this time, were separated from British Columbia by a vast expanse of very sparsely settled territory named Rupert's Land. The Prairie Provinces as well as the North West Territories and the Yukon had yet to form provincial or territorial governments leaving this vast tract of land west of Ontario to the Rocky Mountains and the North to be governed by the Federal government. Why send 300 men to police such a vast landscape?

There were certain fears that disorder, incivility, and general lawlessness in this vast area could become grounds for American intervention from Fort Benton in Montana and elsewhere (Chapman 1978). The undefended 49th parallel, which separated the United States from the Dominion of Canada, saw Americans walk

⁶ The North West Mounted Police would later become the Royal Canadian Mounted Police in 1921.

across it to find any opportunity they might and leave with what they could take.

The initial role of this North West Mounted Police Force was to collect customs duties, to prevent whisky smugglers from entering Canada from the United States, to set up courts and common jails, and to establish lines of communication between the west and Ontario in the east (Chapman 1978: 63).

Regional responsibility for policing was, and still is, fundamentally in the hands of townships and municipalities in Canada. However, it is often the case that it is not cost effective for a small municipality to maintain a force of its own; rather, it is more effective to contract with a larger force (either the provincial force or the federal). This is the case in many regions post-Confederation. On top of enforcing Federal criminal law in the vastly unsettled land between British Columbia and Ontario, the Force in many instances was given the additional burden of local duties.

When Alberta and Saskatchewan were created in 1905, the attorneys general responsible for law enforcement in their respective provinces found it more efficient to contract this provincial responsibility to the newly named Royal North West Mounted Police. As Chapman notes, “in outlying areas the RNWMP could therefore find themselves acting simultaneously as a municipal, provincial, and federal force, as well as carrying out some duties for other federal and provincial agencies” (1978: 63). Conversely, when Manitoba joined Canada in 1870, the Attorney General created a police force modeled on the British Columbian Police Force to be responsible for the policing of the whole province outside large municipalities, which were responsible for creating their own forces.

The NWMP recruited and trained its officers in a military style and its formation was largely modeled on that of the Royal Irish Constabulary (RIC). The RIC had been the model for police forces throughout the British Empire at the time, and Sir John A. McDonald indicated that the police officers he wanted for the land newly acquired from the Hudson's Bay Company would be horseback military men trained in riflery and artillery but styled as police (Marin 1976). Much later, as a testament to the military influence on its training and organization, the Force was commissioned by royal warrant in 1904 and bestowed the order of Royal North West Mounted Police (RNWP) since detachments of the Force had served in the Boer War (Chapman 1978: 63).

Two characteristics distinguished the RIC from other forces. One, it had a military organization, specifically using military ranking, weaponry, uniforms, and code of discipline. Secondly, the police function of the RIC made it necessary to spread the force's manpower widely throughout Ireland with relatively few men in each detachment, making the traditional military function in the face of widespread rebellion or invasion, impossible. Moreover, the relatively few men in each detachment placed more responsibility on each individual of comparable rank than would be required in more traditional military units thus emphasizing their police function. It is evident that at the time of the NWMP's creation on May 23rd 1873, that the Government foresaw the necessity of a force that could function both as a military and as a police force (Marin 1976).

Discipline for the earliest of the officers in the NWMP could take two forms, dismissal or a fine not exceeding thirty days pay (Marin 1976). The first

Commissioner of the Force found it beneath the dignity of its members to enforce strict military punishments upon them. Despite the fact many of its earliest members had been members of the British Army or Canadian Militia, the Force was commissioned under civil contract and not under articles of war. As Lieutenant-Colonel George A. French (the first Commissioner of the Force) noted: “the men were ‘(t)ied down by no stringent rules or articles of war, but only by the silken cord of a civil contract” (Marin 1976).

In the eastern portion of Canada, it was technically the responsibility of the Dominion Police to carry out federal policing duties. However, created in 1868, shortly after Confederation, the jurisdiction for the Dominion Police technically covered all of Canada yet their field of operations was largely restricted. The main function of the force was to protect federal property in Ottawa as well as naval dockyards. Other concerns of this force included monetary counterfeiting, narcotics trafficking, white slave trade, as well as record keeping on paroled prisoners (Chapman 1978). Another notable contribution included the creation of a national fingerprint centre similar to that of the European system at the time. A secret branch of the Dominion Police also investigated plots against the government and gathered intelligence on certain aliens and “subversives.”

As the First World War progressed and the United States remained neutral for the first three years, the federal government was under mounting pressure to neutralize enemy conspirators, agents, and saboteurs, forcing them to recall the RNWMP from the prairies and from Northern Canada to aid in the effort of counter-espionage and security (Chapman 1978). With the removal of a federal policing

force from the prairies, Saskatchewan and Alberta were reluctantly forced to establish their own provincial police forces, and consequently, the headquarters of the RNWMP was relocated from Regina to Ottawa. However, the economic hardships of the 20s and the 30s would see a larger shift towards provinces contracting their law enforcement roles to the RNWMP (Chapman 1978: 65).

In 1919, the RNWMP played a leading role in breaking the Winnipeg General Strike, which sent ripples of discontent through labour leaders and the unemployed, nationally. Yet in 1921, with a public reputation for being a competent para-military force, for fulfilling their federal and provincial enforcement duties reliably, and for having success in its security function, the Federal government decided that the RNWMP should absorb the best of the Dominion Police Force and become the RCMP thus assuming dominion wide jurisdiction of Federal laws (Chapman 1978: 64).

The RCMP continues to be a para-militaristic police force with its training and organizational structure despite the diverse nature of the environments and situations that its members face from detachment to detachment. As was the case shortly after Confederation, where the NWMP found itself fulfilling many different rolls at one time, the RCMP finds itself confronted with unique and diverse sets of circumstances on a daily basis. Members of the Force take on multiple rolls in one region, fulfilling the tasks that would usually be divided among multiple agencies or organizations. Such is life for the RCMP in places like Dauphin, British Columbia, as Paul Palango (1998) found, where the first floor of a building on Hedderly Street is home to the RCMP municipal detachment, while the second floor of the same

building houses the regional headquarters which acts as both provincial and federal law enforcement.

Palango (1998) raises an interesting question throughout his book, *The Last Guardians*, when he asks if the RCMP should be a national police force or a federal law enforcement agency (1998). To most, there may be no difference between the two. However, there is a distinct difference. A national police force should be present in every part of the nation, ready at a call to respond to community and individual emergencies one would associate with dialing 911. A Federal law enforcement agency, however, follows their intelligence to the crime, much like the Federal Bureau of Investigation and other enforcement agencies do in the United States as does the Canadian Security Intelligence Service (CSIS). However, CSIS has no authority to intrude in the lives of Canadian citizens making arrests or detaining suspects, for example. That authority lies solely with the different police forces found across Canada. If an officer of the law observes a crime, he or she possesses the legal authority to arrest and detain if needed, while a CSIS officer does not. CSIS, in good faith and without compromising its own sources, refers its intelligence to a unit of the RCMP to investigate and to lay charges. Without the ability to investigate nationally as CSIS is mandated to do, the RCMP is essentially a national police force and as Palango concludes, this can be traced back to the McDonald Commission. The McDonald Report concluded that it was not the inadequacies of the RCMP's security service that came into question, rather, it was the inadequate legal mandate of the RCMP's Special Branch with regard to counter-intelligence activities that was seen to be the problem (Palango 1998: 290). Thus in 1984, CSIS came into existence

although its mandate did not give CSIS the authority to arrest or detain suspected individuals.

What one thinks the RCMP ought to be or how it should be mandated to operate within Canada are not questions that are examined in this thesis; however, it is important to understand the historical importance of why the RCMP is structured the way that it is. The RCMP is what it is, and operates as it does because of the political and cultural climate historically and presently. What this paper will examine is the relationship between civilian oversight and the RCMP, the way in which civilian oversight has functioned and the way in which it is proposed to function in the future.

In 1986, after the introduction of Parts VI and VII to the *RCMP Act*, the Public Complaints Commission was formed to handle complaints made by members of the public against the RCMP. Similar agencies had existed in several provinces where the RCMP were contracted to conduct police work in the absence of a provincial force; however, when carrying out a federal role, the RCMP can not be held accountable to a provincial agency for the purpose of the handling of complaints (Beaulne 1993). This issue was settled by the court case of *Attorney General of Alberta v. Putnam*, [1981] 2 S.C.R. 267, yet the RCMP is still accountable to a Federal agency and does not escape responsibility altogether. The creation of the RCMP complaints organization and the complaints process was a direct result of the McDonald Commission, established in 1977, and the Marin Commission which issued its final report less than a year before the McDonald Commission came into existence.

Independent oversight of law enforcement is integral to the validity of state authority in two ways. In the words of Lord Hewart: "Justice must not only be done, but should manifestly and undoubtedly be seen to be done" (*Rex v. Sussex Justices ex parte McCarthy* 1924). Not only must the rights set forth in the *Canadian Charter of Rights and Freedoms* be upheld, subject only to limitation when they can be demonstrably justified in a free and democratic society, but the public must also be able to observe through a transparent government, that when rights of citizens are infringed upon, that those who are responsible for the actions of police are brought to account for their actions or omissions. There is considerable debate over many of these points, such as, what does it mean to be accountable, who is to give account and to whom?

Early in the history of the RNWMP, the complaints, internal discipline and grievance process were a mixture of processes that held to the traditions of the military with an added sensitivity for the practical application of law enforcement and until 1964 they had no explicit directive on the handling of public complaints (Marin 1976). This is not meant to be misleading, but to be a statement of facts. It was possible to voice complaints before 1964 but no formal rules governed their handling. Due to the wide dispersal of and the few numbers of men in each detachment, informal resolution was quite often the manner in which complaints were resolved. At times, when complaints were complex and the request was made, a senior officer would investigate a complaint and if founded, would discipline the officer (Marin 1976). It is important to note that the Force has "always viewed public complaints as a matter relating directly to discipline. As a consequence,

public complaints procedures were until only recently identical to those procedures developed within the discipline system” (Marin 1976). The Marin Report ends Part

II with this statement:

It is no exaggeration, however, to suggest that [the Force] could not have survived the political debates that occurred in the early part of the twentieth century had it a record of insensitivity towards those whom it served. The fact that the Force serves today as the police force in eight of the ten provinces, the two territories and one hundred and seventy-one municipalities, gives credence to the claim that it has provided a satisfactory response to public complaints (Marin 1976: 41-42).

Marin Report

The Marin Report was the first public acknowledgement of any substantive turmoil with the accountability of the RCMP. In order to address any lack of public trust in the Force, the Committee of the Privy Council authorized the Solicitor General of Canada, on June 6th, 1974, to appoint the Honourable Judge René Marin to chair the Commission of Inquiry relating to public complaints, internal discipline, and grievance procedure within the RCMP. The Commission is commonly known as the Marin Commission and subsequently the report submitted to the Solicitor General on January 16th, 1976 to be tabled in Parliament, is known as the Marin Report.

The Marin Report supported the creation of a complaints system where complaint substantiation, investigation, and discipline are “in-house” to the Force and externally supervised by an independent body that “would have the task of

considering the whole conduct of the case to ensure that just and fair treatment was received by either the complainant or both the complainant and the officer about whom the complaint was made” (Marin 1976: 68). The report notes that an investigation conducted outside the Force may not be thorough enough or may not be any more reliable than one conducted internally by the Force. The report also rejected models of complete internal and complete external investigation, adjudication and discipline due to issues of bias. A model of external investigation and adjudication with internal discipline was also rejected on practical grounds. As can be seen in “Appendix 1: Complaints Process Flowchart under the Commission For Public Complaints Against the RCMP,” the process implemented following the Marin Report resembles the model promoted by the report.

The Marin Report spells out the Commission’s intentions to balance the needs of the Force with those of Canadian citizens, as both need to be addressed (Marin 1976). The Marin Report recognizes that the majority of complaints processed by the RCMP are resolved informally even though no distinction made between formal and informal procedures prior to the filing of the report. Between the years of 1963 and 1973, the size of the RCMP Constabulary nearly doubled from 8,540 members to 15,892, an increase of 86.1% (Marin 1976: 45). It is for this reason along with a social awareness of civil rights, that the Marin Report cites the need for major RCMP policy change including the most traditional of complaints procedures.

One observation the Commission makes is that the informal procedures tend to offer a great deal of discretion to the members handling the complaints. The

options range from whether or not to officially record the complaint, to how to resolve a complaint. Whether or not a complaint is investigated, or how it is investigated is also an area of great discretionary latitude. Some investigations may consist of simple verification and nothing more, while some formal investigations may take place at the local level, and others may be referred to senior officers from a regional command or headquarters (Marin 1976). All that is required is that the investigator be senior to the member who is the subject of the complaint.

A random sample was taken of RCMP officers and the Marin Report found that the majority of officers were concerned that the complaints process did not reflect fairly on them as officers. Similarly, the results showed that officers believe that the complaints process was more than fair towards complainants. The Marin Commission, however, did not support the claim that complainants were treated more fairly than the RCMP officers and the Commission expressed concern with the morale of officers within the ranks of the Force (Marin 1976). The Marin Report recommended a fairer system for officers and complainants, one that is also more comprehensive and thorough.

The Marin Commission based its report on five premises. First, the best way to respond to complaints is to combat the conditions which give rise to an officer's misconduct. Second, in any complaints in which an officer is alleged to have violated the *Criminal Code of Canada*, the officer would be subject to the Criminal Code just like any other Canadian citizen. Third, the responsibility for investigating and disciplining an officer for non-criminal behaviour should remain with the Force to ensure that the RCMP management is uncompromised and remains accountable and

responsible for its officers. Fourth, RCMP management has a responsibility to effectively and fairly respond to complaints and the citizens of Canada have a right to be assured that they are responding effectively and fairly. Finally, complainants should have the right to appeal a complaint to an independent authority should they feel dissatisfied with the handling or outcome of their complaint by the Force (Marin 1976: 71).

