

CROSSING THE LINE

What happens when you file a complaint against the police?

by Lisa Gregoire

It's eight o'clock in the morning at police headquarters in Edmonton and a platoon of recruits are smacking each other around with knees and open palms. Half, dressed in thick padded suits, look like overgrown blue marshmallows with eyes. The other half are learning "stuns," blows to various body parts which, if delivered correctly, can really get your attention. Constable Scott Jones marches up and down the gym like a drill sergeant, shouting "Strike!" at two-second intervals. Despite their comic padding, the marshmallows grimace and groan.

Recruit class 103—12 women and 29 men—are two months into boot camp and today's lesson is officer safety training. Doffing red plastic guns, they learn bare-handed control tactics: finding painful pressure points on the face and body and forcing someone face down on the ground for handcuffing. It's crucial to respond to force with force at a level higher to gain control quickly, instructs Jones, the son, brother and nephew of Edmonton Police Service officers. You can only fight at full capacity under duress for 10 to 15 seconds, he says, before your performance decreases by half. When you get tired, it's natural to compensate by reaching for a weapon, and a bad situation suddenly gets worse.

The recruits are attentive, obedient. They know these skills could save their lives. Some of the men have never thrown a punch before. One woman is barely five feet tall. A man splits his pants up the

rear and soft snickers ripple outward, then stop. Dressed in grey t-shirts and trousers, they are like fledgling blue jays still earning their blue plumage: awkward, hungry, a little soft. In time, they'll be the ones who run toward the sound of gunfire, not away from it. You'll thank them for it.

Whyte Avenue shop owners were thankful when they saw extra patrols in the days leading up to the July 1, 2002, weekend. A year before, they'd endured thousands of dollars in damages after a beer-sponsored concert unleashed a frenzy of drunken hooliganism. Edmonton's 2001 Canada Day riots were an embarrassment for the city and especially the police, who appeared flat-footed. As the anniversary approached, EPS flooded Whyte Avenue with officers to sniff out trouble. Perhaps that's what they smelled in Richard Land.

Land was playing pool and drinking beer with Pat Ratchford and Beverly Jenkinson on June 28, 2002, when the trio stopped by Whyte for pizza around 3 a.m. While walking back to their car, they noticed a pair of police officers they say were giving a homeless man a hard time. Jenkinson said something like "Aw, man," and claims, in a statement, she heard Land behind her say, "Aw, leave him alone." One of the officers told him to "mind his fucking business," to which a slightly inebriated Land mumbled a couple of apparent fighting words: "Fuck you."

THE POLICE? WHO POLICES THE POLICE? WHO POLICES THE POLICE? WHO POLICES THE POLICE?

The July 2, 2001, Canada Day riot on Edmonton's Whyte Avenue was dubbed the worst in the city's history. Roughly 1,200 people joined a mob that broke windows and vandalized cars and phone booths. When nearly 100 police officers were called in, rioters threw concrete, rocks and glass. Police fought back and by 4 a.m. the street was quiet.



WALTER TYCHONOWICZ, CP/Edmonton Sun

The next 10 minutes jerked forward in blurry vignettes of punches and blood. “Before I knew it, I was screaming for help,” says Land, a 35-year-old electrician, six-foot-two and 210 pounds. About a dozen officers were on the scene within seconds. “I remember being in and out of consciousness,” says Land. “They had me handcuffed right away and someone kicked my face into the pavement. A tooth went through my tongue and chipped on the pavement.”

By the time it was over, Land had multiple taser burns on his back, countless cuts and bruises, a fractured left eye socket—and a charge of assaulting a peace officer. Surgeons repaired his skull using a piece of his hip bone, but his vision is permanently impaired. A year after the incident, Crown prosecutors withdrew the assault charge against Land and stayed a charge of obstruction against Ratchford. Land made a formal complaint of excessive use of force against police. In March 2004, 21 months after the event, Internal Affairs finally concluded its investigation: all EPS members were exonerated.

“I said right away, I thought it should be sent to Calgary or the RCMP,” says Land. He had ample reason to distrust an internal investigation. One of the first two officers he confronted was Andria Wasylyshen, the daughter of Edmonton’s then police chief Bob Wasylyshen. The chief retired in March. “I mean, talk about conflict of interest. I don’t understand it. It doesn’t get much closer to home,” Land says. “If I did what they did, I’d be in jail the next day.”

