POLICE COMPLAINT PROCESS
THE FULLERTON COMPLAINT

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Ombudsman
Fairness for all in British Columbia

Legislative Assembly
Province of British Columbia

OMBUDSMAN

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January 25, 1989

The Honourable Angus Ree
Solicitor General
Province of British Columbia
Rm 124, Parliament Buildings
Victoria, B.C.
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Dear Sir:

Re: Robert and Francine Fullerton and the Matsqui Police Service

Robert and Francine Fullerton claim that they were treated improperly by various members of the Matsqui police service during an incident on July 15, 1985, which began at a local gravel pit and ended at the Matsqui Police Station. A civil action has been commenced by the Fullertons claiming damages for assault. The trial of this action is set for hearing before a jury in the Supreme Court of British Columbia commencing April 17, 1989. The Fullertons are represented by counsel and the civil process, although delayed, is proceeding in a proper way.

The concern of the Ombudsman's office is that the public complaint process established under the Police Act may not have operated fairly and in the public interest in this case. This process is extremely important in our society. It provides in the first instance for the timely and informal resolution of many complaints against police action; and in otherwise unresolved situations, it provides for the possibility of full internal investigation and a public hearing before a local police board, and eventually the independent investigation by or a public hearing before the B.C. Police Commission.

While the Police Act process determines what, if any, disciplinary measures might be appropriately taken against police officers who may have acted outside the bounds of their duty, it has an additional and vitally important purpose. Fundamentally, it attempts to satisfy the need for public confidence in the quality and reputation of police in our society.

The police are burdened with heavy responsibilities, and they are necessarily provided with extraordinary powers in order that they might discharge them effectively. However, while the public depends on the police for its protection in individual situations, maintaining the delicate balance in our democratic system between freedom and responsibility is dependent on our ability openly and confidently to hold accountable those to whom we pass power, including the police.

Our fortunate tradition is that we are served nobly by our police forces. However, where allegations of impropriety occur it is not sufficient that the final decision on the matter rest with the police themselves, for their own protection as well as the public's. No matter how thorough and determined an internal investigation and review might be, it is unlikely that the public as a whole will be left with absolute confidence in the impartiality of the process. This is unfair to police officers who may deserve full exoneration, and it does not adequately serve the public interest.

For these reasons, the Police Act provides for the right to an external review by way of public hearing before the local police board, as employer of the police officers, except where the complaint is determined to be "frivolous, vexatious, not made in good faith or trivial". This determination is made first by the Chief Constable, and may be confirmed without a public hearing by a two-member panel of the local police board. Under the new Police Act passed by the legislature in 1988, but not yet proclaimed into law, there will be a right to a hearing before the local police board on this issue of frivolous, vexatious etc. It is clearly accepted under this new Act that a complaint against the police should not be dismissed without the right to a public hearing.

In the Fullerton case, an internal investigation was commenced and a number of witnesses were interviewed. However, the former Chief Constable decided not to investigate further under Section 39.1 of the Police Act when it appeared to him that the complaints were "vexatious and not made in good

faith and (do) not warrant investigation under the B.C. Police Act". This decision was referred for review by Fullerton to a two-member panel of the Matsqui Police Board, who confirmed it without a hearing. This process was in accordance with the law, and no further appeal or hearing was available under the Police Act.

On the application of the Fullerton's lawyer, the Attorney General directed the B.C. Police Commission to conduct a special investigation under Section 44 of the Police Act commencing in December, 1986. An independent investigation was considered to be necessary, particularly due to the serious and unexplained physical injuries suffered by the Mrs. Fullerton. The Police Commission investigation reviewed all of the evidence and statements available, re-interviewed a number of witnesses and considered the adequacy of the initial police investigation and the reasonableness of the findings by the Chief Constable and Police Board panel that the allegations were vexatious and not made in good faith. While the Police Commission report did not recommend further investigation or a public inquiry, it did conclude "in retrospect, it would have been more appropriate not to have dealt with this complaint under 39.1 of the Police Act in view of the serious nature of the allegations".

In the 3 1/2 years since this incident, the Fullertons have continued to harbour their sense of grievance, and the Matsqui police have been exposed to repeated public accusations. The investigation by the Ombudsman's office has not been intended to weigh the evidence to determine the truth from the opposing versions of what happened. Rather, it has been intended to determine whether the police complaint process has operated fairly and in the public interest and, if not, to recommend action to help remedy the situation. The investigation by this office has raised the following concerns.

1. The adequacy of the initial police investigation.
   Although numerous statements were taken and presented to the Chief Constable during the initial internal investigation, three major aspects were not adequately investigated. First was the allegation by Mr. Fullerton that he was mistreated in the Matsqui police lockup, referred to in his initial statements as including being dropped on his face while being handcuffed behind his back, being refused a breathalyzer or blood test to prove his sobriety, and being refused an ambulance and medication. Adequate investigation into these allegations would have included the interviewing of all other persons in custody at the time who might have

observed or heard what occurred. The obtaining by Fullerton's lawyer of an affidavit a year later from a person in custody at the time which tends to corroborate Fullerton's allegations demonstrates the significance of this failure.