The Report states that this new system for handling complaints must be clearly distinguishable from the disciplinary system within the Force. The independent federal agency that will oversee the RCMP should be called the Federal Police Ombudsman (Marin 1976). The new system should also make a clear distinction between the informal versus the formal paths of mediation. There is a clear consensus in the Report that the best option to determine a complaint's validity is through an authority which is independent of the Force. While it may not be beneficial for the RCMP to perform all the requisite functions of the new complaints process, it does not mean that the RCMP should not perform any (Marin 1976). It is also the opinion of the Commission that ample investigators could not be obtained with the requisite knowledge, skills, and experience necessary without hiring those with at least some policing experience, or for that matter allowing internal investigation units to look into complaints. Using internal investigation units is an aid to the investigation of complaints as a whole, due to the greater ease and access an officer has to their fellow officers, whereas an outsider might be met with contempt. This opinion of the Commission had two stipulations: one, where there are criminal allegations, the proper prosecutorial authority should investigate,

and second, while non-criminal allegations should be investigated by the Force, all complaints should be open to review and appeal by the Federal Police Ombudsman.

In order to safeguard the rights of the officers of the Force, the Marin Report recommends that where there is a criminal investigation under way, as well as a complaint investigation, the criminal investigation material shall not be shared with the disciplinary investigation. Consequently, no member of the Force who investigates the criminal proceedings shall be party to any complaint investigation material. Five years later the McDonald Report recommended the direct opposite. It stated that when a criminal investigation has not found sufficient grounds for charges to be laid that the information from those proceedings should be used in any subsequent disciplinary hearing because these criminal investigations may contain additional information an internal investigation may not uncover (McDonald 1981: 981).

It is the position of the Marin Commission that while it is necessary to balance the needs of complainants, RCMP officers, RCMP management, and the Canadian public, all of whom at times may have conflicting objectives, it is essential that the internal RCMP investigations unit and internal discipline mechanisms be preserved in order to maintain a strong chain of command and responsibility on the part of the Commissioner. There also needs to be a review agency, independent of any RCMP influence in order to maintain public confidence in the complaints process; only after this separation of the RCMP and review agency is established can justice be seen to prevail in the eyes of the public. The Marin Report considers that the vesting of an abundance of authority in any independent agency would only

subvert the command structure of the RCMP. This independent agency addresses concerns regarding the ability of the RCMP to be investigator, adjudicator, and final arbitrator in the case of complaints; independent review is necessary to ensure that public confidence is attained.

In relation to the RCMP complaints process, the Marin Report makes one specific set of recommendations to accompany the creation of the Federal Police Ombudsman. The Ombudsman should be an appointed position, selected by the Governor-in-Council, to fulfill a function of watchman over the outcome of RCMP complaint investigations (Marin 1976). The Ombudsman is to report to the legislature annually, or as needed at the Ombudsman's discretion. The Ombudsman may also use any form of the media to inform or to persuade public opinion in any matter the Ombudsman regards as significant to Canadians (Marin 1976: 103).

While broadly different structures of ombudsman have existed in many different countries, the Marin Report recommends creating the Federal Police Ombudsman with three general areas to comprise its mandate. First, the Ombudsman should be answerable to the legislature, as his or her authority is drawn from there. Second, this authority allows the Ombudsman to investigate any administrative decision, yet restricts his or her authority to any legislative decision. Finally, the authority vested in the Ombudsman extends to the power to investigate, to criticize, and to recommend change but restricts this power so that no administrative decision can be directly reversed (Marin 1976: 98). The function to create change and to review administrative decisions lies solely with the legislature and the elected members of parliament.

The creation of such an office of Ombudsman solves the problem that the Marin Report sees before it: how is it possible to provide an effective overseer of administrative action without denying administrators the authority to make decisions for which they are accountable (Marin 1976)? By vesting authority in the Ombudsman to report to the legislature and to inform the public, the Marin Report is seeking to avoid attributing blame to any one individual, but rather is seeking to raise awareness and to rectify certain conditions within the RCMP which give rise to complaints. The intention of the Ombudsman is to enshrine a greater sense of care and sensitivity in those who are making administrative decisions (Marin 1976: 100). Ideally, those who possess the authority to make administrative decisions should consider the ramifications of their decisions before implementing them. In effect, the Federal Police Ombudsman would have administrators review his or her own decisions for fear of having them reviewed adversely by the public.

Consequently, being an outsider to the RCMP at first, the Federal Police Ombudsman may be met with resistance from within the Force during investigations. However, the Marin Report takes the position that any expertise to investigate within the Force will be learned from experience soon after commencing that position. Additionally, by informing the members of the Force of the intention of the Ombudsman and the rationale for the position's creation, the Marin Commission contends it will be easier for the Ombudsman to break through to officers who may in other situations close ranks to protect one of their own who is accused of misconduct (Marin 1976: 102).

McDonald Report

Following the FLQ crisis, the conduct of the RCMP was called into question and scrutinized following the mass arrest of many innocent Canadians who were suspected of being subversive or militant separatists. Public scrutiny of the ability of the RCMP to properly fulfill the role of both federal law enforcers and national security functions was growing exponentially. This led to the creation of a royal commission that examined many aspects of the RCMP including the complaints system, but was to focus on the scrutinizing of the national security functions of the RCMP. On July 6th, 1977, the *Royal Commission of Inquiry into Certain Activities of the RCMP* was established by an Order in Council to scrutinize for precisely that purpose. On January 23rd, 1981, the commission chaired by Justice D.C. McDonald submitted its final two volume report, over one thousand pages in length, to the Governor-in-Council to be tabled in Parliament. The commission is colloquially known as the McDonald Commission, named after its chairman. The report tabled in Parliament entitled, "Freedom and Security under the Law", is known as the McDonald Report. For the purposes of this paper, I will make reference to the McDonald Commission and the McDonald Report.

Regardless of the fact that the Commission was established to examine the security services of the RCMP, which were later to be separated from the RCMP and given to the newly formed CSIS, which is mandated to gather security and intelligence formerly conducted by Special Branch of the RCMP, there are several relevant chapters within the McDonald Report regarding the complaints process of the RCMP. Specifically, Chapter Two of the second volume of the McDonald report,

entitled “Complaints of Police Misconduct,” contains an analysis of the RCMP complaints process at that time and the Commission’s recommendations to revise the process. The Commission bases the recommendations it makes on a set of assumptions about maintaining trust and confidence in the Force, protecting the rights of citizens, and ensuring fair and prompt resolutions of misconduct, all of which are an integral function of any oversight mechanism. The McDonald Report recommends the establishment of The Inspector of Police Practices, operating through the Federal Department of Justice, to act as a review agency for complaints made with regard to officers of the RCMP, or the Force as a whole (McDonald 1981b: 976).

At the time the McDonald Report was compiled, the system of complaints against members of the RCMP was handled completely within the Force and no external authority regularly or systematically oversaw the process. Serious incidents were handled by the Complaints and Internal Investigations Section of the RCMP and locally investigated by senior officers. The sole purpose of any investigation was not only to look into the conduct of the officer in question but also to identify problematic policies, procedures, or training that may lead to systemic misconduct. If a complaint was deemed unsubstantiated at the local level by an investigator, there did not exist any mechanism for review and the only feasible external form of review that had been conducted fell to the provincial Attorneys General, or police boards, or commissions where the RCMP enter into contract with the province. Based on the evidence heard at formal hearings and the examination of the current system of complaints processing, the McDonald Commission made

several recommendations for the improvement of what it saw as major shortcomings within the system.

Since police misconduct seldom results in a public complaint being launched, the McDonald Report theorizes six possible explanations as to why a victim of police misconduct would not launch a complaint: 1) the victim may be involved in questionable activities that he or she wants to remain a secret; 2) the victim may be concerned about police harassment as a result of launching a complaint; 3) the victim may lack confidence in police impartiality; 4) the complaint itself may serve as a bargaining tool for the lawyer of a complainant to reduce the complainant's sentence; 5) the complainant may fear incurring substantial legal costs; and finally 6) the victim of police misconduct may not be aware that misconduct has taken place (McDonald 1981b: 971). For all these reasons, the McDonald Report contends that the actual occurrence of police misconduct is higher than the reported number of complaints.

The McDonald Report proposed the creation of the new position of the Inspector of Police Practices (IPP) which would make the filing of complaints easier and more appealing. As opposed to filing complaints with the same Force in which the alleged misconduct occurred, the IPP would also function as an alternative submission point which would allow a greater number of complaints to come forward. The name of the complainant may also be withheld when the complaint is forwarded to the RCMP and the complaint inevitably is forwarded. The McDonald Report also calls for greater power among judges to bring complaints to light during a trial in which police misconduct is evident (McDonald 1981b: 972). Even though

they represent an unsystematic form of review, judges do form a continuous network of review. The only form of punishment available to a judge who observes evidence of police misconduct is verbal castigation of the officer, and only occasionally judges do exercise this power. Where a judge feels that police misconduct has taken place, the McDonald Report recommends that the judge hearing the case submit a formal report to the Force's Commissioner to launch a separate investigation into the matter. However, a criminal investigation may never go to trial for a number of reasons such as plea bargaining, staying of prosecutions, dropping of charges, or a lack of evidence to substantiate charges (see: Garofalo 1991). Furthermore, it could also be the case that all the facts that a judge would require to make an informed decision regarding alleged misconduct may not be before the courts (McDonald 1981b: 972).

Even though a member of the public who is the recipient of police misconduct still must decide whether or not to launch a complaint, or during a trial, a judge does not become aware of any misconduct on the part of the police, these processes will still remain irregular sources of complaints. In the circumstance where no one outside the Force or the judge becomes aware of misconduct, the McDonald Report makes two proposals aimed at encouraging officers who observe misconduct to bring this to the attention of an external agency with the authority to investigate. The first proposal is the creation of the office of the Investigator of Police Practices (IPP) as an external authority available to officers as a place to receive complaints and as such the IPP would make all efforts to keep the identity of the officer anonymous (McDonald 1981b: 973). In such a case, the Report does not indicate how an

investigation should proceed if at all different from any other complaint investigation. The second proposal is to codify the responsibility for all officers who witness misconduct, to report such misconduct to a superior.

By making this legislative change, the report indicates, “Parliament will make it clear to the members of the Force that the rules of law must be paramount in all that the R.C.M.P. does. Loyalty to the Force or even members within the Force must be secondary” (McDonald 1981b: 974). Yet, even the adoption of such legislation may not be enough to bring misconduct to light. Often, informal rules within a closed organization create stronger bonds than formal regulations. The testimony of one officer in the McDonald Report explains:

[...] where you have rogue individuals in groups of this kind, it is part of the police tradition, of *esprit de corps* and professional secrecy, that as long as people do not break these codes, as long as they do not rat on each other, that police groups are tolerant of the existence among them, of individuals of this kind (McDonald 1981b: 975)(emphasis in original).

In the instance where an order of a superior contravenes the *Charter of Rights and Freedoms*, at what point can an officer justifiably disobey an order to prosecute, or to arrest a protester? Conversely, an officer who does contravene the rights of citizens protected by the *Charter* can hide behind the veil of obedience to his or her superiors, but at what point can those individuals be held accountable for their actions under the law?

The McDonald Report did make one recommendation that should have had an immediate effect. The Commission saw a distinction between two types of complaints: one, in which misconduct on the part of an officer is a indictable offence

and the second type which alleges impropriety but claims no allegations of illegality. The McDonald Commission was satisfied in most cases; where no illegality is alleged, a member of the RCMP is assured of a fair and thorough investigation of complaints. However, the Report recommended that the Inspector of Police Practices investigate when a complaint alleges misconduct of a member of the Force who is senior to the internal investigations unit or is a member of the internal investigations unit, when the Inspector is already investigating a related matter, when the matter is of public interest, or when the Solicitor General requests the investigation (McDonald 1981b: 978).

In addition, the McDonald Report offers three justifications to allow members of the RCMP to investigate complaints. First, due to the fact that many complaints are resolved informally, it seems logical for members of the RCMP to handle such matters. Second, having an outsider to the Force investigate complaints may undermine the sense of responsibility of the RCMP for uncovering and preventing misconduct. Finally, the level of cooperation an RCMP investigator will receive from an accused officer will be greater than that received by an outside investigator. Despite these rationalizations, they must be balanced with the need for public confidence in the RCMP and the complaints process. This is why the McDonald Report suggests that the authority to conduct an independent investigation, if one is warranted, should lie with the Inspector of Police Practices and the Attorney General.

In the instance when illegal conduct of an officer of the RCMP is alleged, the McDonald Report makes recommends specifically that the complaint not be

investigated by the same Force in which that officer is a member. The McDonald Report would suggest that another municipal or provincial force investigate the matter at the direction of the appropriate Attorney General.

Following any investigation of illegal misconduct of an officer, the McDonald Report suggests that the investigation material be available to the Commissioner of the Force for the purposes of disciplinary action. Even if an investigation into illegal misconduct has not warranted the laying of charges, the McDonald Report recommends that the material be used for disciplinary matters when conducting an investigation into a complaint and the effectiveness of the RCMP policies and procedures. The McDonald Report takes the stance that the usage of these materials for such a purpose does not threaten the rights of an officer whose conduct is being investigated. The utilization of such materials from an investigation which concludes that no prosecution is warranted, may reach the same conclusion when examined by the investigator of a complaint.

The McDonald Commission takes the point of view that the final decision-making should rest with the Solicitor General instead of the RCMP Commissioner. A complainant should have the right to appeal a decision if unsatisfied with the process, the result of the investigation, or disciplinary action, and be able to ask for a review by the Inspector of Police Practices. Public confidence cannot be established without final judgment being removed from the Commissioner of the Force in which the conduct is questioned. The McDonald Commission gives the responsibility for the final decision making to the Solicitor General to adjudicate while the Inspector of Police Practices investigates on their behalf. Additionally the Inspector of Police

Practices should have the responsibility of bringing to the attention of the Attorney General any cases before the RCMP that he or she feels have not been adjudicated properly (McDonald 1981b: 985).