FEW WOULD DENY POLICE THE RIGHT TO USE FORCE. It’s an ugly necessity we abide to protect ourselves and our possessions. Like spiders in the basement, we tolerate their

presence because they eat the bugs, but we’d rather not see them. Therein lies the contradiction: we’re OK if police crack a few heads when needed, as long as it’s not our heads.

The Criminal Code of Canada gives police the right to use “as much force as is necessary” to carry out their duties. We further regulate police force through conduct regulations. In Alberta, the Police Act and Police Service Regulation describe the procedures and penalties which result from misconduct. This fall, the provincial government will try to find a sensible balance between police freedom and accountability with a host of amendments to the 16-year-old Police Act. One of the most hotly anticipated changes regards how we process complaints against police.

Politicians have debated police oversight concerns for years but several high profile incidents have lit fires beneath their plodding feet: the 2001 death of seven-year-old Giovanni Aleman, killed when an Edmonton police cruiser sped through an intersection and hit his father’s car; the shooting death by police of Sudanese immigrant Deng Kuol in Calgary in October 2003; allegations of excessive force concerning Andria Wasylyshen and her brother, EPS Constable Michael Wasylyshen; and allegations into decades-old misconduct against ex-chief Bob Wasylyshen himself.

Many officers say the question of whether police can adequately police themselves is a sham cooked up by overzealous lawyers, perpetuated by media and now legitimized by government. Outsiders are unqualified to judge police behaviour, they say. But Patrick Knoll thinks otherwise. The former chair of the Law Enforcement Review Board (LERB), the body to which complaints against police are appealed, says citizen demands for stricter oversight are real

COMMUNITY POLICING



Chris Braiden, an Irish-born Edmontonian, spent 29 years in the EPS before retiring in 1993. He suspected that new technology and police patrols didn’t diminish crime on their own. With support from his chief 15 years ago, he identified high call areas, created a system of beats, and proposed that members get out of their cruisers and address neighbourhood problems creatively. The intention of the community policing

model, says Braiden, now a consultant, was crime prevention.

It worked. Between 1991 and 1994, total calls to Edmonton police were reduced by nearly half and Criminal Code occurrences—121,278 in 1991—were reduced to 78,805 in 1994. Also notable, complaints against police members declined by 47 per cent.

Doug McNally, who retired as EPS chief in 1995 and now heads the Edmonton Community Foundation, says community policing required significant cultural change. “Policing began to lose its way,” he says about how, in the 1970s and 1980s, constables only reacted to crime instead of preventing it. “Not to say [community policing] was perfect, but we were on the right track: policing with people, not policing of people. It goes back to Robert Peel’s principles.” Peel, credited by many as the father of modern policing and the creator of London’s “bobbies,” devised nine principles of policing. All required one basic factor: public consent. “Police must secure the willing co-operation of the public in voluntary observance of the law,” Peel suggested. “Co-operation diminishes proportionately to the necessity of the use of physical force.”

McNally says, “Peel’s principles are as relevant today as they were when he wrote them back in the early 1800s.” But it’s difficult maintaining those principles in a paramilitary organization built on power and control, the shadows of which he sees creeping into modern policing. Edmonton and Calgary, with their expensive helicopters and heavily armoured tactical units, he adds, are part of that trend.

What Braiden and McNally fear is a widening gulf between police

and reaching critical mass. Public confidence in police will continue to erode as long as the possibility of bias and conflict of interest exists, he says. And right now, it does.

Police see innocent people get hurt and they want bad guys to pay. Lawyers are paid by the bad guys to dig for legal loopholes. To some, this squabble is part of a long-standing rivalry between the badge and the briefcase—blue collars versus white collars. To others, it’s about Richard Land. How we handle his complaint, they say, will shape the kinds of officers Recruit Class 103 will become.

NOT SURPRISINGLY, most excessive force complaints against EPS members relate to incidents which occur downtown between 6 p.m. and 6 a.m., corresponding with the peak hours and locations of crime in Edmonton. The bulk of alleged injuries involve cuts, bruises and sprains to hands, wrists, arms and shoulders, but some are more serious—broken or dislocated fingers, bruised kidneys and cuts to the forehead, nose and chin. Of 100 complaints made over four years and resolved by October 2002, only nine were upheld by Internal Affairs (IA).