Second was the issue of the serious and unusual injuries sustained by Francine Fullerton which were not addressed during the initial investigation. Failure to do so leaves a major unanswered question as to their probable cause.

Third is the fact that statements were not taken from three of the four officers who were the main subjects of the allegations. In the absence of such important information, even if it was requested and legitimately denied by the police constables, it is questionable whether a Chief Constable should ever make a decision under Section 39.1.

2. Reasonableness of Chief Constable and Police Board panel's decision of "vexatious and not made in good faith". To be reasonable, such a decision should by definition be demonstrably based on a finding that a complaint was without reasonable or probable cause or excuse, trivial, malicious or otherwise an abuse of the process (Oxford, Random House and Blacks Law dictionaries). Although the Chief Constable and the panel may have honestly not believed, on balance, the allegations on the information they had before them, this does not mean they were vexatious or not made in good faith. There was no evidence of malicious intent as for example which might be demonstrated by some pre-existing bad feeling between Fullerton and the police service; nor did the very significant injuries and seriousness of the allegations suggest triviality; nor is the evidence so overwhelmingly contrary to the allegations that they can be said without doubt to be without reasonable cause or excuse. And further, as noted above, inadequate investigation of three important aspects of the allegations meant that there was insufficient information on which to base such a harsh determination.

3. The need to resolve the matter. Of most serious concern in this case are the unresolved and festering allegations against the Matsqui police service and the outstanding feeling of grievance which continues to be held and publicly expressed by the Fullertons. The public uncertainty which this causes is untenable in our democratic society. Public interest demands that this doubt be resolved by a full public hearing of the allegations and answers to them so that either appropriate sanction can be taken against the officers involved or their impugned reputations can be restored.

4. Insufficiency of civil remedy. It has been suggested to this office that the civil trial will provide the necessary public hearing of the allegations and the appropriate remedy for the Fullertons. Certainly, the conflicting versions of what happened will be tested under oath and subject to cross-examination. A jury will decide on the credibility of the witnesses and, if the Fullertons are believed, they will be entitled to damages. However, access by the Fullertons to an expensive and delayed civil remedy does not adequately address the public interest in having a complaint process which protects the quality and reputation of police services in a timely and independent way. This public interest is far wider than that of individual complainants who may or may not have the resources, endurance or inclination to prosecute the matter through the civil courts. While it is true that there may be an overlapping of functions in this case, it would be a dangerous precedent for those entrusted with the integrity of our police services to leave the public hearing process solely to the initiative of individual citizens.

5. The procedure for a public inquiry. As has been noted, the Fullertons lost their right to a public hearing under the Police Act due to the finding by the Chief Constable, confirmed by the Police Board panel, that their complaints were "vexatious and not made in good faith". A special investigation by the Police Commission has determined that it would have been more appropriate not to have dealt with the matter in this way. The Ombudsman investigation concludes that the finding was fundamentally flawed. The consequences of this error have been seriously disturbing to the Matsqui police service, the Fullertons and the public for the past 3 1/2 years. The situation can not be rectified under the current Police Act as there is no provision in these circumstances for an appeal to the Police Commission. However, a public inquiry could be ordered under the authority of the Inquiries Act by the provincial Cabinet. If so ordered, the Solicitor General could appoint the Police Commission to conduct the inquiry.

   It has been suggested to this office that ordering such an inquiry would indicate significant evidence of wrongdoing by the police and reflect unfairly on them. On the contrary, the Matsqui police have been constantly and publicly accused of wrongdoing and deserve a public inquiry at which they can fully state their case. The order under the Inquiries Act could simply instruct the Police Commission to duplicate the type of hearing it

regularly holds under the Police Act. There is no reason why such a hearing should involve any different standard of evidence, cost, length of proceeding or public profile than a hearing under the Police Act. The order would merely provide the technical means for resolving the unfortunate defect in this case.

CONCLUSION

The public interest has not been adequately served in this case. Serious allegations against the Matsqui police service remain unresolved and stand as an unfair public indictment of them. The Fullertons have been wrongly denied the right to a public hearing of their complaints, and this remains as a festering grievance. The public is left with a sense of uncertainty in the fairness of the process and the integrity of police services. Such unease is untenable in a democratic society. It is therefore recommended that the Solicitor General and Cabinet empower the B.C. Police Commission under the authority of the Inquiries Act to hold a public hearing at the earliest possible date into the Fullerton allegations.

Yours sincerely,

Stephen Owen

Stephen Owen
Ombudsman

c.c. B.C. Police Commission
Matsqui Police Service
Matsqui Police Board
Robert and Francine Fullerton