Even though the authority to make final decisions should lie outside the RCMP, the McDonald Commission also contends that the Inspector of Police Practices should not have the authority to overturn any decisions for disciplinary actions made by the RCMP. Additionally, the McDonald Report states that complainants should not be made aware of the specific disciplinary action taken towards the officer in question; rather, “the Force should tell the complainant that it recognizes the error, that it apologizes for the misconduct of its member, and that it has taken steps to ensure that such activity will not be repeated” (McDonald 1981b: 984). It should be the responsibility of the Inspector of Police Practices to periodically review the appropriateness of disciplinary measures handed out by the Force. If a complainant is to be satisfied, or unsatisfied and wishes to appeal the handling of their complaint, he or she must be fully informed as to the process of any matters related to the complaint in question, and possibly the most integral part of this process is the final measures taken to rectify the misconduct.

These are the majority of the core recommendations that the RCMP needs to implement if it wants to reduce the likelihood of future misconduct by its officers. There are two reasons why the McDonald Report calls for the Inspector of Police Practices to be under the authority of the Solicitor General rather than creating an ombudsman who would be independent of any government department. First the report calls attention to the convenience of having a permanent agency under the

guidance of the Solicitor General, ready to investigate matters as they arise. Second, having the Inspector of Police Practices under the authority of the Solicitor General would give the Minister greater breadth and easier access to information regarding RCMP policy and practices. If the Solicitor General is to be responsible for the RCMP and the Inspector of Police Practices, it will be integral to include this new agency under the authority of the Solicitor General.

In matters where the Solicitor General is implicated in a complaint or investigation, the McDonald Report states that the Inspector of Police Practices should report to the Prime Minister's Office. The Report also recommends that the Inspector be an Order-in-Council appointment for a fixed term of at least five years and that no inspector serve for more than ten. Yet, despite claims by the McDonald Commission for the Inspector to be vested with the power to begin any investigation, and investigate what he or she alone deems fit, free of interference, the McDonald Report also expresses the need for the Inspector to take direct guidance at times, and is in fact not free to investigate as he or she sees fit. Interestingly, whether or not the Inspector of Police Practices can take direction from the Solicitor General to terminate an investigation or to not initiate an investigation, where the Inspector otherwise sees fit, is not addressed. In such a case, the Inspector could report directly to the Prime Minister, circumventing the authority of the Solicitor General, however, this is not specifically delineated (McDonald 1981b: 988).

The responsibility of the Solicitor General for the RCMP extends up to but not beyond the point of assuming responsibility for the day-to-day operations of the

Force. The police are free to investigate and lay charges as they see fit and in this respect they are accountable to the courts. In every other respect the RCMP is accountable to the Solicitor General. The McDonald Report believes this arrangement implies two things; first, that the courts will become aware of misconduct in the course of trials and judges will take action to correct such misconduct; and second that the action and views taken by the judiciary will have a positive effect on changes made to the RCMP. As it has been noted before, the ability of the judiciary to become aware of RCMP misconduct is unsystematic and sparse at best. An implication of this policy is the transfer of responsibility to correct the misconduct of officers, to private citizens, who do so by bringing private action against the Force. The creation of the Inspector of Police Practices allows the Solicitor General to keep sufficiently informed of the methods, practices, and procedures used by the RCMP (McDonald 1981b: 987).

Interestingly, the McDonald Report, citing the British Royal Commission on the Police (1962), states that the chief constable (the Canadian equivalent is the RCMP Commissioner) “should be free from the conventional processes of democratic control and influence” (1981b: 1010; citing British Royal Commission on the Police 1962 para: 68). The problem areas of the chief constable’s duties, the Royal Commission suggests, are those duties which fall outside of his law enforcement duties; such as “the manner in which he handles political demonstrations or processions and allocates and instructs his men when preventing breaches of the peace arising from industrial disputes, [...] or of passive resistance to authority” (McDonald 1981b: 1010; citing British Royal Commission on Policing

1962 para: 89). The McDonald Commission also cites *R. v. Metropolitan Police*

Commissioner, ex parte, Blackburn in 1968 in which Lord Denning is cited as stating:

in all these things [the police commissioner] is not the servant of anyone, save of the law itself. No minister of the crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility lies on him. He is answerable to the law and to the law alone (1981b: 1010-1011).

Applying the logic of the democratic policing model which the McDonald Commission supports and which Roach outlines, it could well be justified that the government of the day bears the authority to direct the Commissioner of the RCMP in such events (Roach 2007). If we assume that the government, or responsible minister, assumes authority for the RCMP, it is logical then that the same minister assumes responsibility for some form of oversight to correct any abuse of power. The question arises: at what point does the Commissioner of the RCMP have the authority to refuse the request of the Government of the day in relation to duties which fall outside of the Commissioner's law enforcement duties? Specifically, would the Commissioner have any authority to refuse any requests of the Government-of-the-day with regard to the policing of protests? Additionally, whether or not he or she has such authority, who is ultimately accountable for any misconduct that may arise from such events?

The McDonald Report states very bluntly in the 19th paragraph of chapter four in its second volume, that "we believe that those functions of the R.C.M.P. which we have described as 'quasi judicial' should not be subject to the direction of the Minister" (1981b: 1013). The Report continues and suggests that the Minister should retain the right to be informed of any operational matter of the RCMP if it

raises an important issue of public policy. The distinction here is between the RCMP Commissioner who should retain control of RCMP decisions and the Solicitor General who should, for the purpose of examining public policy, have the right to remain informed of RCMP operations but should have no input as to where, why, and how they operate (McDonald 1981b). By this logic, the RCMP Commissioner is accountable for any misconduct within the Force, while the Solicitor General is accountable for the Force's policies.

Brown Report

The third and most recent report compiled by Federal task force by order-in-council to examine the civilian oversight of the RCMP is the Task Force on Governance and Cultural Change in the RCMP. This commission commenced on July 13, 2007 and was chaired by David A. Brown as Queen's Council; the report tabled in Parliament (December 14th 2007) from this commission has come to be known colloquially as the Brown Report, however, the official title of the report is aptly named, "Rebuilding the Trust" (Brown 2007).

The Brown Report proposes a new agency of civilians called the Independent Commission for Complaints and Oversight for the RCMP which would oversee the Force (ICCOR) (Brown 2007). Of all of the major commissions to precede it, this is the most progressive of the three, advocating that the proposed recommendations of the ICCOR be binding on the Commissioner and that the sole collection point of

complaints should be the ICCOR. The ICCOR would also compile a database of complaints for the purpose of tracking and evaluating complaints “in order to identify systemic issues, trends or deficiencies in policies and procedures” (Brown 2007).

Being responsible to the Minister of Public Safety, the ICCOR would report, much like the CPC does now, to both the Minister and the Commissioner; however, as the recommendations of the CPC are non-binding on the Commissioner, they may be simply ignored with a written statement indicating the Commissioner’s reasoning. The Report also acknowledges that the police perform a role as guardians of civil liberties as well as being responsible to the public they serve, while their job requires them to be in contact with law-breakers. The Task Force is aware of the “culture of policing,” as they call it, that members of the Force have with one another based on professional reliance on other officers (Brown 2007: 13). This new system of routing all complaints through the ICCOR would make it responsible for deciding who would be the principle investigator of a complaint (the RCMP, another Force, or the ICCOR itself) (Brown 2007).

The majority of complaints would be directed towards informal resolution as is the current focus of the CPC’s operation. The Brown Report also suggested that all complaints should, initially at least, be directed towards informal resolution since this would be the quickest avenue to rebuilding trust between the RCMP and Canadians (Brown 2007). However, this is not the way complaints have actually been handled as one sees in the 2009–2010 annual report of the CPC where there is near parity between the number of official complaints and, what the report term, the

number of “enquiries” or “alternative dispute resolutions” (Commission 2010b).

In sum, these recommendations in the Brown Report were not incorporated into the mandate and operation of the CPC, nor are they proposed to be made law by Bill C-38. The only aspect of the Report that is proposed to be made law by Bill C-38 is the power to compel testimony and require information be presented. Bill C-38 would create The Royal Canadian Mounted Police Review and Complaints Commission with powers equal to those of a superior court of record, which is greater than what was recommended in the Brown Report (Bill C-38 2010: Section 45.63(1)(a)).

Discourse Analysis

The Marin Commission, McDonald Commission, and Brown Task Force are all important documents when it comes to understanding the current legislative framework of RCMP accountability because they shaped the political landscape from which the RCMP Act has been amended and repealed. Each of the reports also represents different discourses surrounding the ideology of what it means to be accountable and how it is that a police force such as the RCMP should be held accountable.

As stated by the Auditor General of Canada, Sheila Fraser, in 2003:

”Independent review is important because of the intrusive powers of agencies and

departments involved in intelligence gathering and law enforcement. Accordingly, we would have expected that intrusive powers would be subject to a level of review proportionate to the level of intrusion” (33). The Auditor General’s words speak volumes as to the necessity for adequate, independent civilian oversight of the RCMP. Such a succinct statement not only speaks to the necessity for such accountability, it also sheds light on the downfall and shortcomings of the current system. This statement does not encapsulate all that is wrong and where certain elements are deficient in delivering functional and substantive accountability, yet this is the task of this study. Through a discourse analysis of federal documents, CPC documents, Parliamentary records, and past complaints reports an accurate depiction will emerge of the manner in which different discourses come to interact in the creation of an accountability mechanism to oversee the process of public complaints handling with the RCMP.

Three separate events, the march at Saint-Sauveur, the occupation of the road outside Gate 6 at the APEC Conference, and the demonstration at the intersection of rue Saint-Jean and côte Sainte-Genève, all show similar actions on the part of the RCMP. In May of 1997 in Saint-Sauveur, a march occurred after the parents association of the local school had learned of the Minister of Education’s decision to close their school. Many residents and parents felt this would signify an end to the town, and the livelihoods of many residents. The march took place over a half-kilometer stretch of highway 160, originating from the school where the parents association had met. But after the demonstrators had turned around and begun to

return to the school where most had parked their vehicles, the police tactical troops intervened by using tear gas to disperse the crowd.

At the APEC Conference in November 1997, in the vicinity of the road outside of Gate 6 of the perimeter fence, about 50 to 60 protesters had gathered. Inspector Killaly had described these protesters as “‘fairly quiet’ and ‘fairly laid back’” (Hughes 2001: 342); however, Staff Sergeant Stewart, soon after arriving at the Gate with Quick Response Teams, cleared the road with a Mark 46 Canister of pepper spray, using it precipitously and indiscriminately on anyone in the vicinity of the Gate (Hughes 2001: 342-351).

In Quebec City, at the Summit of the America’s protest in April 2001, 500 to 750 protesters gathered nearby to where a small front-end loader had earlier torn down 500 to 1000 feet of security fence. In order to allow civilian repair crews to work safely to replace the fence, the RCMP’s tactical troop “O” Division cleared the protesters using tear gas (Heafey 2003: 6-9).

In all three of these situations it was found that the police did not follow the proper procedures to clear an area. Consequently, the force that was used was not justified, nor was a sufficient warning given to the protesters or demonstrators before force was applied. In each case the RCMP were found to have been using unjustified force, and when used, that force was also found to have been excessive. In these three examples it is evident that those in charge showed a disregard for the RCMP’s proper procedural tactics. These examples are also representative of the RCMP’s reckless disregard for protesters in many different circumstances, which is described in depth throughout each Interim Report submitted to the Commissioner

of the RCMP. This reckless disregard for *Charter* rights extends to nearly every dimension in which the RCMP interacted with protesters at each of the three events.

This, however, is not the most perplexing aspect of this study. From the previous research into protest and police interactions, one would not be shocked to find police abusing power during protests. What was also found in the course of this study was a *dismissive discourse* throughout the Commissioner's official response to the Interim Reports of the Commission. This *dismissive discourse* tends to be represented by arguments that reject the findings of the Commission or do not agree with the recommendations of the Commission. Rather, the Commissioner would likely argue on legalistic grounds, that an officer who carried out such an act that was found to be an excessive use of force, was acting in good faith. Alternatively, the Commissioner may argue that even though an action by a member of the Force was inconsistent with the *Charter* it could be appropriate for the circumstances, regardless of the manner in which the action was carried out.

Most of the complaints surrounding events of the APEC Conference were deemed to be unfounded by the investigator, Ted Hughes, even though in many circumstances he found that the measures taken by the RCMP or its members were inadequate in planning, inappropriate for the circumstances, or inconsistent with the *Charter*. In some circumstances unfounded complaints are due to specific legalities and in others due to the limited jurisdiction of the public hearings (Hughes 2001). For example, in some circumstances Mr. Hughes found the actions of RCMP officers to be inconsistent with the *Charter*, but not inappropriate for the circumstances, and this forms the rationale for maintaining that some complaints

were unfounded. In other circumstances it is revealed that the conduct of an officer named in a complaint is that of a Vancouver Police Department officer and thus falls outside the jurisdiction of these public interest hearings. I question the reasonableness of a circumstance in which police conduct is able to be inconsistent with the *Charter*, yet concurrently appropriate given the circumstances.

In addition, this *dismissive discourse* directly contradicts the *additive discourse*. No matter how much more accountability is legislated, the Commissioner will likely not become any more accepting of accountability. No matter how much more accountability those who represent the *additive discourse* argue for, the point still remains that those representing the *dismissive discourse* are not dissuaded in any way. In effect, the only way in which the *additive discourse* could be seen to trump the *dismissive discourse* would be to enact legislation that makes recommendations that are binding on the Commissioner, or in some way shifts the power from the Commissioner to an independent civilian review body. Substantively, a degree of accountability would have to be reached which would negate the ability of those whose arguments are in line with the *dismissive discourse* to actually become dismissive of their responsibilities and obligations to be held accountable. This shift, however, would contradict that which many of the documents analyzed believed was important to the system as a whole, that of allowing the RCMP management to take an active part in the discipline and complaints process.