Marilyn Fleger has witnessed countless confrontations between downtown residents and Edmonton’s finest. As interim executive director of the Bissell Centre, an inner-city agency that helps the homeless, jobless and poor, she knows many clients are weary of their predicament and contemptuous of authority. While she relies on police protection and enjoys a good working relationship with the area beat cops, she thinks officers can get away with mistreating the down-and-out because they are the least likely to complain—or be believed.

and citizens, a gulf that bolsters police might and mystique at the expense of the people they serve. Some argue police have forgotten they are citizens too. “Police sometimes see themselves as an organization in and of themselves,” says lawyer Stephen Jenuth, president of the Calgary-based Alberta Civil Liberties Association. “Police are not special. They’re not military. They’re civilians. They’re part of our society and they should start acting like it.”

Constable James Matsune, a beat officer for the area around Edmonton’s crime-ridden 118th Avenue, has inherited the fruits of Braiden’s community vision. The beats are a treasured assignment, Matsune says, because officers can use innovative methods to work problems from start to finish. It’s tough to balance the demands of residents and shopkeepers while respecting the rights of society’s underclass who call 118th home, he says. But over time, you get to know the prostitutes and the petty criminals, and familiarity breeds a workable co-existence.

“I’m not here to beat up on a drunk. You can go into any situation and talk your way into a fight or out of a fight. I pride myself in being able to de-escalate a situation,” says Matsune, a five-foot-six man with an education degree. “Everyone loves a fireman and hates a cop,” he says. “Our society has no respect for police. I’m scared to think what our city is going to be like in 10 to 15 years with the shows people are watching on TV and the video games they’re playing.”

—Lisa Gregoire

“Everyone loves a fireman and hates a cop. Our society has no respect for police.” —Cst. James Matsune

Fleger recalls what happened one afternoon when a man was drinking alcohol outside the Bissell Centre and a police cruiser drove up. One officer sat in the car while the other went outside and wrote a ticket. The man, intoxicated and penniless, crumpled up the ticket and turned to walk away. The ticketing officer slammed him into the cruiser and started berating him. His partner, seeing Fleger’s alarm, jumped out of the car, stuffed the ticket in the man’s pocket and calmed his partner down before making a quick escape.

“I always wondered if somebody wasn’t there who was a credible witness, whether it would have gone further,” Fleger says. “I have no doubt when there’s not someone around that their actions get out of hand. Is that right? No. Should these people be more respectful? Yes. But this goes with the territory. If you’re not prepared to deal with it, you shouldn’t be a police officer.”

Patrick Knoll warns we should all care what happens to the homeless guy when our backs are turned. “The real danger is that if police are in a position to get away with it with those people, it could happen to Average Citizen X on any given day. So we have to be attentive to misconduct or excessive force with street people because that tends to spill over into all of us.” The province needs strict, transparent

PEEL’S PRINCIPLES

- The police exist to prevent crime and disorder.
- The ability of the police to perform their duties is dependent upon public approval of police actions.
- Police must secure the willing co-operation of the public in voluntary observance of the law to be able to secure and maintain the respect of the public.
- The degree of co-operation of the public diminishes proportionately to the necessity of the use of physical force.
- Police seek and preserve public favour not by catering to public opinion but by demonstrating absolute impartial service to the law.
- Police use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice and warning is found to be insufficient.
- Police, at all times, should maintain a relationship with the public that gives reality to the tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare.
- Police should always direct their action strictly toward their functions and never appear to usurp the powers of the judiciary.
- The test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with it.



Photos courtesy of RICHARD LAND

On June 28, 2002, with Canada Day approaching and police ready for trouble, Richard Land and two friends went to Whyte Avenue for pizza after a night of pool and beer. Land says he swore at a pair of police officers who were hassling a homeless man and was beaten and arrested. About a dozen officers responded to the call; all were eventually exonerated by an internal investigation. These photos of Land were taken a few hours after the incident.

“Police are not special. They’re not military. They’re civilians. They’re part of our society.”—Stephen Jenuth

and independent oversight to shield the majority of good cops from the taint of the bad.

“Hogwash,” is what Marshall Chalmers might say to that. Chalmers, Camrose chief and head of the Alberta Association of Chiefs of Police, says the Police Act and Police Service Regulations contain ample checks on police power—from the oversight of partners and superiors to police commissions, complaint monitors and the LERB. Any opinion to the contrary is misinformed.

“The public needs to know and can be reassured that there is, under the present system, more than adequate civilian oversight for complaints against members,” Chalmers says. “The general population of Alberta is not concerned with who’s policing the police. They’re much more concerned with child pornography, organized crime and adequate levels of police funding. The police in Alberta enjoy huge public support.”

Any debate over police use of force and oversight must begin with two premises, says University of Alberta criminologist Keith Spencer: police are constantly subjected to uncontrolled criminal use of force; and no training model can adequately simulate the unpredictability of human behaviour. Genuine experience is the only way for police to learn how to handle violence. But ask anyone whether they care if some pimp gets roughed up by the cops, Spencer adds, and most will tell you, “No.”

The courts are demanding higher standards of proof and lawyers are getting better at bending the rules, he says. Meanwhile, police officers, bound by human rights legislation, conduct regulations, internal scrutiny and the knowledge that poverty, drug addiction and mental illness can make criminals of the unfortunate, are still expected to keep the streets safe.

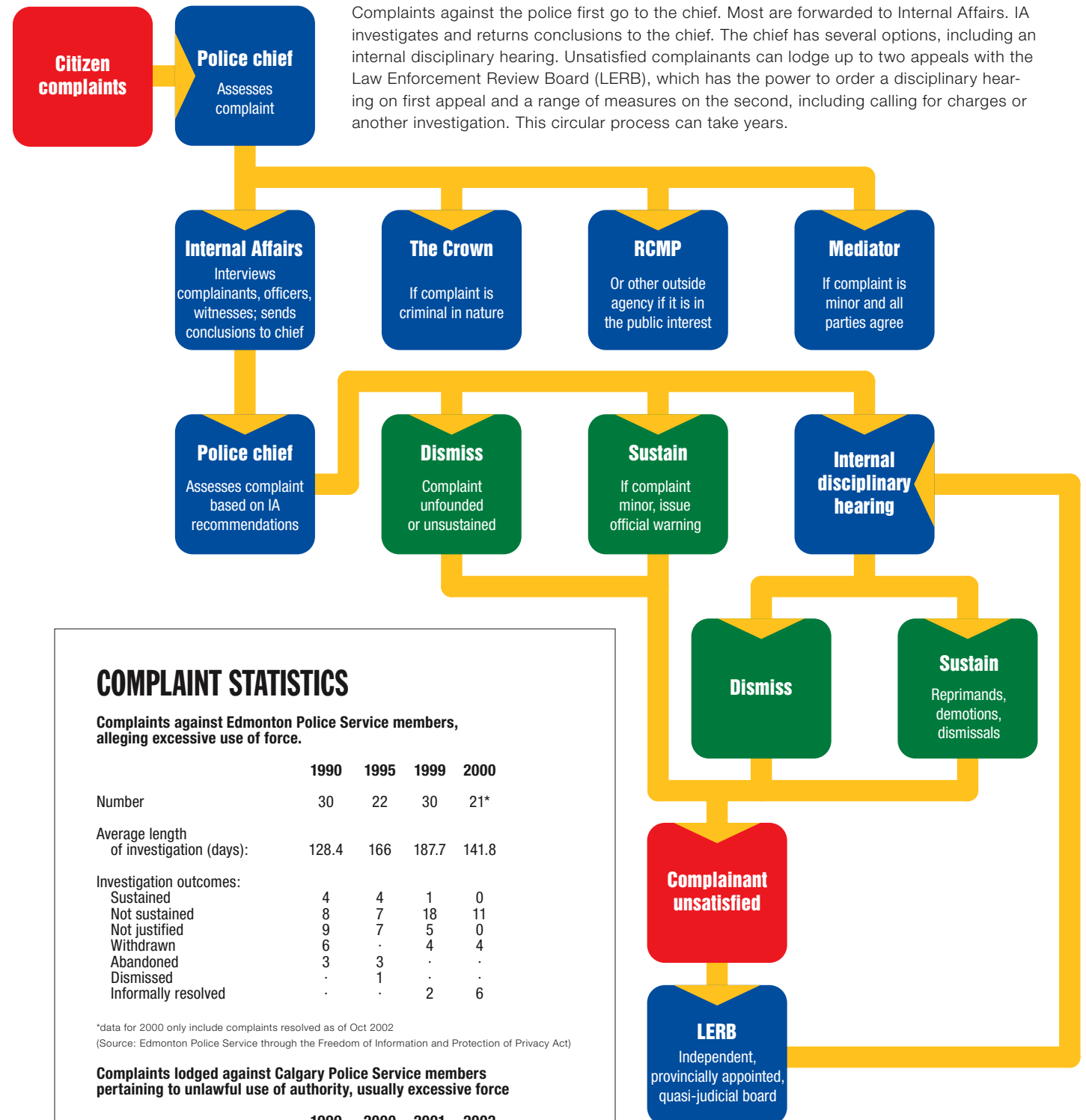
“Given the way courts work and the reality that there’s a huge difference between not guilty and innocent, I think police are, many of them, pressured to achieve the good end by using dirty means. Their goal is ultimately to catch the bad guys and see that justice is done,” Spencer says, citing the popularity of Clint Eastwood’s *Dirty Harry* movies and their ilk as proof society believes the end justifies the means. “You just have to personalize the situation and all of us very quickly move our sense of what’s fair to the right. What parent wouldn’t want police to break all the rules to save their 15-year-old daughter?”