It was the Marin Report, which argued that if the RCMP was wholly removed from the system of complaints and discipline, it would undermine the ability of

individual officers to buy into the system and it would make it more likely that the RCMP would stonewall any efforts of an independent civilian review agency (Marin 1976: 68–70). Similar sentiments can also be found as recently as 2007 in the document produced by the Brown Task Force. These concerns are well founded as one can see from the findings of Watts (1991), Prenzler & Ronken (2001), and Prenzler (2004). All three of these studies found that police agencies were able to isolate an officer who is accused of misconduct and severely hamper investigations of outside agencies.

Of the hypothesized discourses that were believed to have existed, this study found three of them to be represented within the documents that were examined. The discourse that was not represented in the examination was the *accepting discourse*. This study did not find any instances of arguments truly accepting the system of complaints against the RCMP as it currently stands in the RCMP Act. However, there was a discourse found that was largely tied to the *additive discourse* in that it did not expressly advocate a stronger accountability system but it supported the notion that the current system was substantively lacking: this was the *not enough discourse*. Two other important discourses that were found were the *dismissive and deflective discourses*. Another discourse that was discovered was the *trust discourse*. This represents an argument that ignores the actual functions of attaining or maintaining a system that ensures the accountability of the RCMP, but rather argues that the ensuring that the Canadian public trust the RCMP is of primary importance.

The discourse that would tend to oppose the *dismissive discourse* is the *additive discourse*, which tends to be most visible and predominant within the Federal documents, policy reports, and parliamentary records. Conversely, the *subtractive discourse* was only represented in a few instances, one of these being related to the protection of officers' rights and the appropriateness of disclosing information. A discourse similar in many respects to the *additive discourse* was a discourse that recognized that *not enough* was being done to enforce or to bring about accountability. This tended to represent one side of the same coin that the *additive discourse* represents. In this sense, both discourses are supportive of enhancing a system of accountability, yet where the *additive discourse* proposes strengthened amendments or recommends changes, the *not enough discourse* only recognizes the shortcomings of the proposed legislation or current system. The discourse concerned with public confidence in, and trust of, the RCMP was also very prominent. However, of less prominence was a very clear and distinct discourse that stresses the importance of *efficiency and effectiveness* in the handling of complaints and service delivery. As would be expected with new legislation, there is also a discourse that argues for *consistency* throughout the system, as there are many subtle details that need amending. *Consistency discourse* issues are not of great significance to the issue of accountability, as these will likely be fixed when the proper due diligence of this Bill is conducted. The *deflective discourse* was only found in documents provided by the RCMP. And also of importance to this issue, a discourse representing *justice* appeared in only a couple circumstances and only functioned as a premise of the McDonald Report.

Some excellent examples that represent the sentiments of the *additive discourse* are the recommendations of the CPC to amend Bill C-38. In this document the CPC finds it inappropriate that the RCMP Commissioner retain the right to refuse to give the Commission privileged information pertaining to a complaint investigation “if s/he deems it to be either not relevant or not necessary, or both” (Commission 2010a: 6). Furthermore, the Commission recommends that Bill C-38 should be amended to allow the Commission similar access to information that the Security Intelligence Review Commission (SIRC) with respect to reviewing CSIS.⁷ This would allow the Commission access to a broader array of privileged information because in instances where information has been suppressed due to its “privileged” status how could the Commission can determine its relevance before examining it (Commission 2010a: 6). Similar to this discourse but unique in one aspect is the *not enough discourse*.

A document that contains many representations of the *not enough discourse* is the Legislative Summary of Bill C-38. Officially a non-partisan document, it does contain arguments that represent the *additive and subtractive discourses* and it contains many representations of the *not enough discourse*. One example of this follows a short background section reflecting on the relationship between the RCMP and the CPC. At its conclusion Casavant and Valiquet state: “It must be noted that the Commissioner of the RCMP is not required to comply with the recommendations made in the reports of the CPC” (2010: 3). In this regard Casavant and Valiquet recognize that there is a void between the current system of accountability and the

⁷ The Security Intelligence Review Committee reviews the actions of CSIS.

actualization of achieving a state of accountability. They do not recommend a way to rectify this and this is what differentiates the *not enough discourse* from the *additive discourse*. In contrast to the *additive and not enough discourses* there are three discourses that conflict with these two and they are the *dismissive, deflective, and subtractive discourses*.

The *dismissive discourse* is mainly representative of statements made by Commissioner Zaccardelli. These are mainly found within the responses of his to the three interim reports of the CPC concerning the protest complaints. In one instance Commissioner Zaccardelli responded to the CPC's finding that protesters were not given enough time to disperse from an intersection in Québec City with an argument fitting of the *dismissive discourse*. Commissioner Zaccardelli believed that "the evidence clearly establishes that not only were some protesters equipped and prepared to resist the effects of chemical agents, but that they were decidedly disinclined to move, regardless of the time allowed to disperse" (2004: 3). In this argument one can observe the justification of the police tactics and negation of the proper procedures for allowing a crowd to disperse before using tear gas.

An example of the *deflective discourse* can be illustrated by part of Ian McPhail's testimony before the Parliamentary Standing Committee on Public Safety and National Security. In this Committee meeting a question was posed to McPhail by the Liberal representative from Don Valley West, Robert Oliphant who asked Mr. McPhail if he took it as part of his mandate with the CPC to examine budgetary and mandate changes of the CPC as suggested by former CPC Chair Paul Kennedy, Justice O'Connor, and Justice Brown? McPhail's response was that it was a "difficult

question to answer, as I'm sure you'll appreciate, because at the end of the day, it's the Parliamentarians who will decide what changes we're going to be mandated to bring into place" (Standing 2010a: 6). Rather than answering the question McPhail chose to deflect responsibility to the subject of the question of making change to the organization of the CPC. Mr. Oliphant is concerned with the possibility that McPhail's appointment as Chair of the CPC is to maintain the status quo, and "to keep the government happy" (Standing 2010a: 7).

Although there are only a few representations of the *subtractive discourse* one good example of this comes from the McDonald Report. The McDonald Report states that a complainant should not be informed of the specifics of any disciplinary action and that the Force should tell the complainant "that it recognizes the error, that it apologizes for the misconduct of its member, [and] that it has taken steps to ensure that such activity will not be repeated" (McDonald 1981b: 984). Being told that something will be rectified with no details of how this will be achieved is of no reassurance to the Canadian public. By conducting this analysis I believe these discourses tend to group into two different clusters; one consisting of the *dismissive*, *deflective*, and *subtractive discourses*, the other consisting of the *additive*, and *not enough discourses*. The *trust discourse* does not fit well into either of these two groups.

The *trust discourse* generally argues that the question of creating a substantial system of accountability surrounding the RCMP is a question of solidifying and consolidating trust from the Canadian public. The best example of this arises from the Brown Task Force. The document that the Brown Task Force

submitted to the Minister of Public Safety and the President of the Treasury Board is entitled: “Rebuilding the Trust Task” (Brown 2007). Within the introduction of this document it can be seen that

“[a]s we assessed what we had learned and began considering possible solutions, we realized that merely treating the symptoms would not produce sustainable improvements... A new approach to the organization of the Force and its governance structure is essential, and a new independent body is needed for complaints and oversight of the RCMP (Brown 2007: vii-viii).

Additionally, the introduction also states that “rebuilding the trust is our primary goal” (Brown 2007: viii). In this respect this discourse is unique from the others, yet in many circumstances it does resemble the *additive discourse* only in the manner in which it also advocates a stronger accountability system but with the specific emphasis on the method by which it proposes to attain a system of greater accountability. In this regard it requires careful consideration. Further consideration should also be given to the context of the three protests and the interaction of discourses in this context as part of this analysis.

With regard to the complaints launched against the RCMP as a result of events surrounding demonstrations between May 2nd and May 4th of 1997 in Saint-Simon and Saint-Sauveur, although the Commissioner of the Force is in agreement with the Chair of the Commission with respect to most of the recommendations of the Interim Report that is not true of all of them. In all, 170 complaints were launched against the RCMP. The Commissioner is opposed to the recommendation of the Commission that would see letters of apology written to individuals who were bitten by a police service dog or who suffered improper use of force by those who were named in the recommendations. It is the stance of the Commissioner though,

that some individuals who are named in the recommendations did not actually launch a complaint and should therefore not receive a letter of apology. However, the discovery of these circumstances of the excessive use of force were discovered as a result of a complaint being launched on the victims' behalf by a third party. The Commission Chair is firm in her stance that "the Act clearly states that 'any member of the public [...] whether or not that member of the public is affected' may lodge a complaint; this includes third parties" (Heafey 2001: 4). It is clear that the legislation allows third parties to complain on another's behalf and for the Commissioner not to be held accountable to such a complaint's findings is, in the language of the Chair of the Commission, "deplorable".

Drawing again from Shirley Heafey's Interim Report concerning the complaint of Svend Robinson (Québec City Summit of the America's Protest) Commissioner Zaccardelli contradicts himself when he states that: "I will request the Commanding Officer, 'O' Division to have these matters thoroughly investigated and to take whatever action he deems necessary" (Zaccardelli 2004: 11). The event he is requesting be investigated was one that was discovered outside the purview of Robinson's complaint but among the evidence provided to the Commission for investigation. The evidence showed an incident in which a group of four young men, dressed rather nicely, were fired upon with rubber bullets by several RCMP officers with a minimum of warning (Heafey 2003). In addition, the Commission found that the use of force was excessive and the conduct of the officers disgraceful; however, in this circumstance Commissioner Zaccardelli finds it satisfactory to investigate an event that is found as a result of investigating another, yet he does not find it

appropriate to apologize to several individuals who did not complain directly but were the subject of a complaint lodged on their behalf by others. If he adhered to the rule of law then he would have to investigate this incident uncovered in Québec City and apologize to the named, non-complainants who also suffered from police misconduct in Saint-Sauveur. It appears that the Commissioner is operating within a discourse other than that of the regulations and policy set forth in the RCMP ACT Part VI and VII.

Conversely, the other incident that was discovered as a result of this investigation was an incident in which

[...]a protester was seen resisting passively, face down on his hands and knees, his left hand presented as if for handcuffing behind his back, and his right hand raised to his head, displaying the 'peace' sign. He said nothing, and was already isolated and surrounded by two standing and unidentified members when a third quickly came on the scene. The third unidentified member warned him that if he did not get up and walk away under his own volition, he would be subject to arrest and would be dragged away if necessary. This warning was appropriate in the circumstances, depending on how long the other two members had been imploring the protester to get up and simply walk away (Heafey 2003: 14).

A fourth member of the Force joined the three others and abruptly and aggressively threatened to taser the protester. After a delay of only a few seconds this fourth member of the group repeated his warning. When the protester did not respond immediately, the fourth member of the Force delivered the protester a shock of 50,000 volts from his M-26 Taser for about a second. "While the wording of the warning given before the use of the Taser was correct, its use was completely inappropriate in the circumstances" (Heafey 2003: 14). The protester was then picked up and carried away by the officers.

The deplorable actions of this member of the Force warrant some sort of accountability when such violent actions of officers of the RCMP are used on someone who is not violent or a threat to the officers, property, and in the words of the Commission, only non-cooperative. As John Kleinig declares in his book, *The Ethics of Policing* (1996), “[p]olice are expected to maintain order, but also acknowledge the right of people to assemble, demonstrate, and protest” (213) and in this circumstance they have definitely failed to acknowledge this protester’s rights. Even more deplorable, however, is the justification by the Commissioner for such actions. Commissioner Zaccardelli states that Staff Sergeant Sherstan

did mention that the use of an M26 Advanced Taser on a subject displaying resistant behaviour would reduce the potential for injury, both on the part of the subject and of the police officer, when compared with conventional use of force techniques such as joint manipulation, pressure points, stunning blows or strikes (2004: 10).

Of primary concern here is that the protester was not resisting in any manner, nor did the officers have any reason to limit his rights protected under the *Charter*. Similar sentiments are expressed by Malcom Thorburn (2010) as he argues that police must justify the use of discretion when making no-warrant arrests.

Even though the warning was given properly, the second concern with this justification is that the circumstances did not require such actions by the fourth member of the Force and the actions of this member were completely inconsistent with the *Charter*. In this circumstance there was no need for the application of any “conventional use of force techniques” as stated in the last quote of Commissioner Zaccardelli above. This is an example of police discretion failing the citizens of this

nation, which should always be subject to a substantive system to ensure just accountability.

If it is integral for the Force to truly be held accountable for their actions, all efforts should be made to make it possible for complaints to be made with the greatest of ease, whether the complainant is an individual who has witnessed police misconduct or has actually been subject to misconduct. Regardless of who launches the complaint the reality is not changed, that police and demonstrators come into contact, in many circumstances in adversarial ways, which give rise to abuses of power. Just as a witness to a crime may provide a tip to police, so should a witness to misconduct be able to launch a complaint. This is one area of the law where Bill C-38 is significantly different from the *Royal Canadian Mounted Police Act*. The *RCMP Act* states that any member of the public may make a complaint “whether or not that member of the public is affected by the subject-matter of the complaint” (Royal 1985: Section 45.35(1)). Whereas, section 45.51, subsection 1 and 2 of Bill C-38 is much more restrictive as to who can make complaints and whether or not the Commissioner may refuse to deal with them. Subsection 1 of section 45.51 of Bill C-38 is much shorter than subsection 1 of section 45.35 of the *RCMP Act*, because the previously quoted line from the *RCMP Act* has been deleted. Section 2 of section 45.51 has also been lengthened to include many reasons why the Commissioner may refuse to deal with a complaint including any individual making a complaint who:

(i) is not an individual at whom the conduct was directed, [...] (iii) did not see or hear the conduct or its effects as a result of not being physically present at the time and place that the conduct or its effects occurred, [...] or] (v) has not suffered loss, damage, distress danger or inconvenience as a result of the conduct (Bill C-38 2010: Section 45.51(2)(c)(i), (iii), and (v)).

It is clear here that Bill C-38 makes it more difficult to file a complaint. Subsection 2 of section 45.51 would impose conditions that would constrain individuals from launching a complaint that under the *RCMP Act* would be allowed.

As the law governing the launching of complaints is shifting towards becoming more constraining, implementing the recommendations of the CPC after an investigation has been conducted, and or deciding what disciplinary actions to take is left to the complete discretion of the Commissioner. In many cases, the actions taken as a result of the recommendations provided by the Commission were to implement additional training such as, remedial certificate training, or to make sure that commanding officers of the J Division “are henceforth aware” as to the proper procedures (Zaccardelli 2001b: 2). Remedies such as this allow the Commissioner to pay lip service to the Commission without disenfranchising the RCMP rank and file, as there are no formal or measurable ways the Chair of the Commission has to enforce such remedies. Other than naming specific officers in the Interim and Final Report of the Commission, there is no tangible form of accountability in these circumstances and events.

In the investigation of events surrounding Saint- Simon and Saint-Souveur it was found that despite the desire of the RCMP to keep highway 160 open through Saint-Sauveur, unobstructed by demonstrators, the reaction of the RCMP was not sufficiently justifiable given the nature of the demonstration (Heafey 2000). In all circumstances, RCMP policy and the findings of the Commission support the notion that when the use of force is justified it should only be used as a last resort and, conversely, when used, it should always be justified. Another significant finding of

the Commission was to note that in nearly every circumstance of unjustified arrest, Continuation Reports⁸ and personal notes were either incomplete or non-existent. This severely hampers the ability of the Commission to know with certainty the identity of the arresting officer(s). Creating further anonymity, it was the practice of Tactical Troop officers involved to wear gas masks and uniforms with no identifying marks, badges, or nametags. The anonymity of officers was common at all three protests due to the lack of identification being worn.

What one may observe from circumstances such as these is that the RCMP operates within a discourse that accepts the anonymity of officers and non-compliance with policy and regulations, as well as an attitude that condones the unjustified arrest of demonstrators along with the excessive use of force in making arrests and in maintaining public order. The addition of Commissioner Zaccardelli's subversive justification of officers' actions and non-compliance with RCMP policy is representative of the *dismissive discourse* but it also contravenes the very nature of what it means to be accountable.

Furthermore, Commissioner Zaccardelli agrees with Hughes that in several instances the conduct of individual members of the Force during the APEC Conference of 1997 was "inappropriate to the circumstances, and/or inconsistent with the rights guaranteed under the Charter of Rights and Freedoms" (Zaccardelli 2001b: 5) and of those 47 officers where complaints were launched against them,

⁸ Continuation Reports appear to be reports filed along with arrest reports, and incident reports and largely describe extenuating circumstances of an arrest or incident where an officer used force. In other circumstances Continuation Reports are utilized to justify an officer's actions. As the interim Report of the Commission into events surrounding Saint-Sauver and Saint-Simon states, this type of report is a report which states the circumstances and details that an officers was involved in the events described (Heafey 2000).

the RCMP in Vancouver reviewed those complaints to ascertain if further investigation was needed. As a result they found that 17 of those officers should undergo a full investigation of their conduct; however, “no criminal chargers were approved” (Zaccardelli 2001b: 5).

Thus, Commissioner Zaccardelli agrees with Hughes that members of the Force were responsible for several instances of both inappropriate conduct and conduct that was inconsistent with the rights prescribed under the *Charter*. When these instances were discovered and documented, no criminal charges were approved, nor were any disciplinary actions taken. It appears that the internal disciplinary process of the RCMP and the investigators of the 17 officers do not, however, converge with Commissioner Zaccardelli’s position. If there are to be no charges laid against the officers in instances where the Commissioner believes the conduct of officers was inconsistent with the *Charter*, this is possible if their actions were appropriate for the circumstances, but there is no justification to support this. It seems then, that the disciplinary process is echoing with the response of Commissioner Zaccardelli, where, in his response to the Interim Report of the Saint-Sauveur incident, he rejected the investigators’ notion that he should write apology letters to all individuals named. There does in fact seem to be a professional protectionist policy within the RCMP as is demonstrated by the lack of investigators to find sufficient evidence to lay even one charge in 47 cases of complaints where many of their actions were inconsistent with the *Charter*. On a separate occasion where in *Vancouver (City) v. Ward, 2010 SCC 27* that actions of police officers found to be inconsistent with the *Charter* are grounds for the awarding of damages to a

complainant. This is also consistent with the work of David Bayley who argues that “[p]olice cannot be trusted to police themselves. Exclusive reliance on internal investigations and discipline is foolhardy” (1991: iv). Watt also writes about this phenomenon, but attributes the lack of police officers willing to testify against other officers due to “the blue wall of silence” (1991: 350).

In opposition to the closing of police ranks to protect officers, from the investigation of police actions at the APEC Conference, Hughes recommended that police should keep an open door policy with protest leaders so that collaboration for the mutual interest of protesters and police could be fostered. As Commissioner Zaccardelli stated “this approach requires the establishment of a spirit of collaboration for mutual interests and, unfortunately, not all protest leaders accepted this approach at APEC” (2001b: 6). He continues as he misquotes the purpose of Hughes statement describing that: “...the RCMP made reasonable efforts to make their policy work and any responsibility for a failure to establish a cooperative working rapport with APEC Alert does not rest with the RCMP” (Zaccardelli 2001b: 6; citing Hughes 2001: 116). Hughes, as quoted by Commissioner Zaccardelli, has been misrepresented, as the Commissioner’s remarks seem to justify the relations the RCMP took with all protesters, when in fact Hughes’ comments referred to only one group of protesters.

Hughes wrote that “Sgt. McLaren, who was present as the march approached the fence, said the demonstrators were in high spirits, well organized and peaceful” (2001: 115). Later he continued:

[t]here were, however, a few people involved in the leadership core of APEC Alert whose attitude was bitter and hostile towards what

they saw as APEC's purpose. This attitude spilled over into antagonism and ill will towards the police and made the policing task far more difficult than it otherwise would have been. Cst. Charles A. Breakley, who worked with the protest groups under the guidance and direction of Cpl. Boutilier, described APEC Alert as the only group of protesters that was overtly uncooperative. I am satisfied that the leaders of APEC Alert were uncooperative, although those in that category declined to acknowledge holding leadership responsibilities. In my judgment, the RCMP made reasonable efforts to make their policy work and any responsibility for a failure to establish a cooperative working rapport with APEC Alert does not rest with the RCMP (Hughes 2001: 116).

Nowhere in the *Charter* does it state that one has the right to freedom of expression, or assembly as long as the police have liaised with that person and have come to a cooperative understanding of each organization's purposes and goals. This caveat does not exist for good reason. In fact, one may see that in the McDonald Report it expressly states that the ability of individuals to dissent politically, along with the rule of law, are among the essential components of Canadian democracy (1981a: 44). The *Charter* does not require this policy stipulation in order for rights to be accessed, nor does the breaching of this policy signify a justified limitation of any right guaranteed under the *Charter*. Thus, Commissioner Zaccardelli's justification of relations with protesters, such as the APEC Alert and others who were treated similarly, is flawed. It is not within the power of the RCMP to determine how it is that protesters may protest.

Furthermore, if this is the policy of the RCMP at such an event, it needs to be more cognizant of the breadth of the *Charter of Rights and Freedoms* before undertaking such a planning phase, or before it takes on such a responsibility. This awareness is essential when it undertakes a role, which may at times place an officer in a contradictory position. Although it is not an expressed duty of an officer of the

Force to protect the *Charter* rights of the citizens of this nation, going back to 1981, a year before the *Charter of Rights and Freedoms* was enacted, the McDonald Report stated very clearly that officers of the law, are never above the law (McDonald 1981a: 45). Those acting on the state's behalf are subject to operate within the rules of law set out in the *Charter of Rights and Freedoms* which govern the ability of the state to limit one's rights and freedoms, and thus at times, officers of the Force may find themselves in contradictory positions, as one may observe from the example above. It was the intention of those who planned the security of the APEC Conference to create a policy that promoted cooperation between police and protesters (Hughes 2001: 116), the *Charter* must always govern the interactions of police and protesters. Security is required to protect democracy, but the latter must always supersede the former.

In his conclusion to the Commissioner's Response to the Interim Report of events surrounding May 2nd and 4th in Saint-Sauveur and Saint-Simon, Commissioner Zaccardelli expresses clearly that:

The continuing exercise of discretion and judgement by individual officers and supervisors will always be a reality. Our objective is to ensure that our officers are well prepared from training, equipment, legislation, and police perspectives to exercise their discretion in the best possible way in dealing with matters of public order such this (Zaccardelli 2001a: 14-15).

Nevertheless, officers of the RCMP will have to account for their actions. Just as the rights guaranteed within the *Charter* are subject to such reasonable limitations as prescribed by law, equally as well police discretion is limited to such actions that do not infringe on the rights of the citizens of this nation.

In responding to the recommendations of Hughes regarding the events of the APEC Conference, Commissioner Zaccardelli states that he “accept[s] the following observations” Hughes made:

[...]where I have found police conduct to have been either inappropriate to the circumstances or inconsistent with Charter rights, the primary responsibility rests with those who held key roles in security planning for the APEC Conference. [...] [S]ecurity services [...] delivered by officers who were, at best, on the periphery of the two-year planning process while those intimately involved in that process were out of command from the moment the APEC Conference opened.

and. . .

‘Most officers in the field met their responsibilities in an entirely satisfactory manner, notwithstanding the difficult situations they faced, due to a large extent to the planning shortcomings over which they had no control. I am of the view [...] that what occurred in preparing and delivering police services on this occasion will certainly not be repeated’ (Zaccardelli, 2001b: 5 -6).

This statement is highly deflective of responsibility for the clear violations of *Charter* rights by police officers who provided security at events that occurred during the APEC Conference in 1997. How is it that one could logically redirect responsibility for one’s actions onto those who were responsible for planning security and not present during the events investigated by the Commission, since they had no direct input into the actions and reactions of those who committed such infractions? Commissioner Zaccardelli is attempting to blame the actions of those officers who actually violated citizens’ rights on those officers who planned the security apparatus of the APEC Conference. The real issue here is that officers tasked with security at such events, must at all times be accountable to the laws and citizens of Canada in performing their roles as peace officers. The Commissioner is wrong in placing responsibility for the violations of the *Charter* on those who planned

security, while it is fully the responsibility of those who carried out the security at the APEC Conference for these violations.

The body of evidence here comes to show how it is that the Commissioner of the Force operates within the *dismissive discourse*. Commissioner Zaccardelli is dismissive of the very recommendations of the Commission, which are enacted to form a substantial level of accountability for the RCMP. He is also dismissive of the very laws by which the Commission is vested the power to investigate and make recommendations. And finally, he is also dismissive of the responsibility the officers that he ultimately commands have to the *Charter of Rights and Freedoms*. In practice, the *dismissive discourse* rejects any attempts to increase accountability or to adhere to the standards of accountability as are set by law, policy, and regulation.

The other discourse that arose from the analysis of complaints documents tended to be aligned with the *not enough discourse*. This was largely represented by the adherence of Heafey and the Commission investigations to the letter of the law. In instances where there were clear violations of the *Charter*, but where, due to the actions of the Commissioner, the Commission could not compel the Force to make and change or hold any individuals to properly account for their action, Heafey was left powerless. In instances such as this Heafey at times was resigned to strongly worded disapproval where the law left her no recourse to address the Commissioner's *dismissive discourse* or the inoperability of the position the Commission finds itself in. It becomes clearer that at times the Commission is tasked with goals that it does not possess the tools to achieve. Additionally, where the Commissioner of the Force disagreed with certain recommendations and offered

a written reason as to why he disagreed, the only recourse Heafey had was to strenuously object with such a reasoning in her Final Report, as she did several times. Legally, she has fulfilled all of her functions at the moment that a Final Report has been tabled in Parliament.

In the original argument of Lord Denning in *R. v. Metropolitan Police Commissioner, ex parte, Blackburn* in 1968 expounded on the idea that would later be purported by the Marin Report that the Force should be seen to be at arm's length from any investigation. Is it not logical to state that even an investigation conducted by the RCMP could reach an end where justice is served and to that effect, there is no sense in arguing that if the Force is not *seen* to be investigating and is *seen* to be at arm's length, independent of any investigation. This notion of being at arm's length is misleading in that it will only seem to add transparency to the system of complaints. By creating an agency with operational independence there is no inherent added transparency in the system of handling complaints; independence is not synonymous with transparency. This argument would lend credence to rebuilding public trust with the RCMP because as the public sees that the Force is independent of any investigation, the public will be much more likely to trust whatever outcome is reached. Thus, as several of the documents analyzed in this study tend to purport, if the police are seen to be at arm's length from the civilian oversight agency⁹ in the hopes that justice can be *seen* to be done, then one is really dealing with the *trust discourse* rather than the *additive discourse*.

⁹ The Marin Report most notably; however, the idea arises in several others including the essay by Stewart Hyson: "RCMP Ombudsman Model", The Brown Task Force Report, "Progress - Transformation of the RCMP", and William Elliott's testimony before the SECU)

Similarly the Draft Legislation Model prepared by the CPC includes a clause which states that at the discretion of the Board, the Commissioner shall request that another Force other than the RCMP be referred to investigate (Commission 2006: Section 21(2)). The same logic applies here, as above. The apparent creation of distance between the Force and any investigation that may create difficulty for the public has its outcome based solely in the discourse of *trust*, rather than in the *additive discourse*. Determining which police force should handle an investigation will not determine who will conduct a *better* investigation, but who will be *seen* to conduct a better investigation, and by "better" one means "more independent."