Under the current system, a complaint against police first goes to the chief who forwards it to IA. Senior officers investigate the complaint and send their conclusions to the chief. If an officer’s actions appear criminal, he passes the file to Crown prosecutors. If it’s a breach of police regulations, the chief can deal with the matter directly or convene a disciplinary hearing. A complaint dismissed by police can be appealed to the LERB. If the LERB finds in favour of the complainant, the board can only send the case back to the chief for a disciplinary hearing. A complainant unsatisfied with the results of that hearing can appeal *again* to the LERB, at which point the board can hold a second proceeding and consider appropriate remedies. This process can take years.

Knoll wrote in a brief to government that the convoluted route toward external adjudication forms “an obstacle

COMPLAINT PROCEDURE

Complaints against the police first go to the chief. Most are forwarded to Internal Affairs. IA investigates and returns conclusions to the chief. The chief has several options, including an internal disciplinary hearing. Unsatisfied complainants can lodge up to two appeals with the Law Enforcement Review Board (LERB), which has the power to order a disciplinary hearing on first appeal and a range of measures on the second, including calling for charges or another investigation. This circular process can take years.



COMPLAINT STATISTICS

Complaints against Edmonton Police Service members, alleging excessive use of force.

	1990	1995	1999	2000
Number	30	22	30	21*
Average length of investigation (days):	128.4	166	187.7	141.8
Investigation outcomes:				
Sustained	4	4	1	0
Not sustained	8	7	18	11
Not justified	9	7	5	0
Withdrawn	6	-	4	4
Abandoned	3	3	-	-
Dismissed	-	1	-	-
Informally resolved	-	-	2	6

*data for 2000 only include complaints resolved as of Oct 2002

(Source: Edmonton Police Service through the Freedom of Information and Protection of Privacy Act)

Complaints lodged against Calgary Police Service members pertaining to unlawful use of authority, usually excessive force

	1999	2000	2001	2002
Number	31	24	19	21
Investigation outcomes:				
Dismissed or not sustained	27	12	14	18
Withdrawn following mediation	2	2	2	1
Withdrawn for other reasons	1	2	2	1
Sustained in whole or in part	1	8	1	1

(Source: Calgary Police Commission)



WALTER THORNHOLM/CZ, CP/Edmonton Sun

Some of the 1,200 people on the streets during Edmonton's Canada Day riot chanted "It's all police aggression," but many Whyte Avenue business people and nearby residents disagreed. Booze and bravado were to blame, they said, arguing that police had no choice but to respond with force.

"For those who call us goons, I would challenge them to come out and use their own methods to deal with the people we have to deal with." —*Ex-chief Bob Wasylyshen*

and endurance course for citizen complainants" and leads to the "inevitable perceptions of bias" since complaints already dismissed by the chief are returned to the same police service for review. The process leaves people "bitter, exhausted and angry," he wrote.

That's not the only problem. During an LERB hearing three years ago, a Calgary Police Service detective testified that after being appointed to Calgary's IA section, he was told by his superior that friendship or other relationships with the officer under investigation were *not* impediments to working on that person's case file.

While the Police Act may need some obvious revisions, Knoll has a grander vision: in cases where police cause injury or death, the province should employ an on-call public investigations monitor. "Citizen complainants rarely express confidence in the internal investigative process and are generally of the view that failings, omissions and inadequate effort in

the police internal investigation void their chance of a just and fair resolution, even if an avenue of appeal exists," Knoll wrote in a brief outlining the role of a public monitor.

Other police jurisdictions in Canada have set up external police auditors, the most notorious being Ontario's Special Investigations Unit. Since its inception in 1990 as a body to handle police shootings and complaints of serious injury or death, it has been dogged by bureaucratic bloat and police hostility. Knoll doesn't think Alberta needs an SIU. A relatively inexpensive on-call public monitor for serious cases would be sufficient. Appointed from the ranks of retired judges, prosecutors and police from outside Alberta, the monitor would have the same authority as IA investigators to, among other things, visit crime scenes, interview witnesses and recommend criminal charges against police.