Contrary to the notion that the Force should be at arm's length from the civilian oversight body, the McDonald Report believes that the RCMP should be the primary investigators of complaints. This is also reflected by other documents and is codified in Bill C-38. The McDonald Report also adds that the Force is to take seriously the need to make changes and to maintain a standard of conduct in carrying out such investigations, which implies that a measure of internal RCMP cultural change is necessary (McDonald 1981b: 986). Similar to the notion of justice being seen to be done, and quality investigations actually being conducted, this idea of the RCMP being able to be the primary investigators with the implied notion of internal cultural change, also falls into the *trust discourse* because without the cultural change, the ability of the public to trust the RCMP to have any part in the complaints process will disappear and the result of that is an RCMP that is disenfranchised from the system altogether and will further lead to an adversarial relationship.

This cultural change is also linked to another recommendation of the McDonald Report when it recommends that every officer be under statutory duty to report any misconduct or illegal action of other officers (McDonald 1981b: 973). This proposes that officers of the Force be more loyal to the letter of the law than their companion officers but, as the Brown Report aptly points out, there is a unique bonding experience between officers of the RCMP which makes this recommendation difficult to implement (Brown 2007: 13). If officers are to take a stake in a system of accountability but are also in a unique position to form a strong bond between colleagues how would the law break these bonds and create officers who hold loyalty to the law above loyalty to a co-worker?¹⁰

Furthermore, a foreboding recommendation exists in the McDonald Report which states that the Solicitor General should have full power of direction over the Force except for those quasi-judicial issues such as the power to investigate, prosecute, or arrest (1981b: 1014). Currently the RCMP falls under the guidance of the Minister of Public Safety and Emergency Preparedness. However, the proposal in the Report does not represent a substantive change. If the RCMP is subject to the direction of the Solicitor General or the Minister of Public Safety and Emergency Preparedness, or any Minister or member of the House of Commons appointed for such purposes, the deployment of and guidance of the RCMP or its members during protests, will no longer be seen as maintaining independence from the political realm of influence. This does not directly affect the issue of accountability but the

¹⁰ This idea of RCMP cultural change that may be necessary for a comprehensive system of accountability to take root within the ranks of officers is very interesting, but it also falls beyond the scope of this thesis.

RCMP would inherently be a partisan agency of government, not a civilian law enforcement agency answerable to the law and the law alone. The role of the officers of the Force would be dramatically altered if the Commissioner and the members of the Force were ultimately answerable to more than just the law.

Another document that is fraught with foreboding recommendations and assumptions is the document entitled: "Rebuilding the Trust" (Brown 2007) which is largely comprised of passages reflecting the *trust discourse*. There is one passage, in particular, which stands as a premise for the other arguments put forward, which is perplexing. The passage states that the police "are routinely in contact with those who break the law and who in many cases are not strangers to violence" (Brown 2007: 13). This statement is found in the chapter of the report entitled "Public Accountability," in a section that deals with "the culture of policing" (Brown 2007). Consequently, it is the belief of the Brown Task Force that it is the unique bond between police officers and violent portions of society, created through their frequent encounters, which prevents the public from trusting internal police investigations of public complaints. The Brown Report argues that the Canadian Public has difficulty trusting a police agency to police itself when that agency is so closely bonded to one another as co-workers.

Additionally, if this passage from page 13 of the Brown Report, or one similar to it, is used to justify police action against protesters I believe this premise to be largely misleading for two reasons. First, this statement would have one believe that protesters are largely individuals who break the law. They are in contact with the police, they must be law-breakers; however, from the descriptions of many of the

incidents that were found in the Interim Reports of the CPC, many were described as peaceful, which leads to the second point.

The investigations in these cases that have been studied are conducted because of violent encounters. Protests are not always peaceful. In three instances, a very similar trend in conduct was uncovered where the police used both excessive and premature force to clear protesters from a given area. In these cases it could also be concluded that the police were the instigators of violence, not the protesters. Not only would this argument purported by the Brown Report be misleading if used to justify police action in a protest situation but it could unfairly give many protesters a bad reputation. Additionally it would treat police “out on the beat” and police as part of a protest policing assignment as the same when in fact these are two very different dynamics of policing.

Retrospectively, once alleged police misconduct has occurred there is an issue of access to information. Specifically, how should the CPC be able to obtain the appropriate information to conduct an investigation or review of a complaint? One document that addresses this issue and represents the *additive discourse* is the Official Response of the CPC to Bill C-38 (Commission 2010a). The document at several points acknowledges how Bill C-38 does not go far enough in creating an adequately accountable police force. One example of this is the issue of access to information, specifically privileged information is a great example of how this document proposes increasing the powers of the CPC. It is the recommendation of the CPC that Bill C-38 be amended to give the RCC the same rights as SIRC. SIRC is not required to obtain consent from the Director of CSIS before publishing a

document that may contain sensitive information; its only requirement is to consult the director.

In addition, the CPC in their Official Reponse to Bill C-38 would prefer to see an amendment to the Bill that creates the ability for the RCC to have full access to information it deems necessary, rather than allowing the RCMP to determine what information to hand on to the RCC. As it states, “[Justice O’Connor] noted that the review body ‘may not always know with certainty whether information is necessary (or relevant) until it examined it’” (Commission 2010a: 6; citing O’Connor 2006: 533). Furthermore, when the CPC drafted legislation in 2006 it wanted to greatly expand the access to information by increasing the provisions of the *Power of the Board* beyond those that existed in legislation at the time, and beyond what is proposed in Bill C-38 to date. Five additional provisions were added to supplement to the two already existing. The additions suggest that the RCC should be able:

- c. to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as it sees fit, whether or not that evidence or information is or would be admissible in a court of law.
- d. to enter any premise occupied by the law enforcement service to which law enforcement officers belong on satisfying any security requirements relating to the premise;
- e. to converse in private with any person in any premise entered pursuant to paragraph (d) and otherwise carry out therein such inquiries within its authority as it sees fit; and
- f. to examine or obtain copies of or extracts from books or other records found in any premises entered pursuant to paragraph (d) containing any matter that it considers relevant;
- g. to make or retain copies of any document that comes into its possession in the course of an investigation, a review, an inquiry, an audit or a hearing (Commission 2006).

These provisions would greatly expand the ability of the RCC to gain access to information it deemed relevant and bring an end to the Forces’ power to determine

what information it would furnish to the review body. Derived from the *additive discourse*, this reflects a definitive shift in power and would go a long way towards balancing the level of intrusiveness between the RCMP and the civilian oversight agency. Ultimately, this is but one example of a recommendation to improve a Bill that in other regards does very little to increase the level of accountability that the RCMP are subject, and offers little in ensuring public confidence in the Force is maintained. Nothing is to rectify the imbalanced relationship between the Commissioner and the Commission, and ultimately, this is why Bill C-38 has failed to create a system of accountability the Canadian public can invest trust in.

Rebuilding public trust is an important issue when dealing with police and the public's willingness to cooperate with the RCMP. However, if the efforts spent in rebuilding the public's trust in a system of RCMP accountability, which is insufficient in delivering substantive justice, then any efforts will be fleeting. Thus, one can conclude that it is logical to first ensure that a sufficient system to deliver substantively just accountability is necessary before any undertakings to rebuild public trust in the RCMP and the system of accountability as a whole are undertaken. This will only aid in the creation of a public culture of trust surrounding the RCMP. As one may see with the examples of the *dismissive discourse* represented throughout the analysis of the complaints documents, the current system favours the Force, while justice in the form of complaints investigations are delivered to the public at the discretion of the Commissioner. Bill C-38 offers no hope in changing this.

Fourteen years prior to the Marin Report's publication, the British document the "Final Report" of the Royal Commission on the Police stated in paragraph 326 that "[i]t is no exaggeration to say that the police cannot successfully carry out their task of maintaining law and order without the support and confidence of the people" (1962: 99). Trust has always been an issue for police forces. They need trust and confidence from the people whom they police and from which to draw their legitimacy and authority. Without a substantively just accountability process in place, events such as those that took place in Saint-Sauveur and Saint-Simon, on the Campus of UBC during the APEC Conference, both in 1997 and Québec City during the Summit of the Americas in 2001, will continually erode public trust and confidence in the RCMP. Without a substantively just accountability mechanism, future protests and police encounters, where the police use force excessively and disregard protesters' *Charter* rights, will only further the erosion of public confidence in the RCMP.

Furthermore, "[i]n taking the position that the requirements of *security* in Canada must be reconciled with the requirements of democracy, let us be clear that we regard responsible government, the rule of law, and the right to dissent as among the essential requirements of our system of democracy" (McDonald 1981a: 44, emphasis added).¹¹ The principles of democracy demand that the RCMP be held accountable for actions that contradict the *Charter*. In a very recent court case,

¹¹ Noting that the McDonald Report was commissioned to report on issues of national security duties of the RCMP, the term "security" in this context is linked to national security, rather than security of a single event such as a protest. I believe, however, that the term security could be replaced with any other RCMP duty and the statement would hold as much validity, because regardless of the security being provided, the conduct of the RCMP is always subject to the rule of law in a system of democracy. It is only coincidental that security in the national security context and security at an event such as the APEC Conference is not distinguished in this passage.

Vancouver (City) v. Ward, 2010 SCC 27, the Supreme Court of Canada ruled that the excessive use of force by officers upon Cameron Ward clearly demonstrated a breach of his *Charter* rights and he was awarded compensation under section 24 of the *Charter (Enforcement)*. This literal application of the Section 24 of the *Charter* demonstrates that accountability can be obtained and that the complaints system is not the only avenue available for recourse when one believes that his or her *Charter* rights have been violated. Additionally, not only are illegitimate breaches of *Charter* rights grounds for compensation to be awarded but, to extrapolate upon this notion, all misconduct should be subject to a level of accountability where justice can be obtained.

Despite the efforts of the Commissioner to ignore the black letter of the law in the cases that have been examined this reinforces the fact that the Commissioner may not sidestep the recommendations of the Commission in order to elude accountability altogether. It has been demonstrated that it is quite easy for the Commissioner of the RCMP to ignore the process of accountability in the system of public complaints handling. Despite the powers that the CPC holds in accessing information and its powers of subpoena and evidence, the balance of power weighs heavily on the side of the Commissioner due to the lack of legally binding influence that any CPC recommendation holds. Bill C-38 places no more stringent conditions upon the Commissioner than the current legislation. What good is a system of accountability that allows the leader of the very organization that is subject to accountability to determine how this system is applied?

RCMP accountability cannot be left to the courts alone; they are only one way of obtaining justice when confronted with police misconduct. For many, accessing justice through the court system in Canada is far from attainable. Besides those who are legally privileged to be able to attain access to the court system, or more fundamentally, access to justice, many are not privy to the same accessibility. There is a great deal of reform needed in the Canadian court system before each and every Canadian has access to justice (see Christie 2007; Hughes 2008; Macdonald 2001; Rhodes 2001; and Roach, and Sossin 2010). Although the courts are only one mechanism through which individuals can hold the RCMP accountable, this is not an avenue to which all Canadians have equal access.

When one reflects on all the different discourses that intersect within and between these documents, one can begin to see how the notion of the interdependent nature of police accountability, as purported by Stone (2007), can come to govern this process of accountability. Without the social drive for accountability, the legal system and legislation will never be forced to pass laws that legally enshrine accountability and, as one can see through the court case of *Vancouver (City) v. Ward, 2010 SCC 27*, the legal institution is also forming an active and substantial branch of accountability. Furthermore, as stated by the Auditor General in 2003, because the police are able to utilize such vastly intrusive methods during their law enforcement duties and functions, the powers of any civilian oversight agency should be proportionate to those of the Force they oversee (Standing 2009b: 3; citing Fraser 2003: 33). Certainly there is a distance to go before the legislation may achieve such a status; however, in some respects the

legislation is moving in the direction of imposing greater levels of accountability on the RCMP. One example of this is the provision in Bill C-38 that allows the RCC to conduct joint investigations with other organizations across the country with a similar mandate and function.

Regardless of the intersection and dynamic interplay of public trust and RCMP accountability through the complaints system, as well as the judicial avenue of accountability and justice, there must be a system of accountability that balances the levels of police intrusiveness and of external control on behalf of a civilian review agency that approaches proportionality as was described by the Auditor General in 2003. When this is achieved, public trust in the RCMP will quickly follow. Unless this proportional relationship exists, the next time the RCMP infringes on the rights of protesters, all that has been worked for will likely be lost.

Chapter 5 - Conclusion

Can't we all get along?
- Rodney King¹²

Political debate influences the creation of laws and organizational mandates of agencies such as the CPC and where the publication of complaints investigations and findings influences public debate over issues such as police accountability, which in turn should influence the political debate, is expected in a liberal democracy. In the conclusion of this study one may now observe that the different discourses that influence the creation of legislation come into tension with one another. It is at this point where the discourses create tension with one another that the legal framework for agencies such as the Commission for Complaints Against the RCMP, or the RCMP Review and Complaints Commission are created.

After examining the findings of this study, one may understand that the different discourses involved in this process intersect with and influence the others; in this way they formulate the system of lodging complaints against the RCMP. The *dismissive discourse* has a distinct power relationship with the *additive discourse*, and vice versa. When these two meet and contradict each other, there is a distinctive outcome, and this is the case for each discourse, or set of discourses, however, the distinct outcome of each one's intersection is not deterministic but rather dependent on context. In the context of complaints arising from protests, the *dismissive*

¹² Wisconsin State Journal (1992) "Out of the Ashes, Heroes Emerge." Wisconsin State Journal. Madison Newspapers Inc. May 7th, 1992.

discourse of the Commissioner runs counter to the *additive* and *not enough discourses* and shows a disregard for accountability and the rights of the Canadian public as prescribed under the *Charter*. If a substantively just accountability system cannot be established, the next time the RCMP or its members infringe on the rights of protesters, the trust, which the Force is currently focused on shoring up, will evaporate.

Critical legal studies were described earlier as an attempt to demystify the legal system and determine what extra-legal factors exert influence in legal decision-making. This perspective has enabled this analysis to look beyond the codified process of accountability of the RCMP to understand how it is that certain instances of police misconduct are handled. It is also important to understand how it is that the legal framework is established and how the debate over constructing it has been influenced by the different stakeholders. By understanding all the discourses involved in creating and influencing the system of accountability surrounding the RCMP one can truly come to understand how it is that justice is reached in cases of police misconduct.

In determining how it is that justice is reached in the cases of police misconduct, this study was aided by the perspective of doubt proposed by Wolcher (1995). This perspective made it possible to understand the crux of the discursive arguments made in each document. Regardless of rhetoric and political double-speak, it was possible to demystify what was meant in certain cases or what the ramifications were of other statements. Perhaps it would be useful for others who strive to conduct similar analyses to also utilize a critical form of inquiry in their

work. In demystifying legal documents or similar material it is useful to not take for granted what is widely known about or purported by stakeholders, as Wolcher argued (1995). To assume the law and other federal documents are interpreted and applied in conformity with their precise wording would be false. Literal interpretations and applications of the law are often quite different than what is found to have occurred in hindsight. This is where the perspective of critical doubt is useful to demystify the unequal application of justice in the complaints process.

The power exerted by each discourse then could have latent and manifest consequences for its actions. The manifest consequence of the *trust discourse* may create an environment in Canadian culture where the public comes to view the RCMP favourably and with an attitude of trust. However, without an adequate and substantively just accountability system in place, to hold the Force and its members to account for actions of misconduct the manifest consequence of the *trust discourse* will likely create a culture of trust in the RCMP where little accountability exists. The latent consequence of the *trust discourse* could become evident the next time the RCMP find themselves accused of misconduct on the same scale as the three public interest hearings conducted by the CPC in this study. For many Canadians to find that the Force they trusted is not substantively accountable for instances of misconduct, trust would be fleeting.

In concluding this thesis I would hope that it is now clear how that system of RCMP accountability is flawed. Subsequently, I also believe that from this analysis one can hope to approach this topic in a meaningful way in order to bring about positive change. Trust may be fleeting but accountability is attainable. Despite the

best effort of William Elliott to create an accountable Force during his tenure as Commissioner many pundits and journalists still point to a public trust deficit in the Force. This deficit was created by years of scandals and the shortcomings of the Force, some of which have been examined in this study. Police misconduct does not inherently lead to a scandal, yet the lack of adequate accountability to rectify the unjust infringement of citizens' rights and the inevitable loss of trust suffered by the Force can produce a culture of mistrust among Canadians towards the RCMP.

To say that the current situation exemplified by the analysis provided by this study is simply the product of discourses opposing or countering one another is to miss the point of the analysis and findings. One must assume that policing in a liberal democracy will not always be perfect since misconduct happens. Officers of the Force are human and they sometimes make mistakes. It is the reaction of the Force to instances of misconduct with which this study is concerned. How is it that the discourses involved with creating an accountability system to oversee the Force, influence its creation? The curtain has been pulled back somewhat to show an intersection of several discourses that, at least in this light, do not do enough towards creating a substantively just accountability mechanism.

Despite the headway made by Bill C-38 that would allow the RCC to conduct joint investigations with other organizations, the RCC's ability to admit evidence not normally admissible in a court proceeding, and its ability to summon with equal powers as a superior court of record the balance of power still remains in the hands of the RCMP. As long as the Commissioner retains the power to ignore the recommendations of the civilian oversight agency that is mandated to ensure

accountability of the Force, a truly substantive just accountability system will not exist. This is the point at which the work of Chambliss (1964) combined with that of Wolcher (1995) become important in guiding the analysis of documents and law to uncover why complaints are handled in the manner that they are. In many respects it is not the literal interpretation of laws and policy that govern the application of law but rather some deeper seeded power relations rooted in ideological assumptions.

Power and Ideology:

Understanding that power, in its most general sense, as Steven Lukes describes the ability of A to affect B, is a very succinct base from which to understand the power dynamics of this study (Lukes 1977: 4). Power in this study is expressed as the desire for each discourse to affect change in legislation, which then levies conditions upon the RCMP, forcing it to conform to a system of accountability, or to allow it greater leniency and thus avoid the burden of conforming to regulations of civilian oversight. The purpose of this study was not to determine if there was a direct effect of each discourse on the system of complaints but rather, this was an *a priori* assumption that the argumentative discourses that were represented through commission reports, RCMP publications, and CPC publications did have an effect on the creation of the RCMP complaints system. To borrow from Lukes: “we all effect each other in countless ways all the time,” and if we assume this

to be true, then it can be no stretch of the imagination to assume a Federal report can affect the creation of a legislated entity (Lukes 1976: 26). Each discourse will approach this in a different manner whether in the first (*additive & not enough*) or second (*dismissive, deflective, & subtractive*) group of discourses. The *trust* discourse is unique in this regard, at times arguing why exactly it is that accountability is necessary and in other instances operating as a premise or a *de facto* basis for an argument. Generally speaking though, power can be regarded as the ability to effect change or resist change in Parliamentary legislation and this will have a subsequent impact on the manner in which the RCMP and the civilian oversight agency interact in the creation of accountability. These are the explicit goals of the discourses found in this study.

This idea of power as a dynamic of effective change or resistance to change is compatible with the notion Lukes describes which echoes the idea of Boudon in writing that “the concept of structure varies with the context in which it is employed” (Boudon 1971: 46), meaning that any definition of power between the RCMP Commissioner and the CPC or RCC would be subject to the context in which it is employed. That is to say that power as reflected in the context of which has been studied here, could be vastly or minutely different, depending on the context of structures in which the power is situated. The structures of this context are largely set by parliamentary regulations and the laws in which the Chairs of Commissions operate; Commissioners are appointed and the roles of different individuals and organizations are mandated as to their function. All these different social locations of organizations and individuals and structures of legal frameworks and mandates

come to comprise the structural context in which power operates. Power consequently comes to define, redefine and albeit possibly change the context and subsequently the structures within which it operates in the same process in which it exerts influence in the realm of discursive interaction studied here.

In another respect the discourses come to represent ideologies, in that the discourses purported by certain groups or individuals would reinforce the ideology of the group or individual, strengthening their legitimacy. In this respect the Foucaultian idea of discursive formations being the resemblance of themes, common patterns and regular styles means that the different discourses can be seen as the manifestation of broad ideologies on a specific social phenomenon (Cousins and Houssain 1984). These broad ideologies are encompassed by the emergent themes of the two groups of discourses as well as the unique *trust discourse*.

Returning to the discussion in the first chapter, many contradictory and opposing assertions as to how the system of RCMP accountability should be structured were addressed in the analysis, and the curtain was pulled back to reveal the discursive themes from which they arise, yet in these contradictory ideas, ideology also plays a great part in framing the argumentative stances of each side of the argument. For instance, the two ideas of della Porta in protest policing are the “negotiated management model” and the “escalating force model” which can be seen as representing different policing ideologies. The former could arguably be tied to the idea of community policing while the later belongs in large part to a crime control perspective. These are two very different ideological stances on the prevention of crime with different ontological beliefs regarding the nature of crime

and its solutions, similar to the way in which the *additive* and *not enough discourses* differ from the *dismissive*, *deflective*, and *subtractive discourses*.

Community policing is typically understood as a professionalization of policing and by a trend towards the decentralization of policing (Nancoo 2004). Very similarly to the negotiated management model of protest policing, which emphasizes communication between protesters and police, so to does community policing foster open communication between neighbourhood residents and the police. These two perspectives emphasize the collaborative efforts of both the police and the public, either protesters or community residents, in either controlling crime or policing ones own community. In contrast, the “escalating force model” of protest policing and crime control perspective conceptualizes crime and social disorder as an entity unto itself that requires remedy. Social disorder is conceptualized as a sign of social sickness needing cure through even greater force, similarly crime is seen as a social dysfunction in need of control, thus justifying a heavy handed “get tough on crime” approach. From this one can understand the different ideological and ontological differences discourses may represent. Similarly to the differing ontological stances that support the “escalating force model” and the “negotiated management model” so to may opposing ontological stances exist between the two groups of discursive themes that were found in this analysis, as well as a third that supports the *trust discourse*.

The difference between ideology and discourse is mainly a question of the unit of analysis, as one is the representation of the former. Conversely, power and ideology each represent the same conception of ideas in different states of being.

Power being the *active* representation rooted in the *passive* concept of ideology. Thus, the dismissive tone of Commissioner Zacardelli in responding to the recommendations of each Commission's Interim Report is the active exertion of power rooted in an ideology that would condone the actions of the RCMP in using excessive force, in many circumstances, against what the ideological perspective would see as illegitimate protests, and / or that the actions of the Force were legitimate.

Practical Implications:

In order for a civilian oversight agency to wield any influence and to hold the RCMP and its members accountable, the enacting legislation must entrust such an agency with meaningful powers to ensure compliance on the part of the RCMP or its members in the system of accountability. A private member's bill in the 3rd session of the 40th Parliament of Canada in 2009 proposed the creation of a Civilian Investigation Service to investigate any instances of death or serious bodily harm to individuals while in RCMP custody (Bill C-472). This act would allow the Director of this Service to recommend to the Attorney General of Canada, if they believed that there were reasonable grounds to pursue criminal charges, that charges should be laid against an officer of the Force (Bill C-472 2009: Section 45.48 (10)). Shifting the emphasis from the Commissioner to the Commission, to recommend that charges be laid, moves the balance of power between these two entities towards equilibrium.

This is, however, only one example of such a power a civilian oversight agency could possess that would greatly expand its repertoire of possible tools available with which to hold the RCMP to account.

During all the CPC investigations of complaints, Commissioner Zaccardelli was Commissioner of the Force. As much as one could conclude that the *dismissive discourse* was an effect of Commissioner Zaccardelli's appointment, there is also the point to be made that there were no instances of protest that gave rise to complaints being filed and investigated by the CPC outside of his tenure. An article appearing in *Maclean's Magazine* on November 14th of 2007, claims that it appears to be business as usual for the RCMP, especially in upper management: sweeping embarrassment under the rug, keeping whistleblowers from speaking out, and at all costs portraying a successful, world-class image of the Force (Gatehouse & Gillis 2007). The article maintains that it is a problem of "a deeply ingrained culture of officers who feel they have the power to make – and break – the rules" that is crippling the Force; this more closely resembles the "mid-1800s military management culture" than the world-class law enforcement agency it is touted to be (Gatehouse et al. 2007).

The article also points out a major contradiction in the RCMP complaints process, as the authors observe that the police are not only the initial investigators of any complaints, they also determine a complaint's validity and if disciplinary action is warranted, adjudicate these matters as well. When a complaint is referred to the CPC for review or investigation, it in turn relies on material collected by the Force in the initial investigation. Why is it that the Commissioner also has the final decision to disagree with any Commission recommendation? The author of this

study could not agree more with a statement of former CPC Chair Paul Kennedy as he is quoted in the article: “we have a model of police review that is based on a time that has passed us by” (Ibid: 26).

From the observations of this thesis I have concluded that the system of RCMP accountability is largely flawed in that the emphasis of power rests with the Commissioner of the Force leaving the CPC and complainant at the Commissioner’s mercy. This relationship must change in order for accountability to truly be achieved. With the support of the discourse analysis one can now observe that in the practice of handling complaints the balance of power is held by the Commissioner of the Force, which can impede the ability of complainants to seek and ultimately, limit their opportunity to obtain justice.

For any police force that operates within a liberal democracy and relies on the concept of policing by consent, it is absolutely necessary to properly establish an accountability framework from which the Force and the public can begin to form a trusting relationship. This is what the Commissioner of the Force and decision makers in Parliament have overlooked in trying to rebuild the trust of the Canadian public in the RCMP.

Yet, as the current Commissioner, William Elliot, soon plans on leaving the Force in July of 2011, it is interesting to note that his promises of bringing openness, transparency, and accountability stand as empty and vacant as his office soon will. Nevertheless, some have speculated that this offers the Minister of Public Safety some time to reflect on the Force and its future before appointing a new commissioner. Some have argued that the Force is too archaic to function properly

in the 21st century, that it needs to remove itself from contract policing in municipalities and that a meaningful civilian oversight agency needs to be established for a Force that is strictly devoted to national law enforcement such as the Federal Bureau of Investigations in the United States (Mulgrew 2011). Whoever becomes the new Commissioner of the RCMP this July needs to be someone willing and able to bring about the reform necessary in order to instill the change that will be required to create an amicable relationship between a civilian oversight agency and the Force. From its roots in the post-dominion Canadian prairies, the Force has tried to adapt to the modern Canadian society; however, in order to maintain Canada's growth as a liberal democracy, reform is necessary to create a Force which is accountable. As a principle of liberal democracy, dissent should be treasured as an inalienable right. Yet, if the Force continues to provide security at Government events where protests may occur and if the RCMP continues to contract with the provinces and municipalities across Canada, it must be able to properly respond to such situations with the respect that the Canadian public deserves as prescribed under the *Charter*. When or if the rights of individuals have been limited, there must also be a meaningful process to hold those officers or the Force as a whole, to account for their actions and decisions by an independent civilian oversight agency.

As a contextual rewording of Lord Hewart's remark that justice should be done and also seen to be done, I whole-heartedly agree with his statement. However, I contend that in the context of which this study has been conducted, that federal law enforcement seems to be following sentiments that are more accurately

reflected by a statement such as this: 'if justice cannot truly be done, the *illusion of justice* should manifestly and undoubtedly be seen to be done'.

Ultimately, one must address the question of how such research can improve the state of affairs surrounding the issue of RCMP accountability. To address the question of success, does the current system of complaints achieve a state of accountability for the RCMP? One can draw again from Tammy Landau as she stated: "'success', is legislatively defined" (1996: 294). The CPC is successful in providing accountability for the RCMP, as defined by the RCMP Act, if it carries out its duties as prescribed by law. However, if one addresses the nature of the term accountability as I defined earlier as consisting of three elements. A system of substantively just accountability should 1) hold officers to account, it should 2) demand officers to justify their actions, and it should 3) hold those responsible for their actions. It is the third element I believe is lacking from the delivery of accountability. Partially due to the application of the *dismissive discourse* as was found in the examination of the three protest investigations, the CPC is unable to deliver a system of substantively just accountability, despite their fulfillment of their legislated mandate.