Martin Ignasiak has another suggestion. As chair of the Edmonton Police Commission, the civilian body appointed by city council to oversee police budgets and general policies, Ignasiak says the commission should process and investigate complaints against police. The commission's role has traditionally been an administrative one, with real power over police actions and misconduct residing with the police chief. Ignasiak—a lawyer—removed the EPS logo from the commission's letterhead last year in a symbolic gesture to indicate a new, arm's length relationship.

"We feel the vast majority of complaints could be dealt with informally. I'm a lawyer but I think we need to get the

lawyers out of there," says Ignasiak. Commission members should also participate in disciplinary hearings, he says, for police found guilty of misconduct. "It's secretive and no one's been able to tell me why that secrecy is necessary. Some argue it's a human resource issue... I think the public has a right to know what complaint is made against an officer and the outcomes."

These and other public criticisms of policing in Alberta and government inaction have rankled Solicitor General Heather Forsyth. In April, she wrote a letter to Ignasiak saying his critiques were disturbing and irresponsible and, three days later, dismissed his proposal regarding police commission oversight.

Bob Wasylyshen, interviewed a week after his retirement, laments how relations between the commission and EPS became strained toward the end of his tenure. He considers the current oversight system fair and meticulous and one which he always followed to the letter—even when dealing with his own children. "The course of action I elected in dealing with [Andria and Mike] was perfectly within the bounds of the Police Act," he says. "There was a lot of criticism of me in the paper, which still continues to this day, which would lead the uninformed reader to believe that I did something outside the lines, which is absolute nonsense."

He's right, Ignasiak says. That's why the Police Act must be changed. For the sake of dwindling public confidence, the law should shift responsibility for serious complaints from the police to the public. Wasylyshen says this risks making the process more expensive, more bureaucratic, more litigious and less professional. The truth is, police deal with unstable, deceitful, violent people who sometimes get hurt when they're taken into custody, he says. Some take revenge by complaining against police.

"For those who would be critical of us," Wasylyshen says, "calling us goons or whatever, I would challenge them to come out and use their own methods to deal with the people we have to deal with. They would understand better."

The Solicitor General's department will weigh the need for measured force against the public's demand for accountability when it introduces legislative amendments this fall. Changes are clearly afoot. "Nobody is saying the system is fatally flawed," says department spokesman David Bray, "but there is a perception that police shouldn't investigate police in serious circumstances."

SINCE THE START OF THEIR TRAINING, the recruits of Class 103 have been marching toward a life of violence and paperwork. This afternoon, Constable Jones is helping them embrace their inner warrior with a lecture called the "Recruit-Warrior Mindset." He shows clips from *Braveheart* and *Gladiator*. Quoting retired U.S. soldier David Grossman, he tells his students that 98 per cent of the world's population are sheep, 1 per cent are wolves and 1 per cent are sheep dogs.

"Our goal, our purpose, is to keep the wolves from attacking the sheep," Jones says. "It's that simple. You are being trained to be sheep dogs. Now sheep don't care about

DETERMINANTS OF FORCE



Municipal police members can use this chart to train for situations requiring force. The inner circles refer to the subject—whether they're co-operative, passively or actively resisting, assaultive or threatening grievous bodily harm or death. The middle circles: an officer's duty to communicate and give instructions for compliance. The outer circles: corresponding levels of force, increasing from an officer's mere presence to physical control, to weapons such as batons and pepper spray, to lethal force.

the sheep dogs. Most of the time, they don't want anything to do with them. Until the wolf's at the door."

Grossman coined the term "killology" to define the science of violence and its physical and psychological impacts. Like how, under duress, your pupils dilate and you get tunnel vision and cold, sweaty hands, and suddenly you can't hear anything but your thumping heart. Everything slows down. Gets fuzzy. You're afraid. You reach for your radio and someone punches you and where's your partner and you didn't kiss your wife this morning and you wheel around and the sun blinds you for a second, and.... And then what?

It takes extensive re-education to push someone over the line from law abider to law enforcer, from sheep to sheep dog. To suit up every day with handcuffs and a gun, police must believe not only in themselves, but also in the law and their duty to apply it—with force if necessary. We don't expect perfection, only a fair and transparent response when mistakes are made. Like when a cocky guy on his way home with a slice of pizza winds up in reconstructive surgery.

As Sir Robert Peel said, "The police are the public and the public are the police." Not us and them. Just us. All equal. And equally fallible.

Lisa Gregoire is a freelance writer in Edmonton and one-time police reporter with the *Edmonton Journal*.