Protest Literature

Protests have been the subject of a vast amount of academic research, predominantly in the United States, but also internationally. Drawing from some of the appropriate literature we know that from studying past protest situations of the police and public interactions that the way in which police approach protests has a dramatic effect on the way in which the two groups will interact, be it peacefully or violently. However the Government of Canada or those in positions of authority in the RCMP validate the manner in which the police address protests the actions of the RCMP must always be reconciled with the *Charter*. Also, the manner in which protest are policed has some effect on the police and protester interaction. When police prepare for violence, they in turn precipitate violence from groups which are not inherently violent to begin with (Gorringer & Rosie 2008). Although Gorringer and Rosie did not determine that a causal relationship between police responses and the interactions of protesters, but rather, that both police and protesters interact in creating the situational outcomes of any meeting between the two groups.

The objective of police in protest settings should be one of constant vigilance, yet prepared for the worst should they observe violence, vandalism, or crime that is imminent or under way which requires a valid response. Mike King and David Waddington described this as a two-pronged approach to public order policing, often utilized by police. The first prong, commonly known as the paramilitary extension of police, deals with the physical ability of police forces to deal with crowds and public disorder, while the second focuses on a heightened use of intelligence (2006: 76). Beyond the simple explanation of what King and Waddington call a 'soft hat' policing model, encompassing a rather impotent show of

police officers while the para-military units are held in close proximity, but out of sight of protesters, “[r]ather, it is more a situation whereby the policing operation is intelligence-led through risk analysis, consultation plus infiltration of ‘non-negotiable’ groups, intensive surveillance, and pre-emptive removal of targeted leaders and potential ‘troublemakers’” (King & Waddington 2006: 95).

Whenever police confront protest in a liberal democracy, there is a dynamic interaction between these two entities. Two of the emerging patterns of interaction include negotiated management and escalating force, which have been the subject of academic literature. The “escalating force model” is based on the need for police to maintain control of a situation and the police see that this objective can be attained through the use of force. This perspective is based on the assumption that force is necessary in order to obtain order. Every tactic protesters use will be matched and exceeded by police. Marches are met with barricades, thrown bottles and stones are met with tear gas and rubber bullets. Ultimately, the police hold a monopoly on the use of force given to them by the legislature. We give them this power because we recognize that their job can be difficult, and at times the use of reasonable force is necessary to prevent greater damage. A situation where the “escalating force model” is utilized is usually characterized by a low level of communication between protest organizers and police, a low level of police tolerance for protests and innovative protest methods, a low priority set by police on the right to protest, and the use of coercive methods of control on behalf of the police (della Porta & Reiter 2006).

The “negotiated management model”, on the other hand, gives high priority to the right to protest peacefully and communication between protesters and police is encouraged (McPhail, Schqueingruber, & McCarthy 1998; della Porta & Reiter 2006). Often police will overlook, or under enforce trivial and minor infractions of the law in order to minimize confrontations in order to maintain peace. This is one of the three emerging tactical tendencies that della Porta and Reiter consider to be the future of protest policing which includes under-enforcement of the law, an emphasis on negotiation and mediation, and large scale collection of information and intelligence (della Porta & Reiter 1998). The work of King and Waddington (2006) and de Lint (2009) emphasize this shift towards the use of information and intelligence as a modern form of controlling protests. Haggerty and Ericson (2001) also emphasize the expanding militarization of police in Canada and a trickle down effect of technology from military research that makes it increasingly easier for police to gather information on protesters. And yet despite the institutional shift towards the use of benign control tactics and information based strategies that are integral for police, in order to restore, maintain, or enhance legitimacy in the public eye, these are ultimately methods by which protesters are still being controlled (della Porta and Fillieule 2004; and Waddington 1998). As Waddington (2007) points out, it is much more difficult for police to get involved in fully violent and riotous altercations with protesters without thoroughly justifying it, because of the ever-present media publicity, more clandestine tactics are required. This however, still ignores the fact that protesters are being controlled, and these actions by the police and the state are intended to create an illusion of freedom and democracy.

In his book, *Policing Public Order: Theory and Practice*, David P. Waddington (2007) claims that the shift towards the “negotiated management model” of policing protests and away from the “escalating force model”, brings with it “a greater respect for the ‘rights’ of protesters, a more tolerant approach to community disruption, closer communication and co-operation with the public, [and] a reduced tendency to make arrests (particularly as a tactic of first resort)” (10). However, as King and Brearley (1996) remark: negotiated management resembles a shift towards a highly trained and well versed “caring cop on the street in view of the public, with reserves all tooled up and ready to go in the backstreets” (78). Despite a step in the direction of a freer avenue of protest, the police may continue to subvert civil liberties in other situations, relying more clandestine tactics.

Willem de Lint and Alan Hall argue that policing in the information age has become more attuned to “prevention and pre-emptive strategies of risk aversion and less [...] the coercive authority of state agents” (2009: 45). There is still ample anecdotal evidence of state control, albeit in American research, of direct physical, often illegitimate and arguably illegal police action in Luis A. Fernandez’s *Policing Dissent: State Control and the Anti-Globalization Movement* (2008). In one of the few studies of public order policing in Canada, King (1997) finds two emerging trends in Canadian policing, one emphasizing conciliatory methods while the other contradictory approach emphasizes an increasingly militaristic approach to public order policing (72-73).

Regardless of the manner in which protests are policed, there may inevitably be an argument between protesters and police as to the justification for police

actions in the use of control tactics. I hope that through this research it is possible to navigate the different discourses that influence the creation and modification of the system of complaints against the RCMP in a positive way that will create an the conditions from which a system of greater RCMP accountability can flourish. Certain complaints may influence the manner in which police plan to engage with protesters in the future. Likewise, Bill C-38 now being discarded after the elections of May 2011 will have no effect on the way police and protester interact nor do I think it would have created any substantive change had it come into effect. In the event an effective piece of legislative becomes available so that the public can scrutinize the methods of public order policing, police may choose different tactics to utilize when dealing with protesters. It is the existence of a valid oversight agency that may provide this level accountability for any police force.

Further Considerations

Additionally, what would be need for this system to achieve its intended goals, or what would need to change within this system for its goals to be attained? Although, this study is a unique form of inquiry into the dynamic of discursive arguments from the political landscape, greater analysis is needed in an effort to discover how a better mechanism can be created to hold police forces and their officers to account. To achieve this one must understand how it is that different forms of police accountability are constructed and created. One could also examine

other police forces within Canada or internationally to see if the same or similar discourses exist in similar complaints and accountability mechanisms. Given the nature of such reactive accountability systems such as the one studied here, it is likely that the issue of misconduct by police officers will persist into the future. Police misconduct may always be an issue wherever police agencies exist, but research is needed in order to inform the creation and best delivery of justice after the fact.

When the actions of an officer are found to have conducted themselves in a manner that is otherwise not an acceptable form of conduct, all efforts should be made to ensure that such misconduct should never happen again. To do otherwise is to condone such activity. In short, the emphasis on oversight must emphasize corrective measures that attempt to resolve the issue that may give rise to misconduct in the future. Not all issues of misconduct are individual in nature. Many could have their roots in structural issues, where such conditions could lead to a greater likelihood of an officer or group of officers unjustly infringing on the rights of individuals, be it as a result of Force-wide policy, or chain of command to name a couple of examples. Such issues should also be addressed under this banner of accountability, and should retain the same emphasis on corrective measures that are focused on resolutions. Further research is also need to examine the structural conditions, which may give rise to police misconduct. Given the nature of the complaints in this study, many of the instances of misconduct may have been committed as a result of security planning as in the case of the APEC protests in 1997, or as a result of lack of planning and organization as in the case of Saint-

Sauveur of the same year. Beyond the individual officers of the Force, what are the internal, organizational dynamics of a police force, which can give rise to misconduct or create an environment where misconduct is more likely to occur? As stated previously, police misconduct may always be a part of policing. However, all efforts should be made to reduce this phenomenon wherever possible.

Whether or not an issue of misconduct is the product of one “bad apple” or a bushel that is rotten to the core, each circumstance of discovered misconduct must be approached in a consistent fashion. This is also not an issue that can be solved in one swift act of Parliament; it may take a long sustained effort on the part of all those individuals or organizations that can exert influence over the process, from the very top of the chain of command to the Members of Parliament who debate such issues in government, and to the individual officers of the Force. Ultimately, the end goal of a proper state of accountability rests with the ability of this new shift in policy to succeed in producing a cultural change that would see a more self-reflexive force internalize the principles of justice prescribed in the *Charter* and who could examine their own actions in light of these principles. Understanding that cultural change takes many years at best, it would be fruitful to create a strong, legally mandated civilian oversight agency to hold the Force and its members to account. The citizens of this nation deserve a national police force that will respect their right to assemble peacefully and to express their opinion among other rights prescribed under the *Charter*. A police force which does otherwise, does not derive its authority from the consent of the public as a police force in a liberal democracy should, but rather oppresses those who would wish to be treated justly and fairly.

Consider the future of policing if Canadian's do nothing to ensure the RCMP are held accountable, or that the issues which give rise to misconduct the modern conception of rights may be lost altogether. I would hope that an analysis such as this could help in creating some form of substantive change in the system of RCMP accountability.

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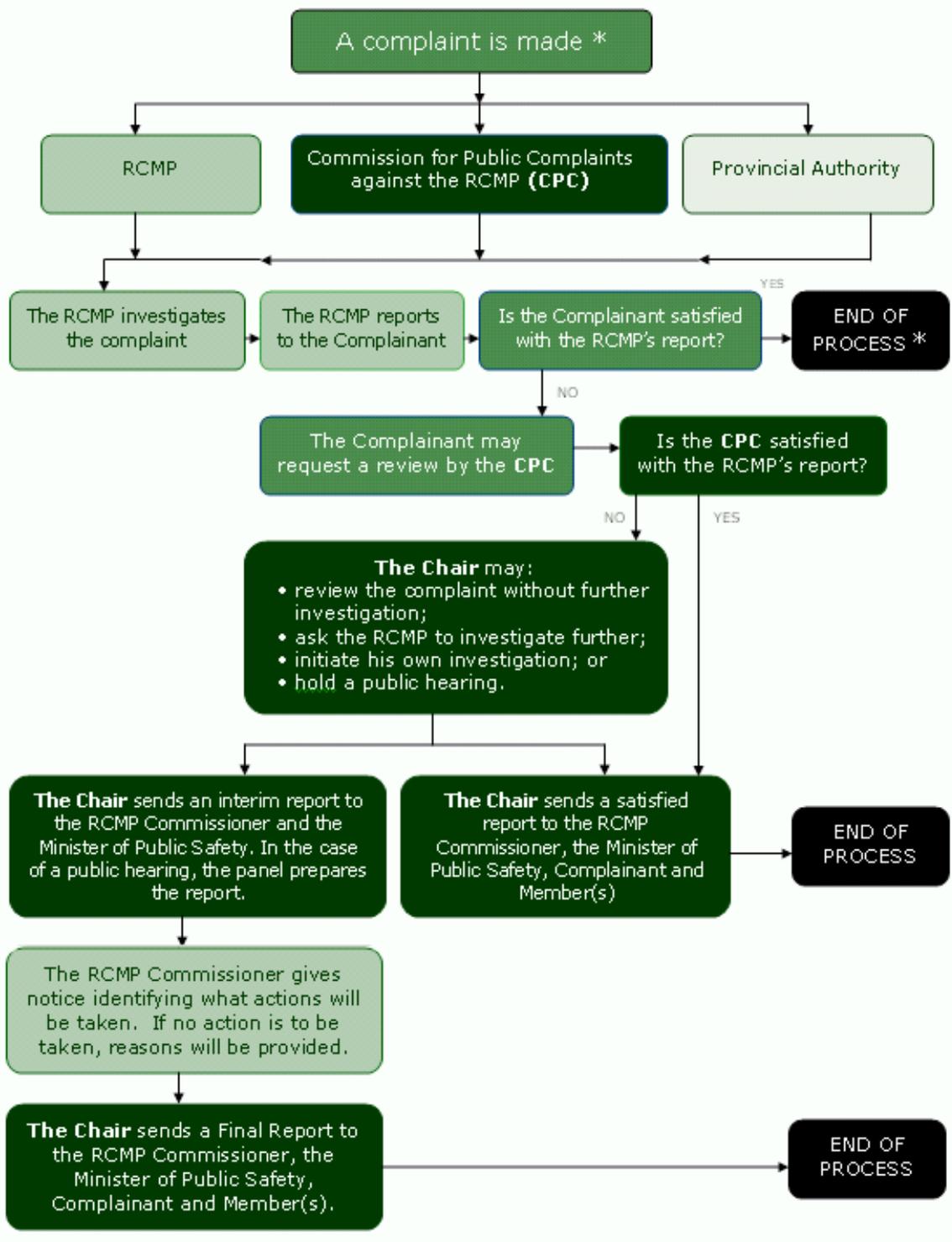
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Appendix 1: Complaints Process Flowchart under the Commission For Public Complaints Against the RCMP



Accessed August 24th 2010

<http://www.cpc-cpp.gc.ca/srv/sta-norm/cp-pp-eng.aspx>

Last Updated February 19th 2010

Appendix 2: Documents Analyzed in this study
*Sorted by organization of origin and alphabetically

Royal Canadian Mounted Police:

Royal Canadian Mounted Police. 2010a. "Progress: Transformation of the Royal Canadian Mounted Police" Royal Canadian Mounted Police. Retrieved October 14th, 2010: http://www.rcmp-grc.gc.ca/pubs/pro-trans/66198-0_eng.pdf

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Federal Government of Canada, and Federal Departments:

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