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IRELAND**

**CANADIAN ASSOCIATION FOR THE OVERSIGHT OF LAW
ENFORCEMENT**

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Good morning, Ladies and Gentlemen. I am very pleased to have been invited to speak to you today. I have elected to talk about the circumstances in which the going gets tough for those of us involved in police accountability – when it happens and how we can respond to ensure that we continue to provide the best possible service.

I want first and briefly to tell you something of my Office and of the work which we do, and in so doing to tell you about some of our investigations. I hope that what I say will be of some interest to you.

My office was established in 2000 and forms part of the architecture of new policing institutions which were created to address the problems with policing which have played such an important part of the situation which we euphemistically refer to as the Troubles.

I provide an independent, impartial police complaints system for Northern Ireland. It is both an opportunity and a challenge in Northern Ireland, for whilst we are well on the way to peace, policing still constitutes what has been described as the biggest issue in the peace process. It is generally agreed that we are making a significant contribution at this time to the future of Northern Ireland.

We provide a service to investigate allegations of police misconduct and of policy and practice failures by each of the six police services which operate in Northern Ireland. The PSNI is the largest with some 9,200 sworn officers. We do this by virtue of powers conferred in the Police (NI) Acts 1998, 2000 and 2003 and all the associated legislation. We are also governed by a whole host of other legislation which regulates the process of criminal investigation.

Generally we investigate matters which occurred during the previous 12 months but we have also a power to investigate old cases of any age where there are allegations which are grave or exceptional and in respect of which there was no previous complaint or, if there was a previous complaint, there is new evidence. We have received over 18,000 complaints and 25,000 allegations in almost six years. It is a massive amount of work.

To do this work I have budget of over \$15m and a staff of 128 people – investigators, lawyers, statisticians, analysts, researchers, and finance and personnel and administrative staff. We operate across Northern Ireland and provide a service 24/7. My staff are representative of the community we serve. They are 46% Protestant, 41% Catholic and 14% other religion or none.

To do the work we have full police powers – of arrest, search seizure, entry and access to all police materials and information. We can and have seized as evidence police vehicles, batons, guns etc.

We investigate complaints from the public and also cases which come to us from the police chief, from the government and from our Policing Board. We also receive cases from the the Prosecution Service if there is evidence, for example, that a police officer perjured himself in court, or that there was fabrication of evidence for a trial. Cases are referred also by our Criminal Cases Review Commission which looks at the safety of convictions and which has a power to refer to appeal cases in which it suspects that a conviction is unsafe. The CCRC

sent us, for example, the case of a young man who was convicted of murder on confession evidence in a Diplock Court. There was a suggestion that police officers may have fabricated the confession evidence. We investigated this and made the necessary recommendations to the Prosecution Service. I can also investigate without a complaint if I consider it is in the public interest to do so.

So what are the challenges and when does the going get tough?

Firstly when you are processing a case through the criminal justice system:

Here is an example of case which came to us by way of complaint. It involved a young man arrested suspected drunk in charge of a vehicle. He was taken to a police station and was being breathalysed. If you look at this video you will see him apparently saying something to the police man, then the policeman pushes him violently and he crashes over a chair banging his head against the door. That police officer was convicted of assault and dismissed.

Here is another example. This came to us from an American Observer at a parade. She filmed a convoy of police landrovers leaving the scene of some public disorder. All was quiet again. Nine landrovers left the area peacefully. Watch the tenth as it veers onto wasteground towards a group of people who were watching the police leave. That police driver was convicted of dangerous driving and is no longer a police officer. After his conviction he appealed and lost his appeal. The he went by way of case stated to the court of appeal and his conviction was set aside because the trial judge was held not to have considered all the matters which might have been in his mind as he drove the landrover, even though these issues had not been raised by his defence counsel. He was tried again and convicted again. Where police officers do wrong those who investigate them have to be very tenacious and witnesses have to be well looked after to try and ensure that they remain available for the trial. Our American

Observer had to come twice to Northern Ireland to give her evidence during the trials of this officer.

The real difficulties in both these cases involved the need to keep a very clear perspective on the evidence and to ensure that in its presentation to the court nothing was lost whilst still complying with all our obligations in terms of the mandatory disclosure to the defence (the police officer) of any material which might undermine the prosecution or assist the defence.

Any death which may have resulted from the conduct of a police officer must be referred to us. Every death in custody is investigated, as are deaths where the last person to see the deceased was a police officer. We are currently investigating the deaths of two young men in a stolen car which had been followed by a police car and which crashed into two other vehicles. We have published the results of an investigation of a case in which a car was reported as being driven erratically, was followed by two police cars at different times and which drove eventually onto waste ground. It was a very dark night and the driver stopped the car and got out and began to run. He ran towards a river which he knew to be ahead. The police car followed him. He jumped down into the river and the police car which was travelling very slowly went down into the river, pinning him under the car in the water. He drowned. We were called and investigated and found that the officers were new to the area and did not know exactly where the river was. It was a most tragic accident.

Although we have an armed police service we actually have very few shootings by police. Two people have been shot dead by the PSNI in the past six years – one case was that of two young men allegedly involved in criminal activity who were stopped by police. Both young men were shot in the minutes that followed, One, Neill McConville, died of his injuries. We have investigated that case and have told the family exactly what we have found. We cannot publish the results because the young man who survived is facing trial for a totally unassociated

very serious offence and will be tried in connection with the criminal offence in which he was allegedly involved at the time he was shot. My report cannot be published until that trial has taken place. It is difficult.

Another more recent case, on Easter Sunday this year, involved a young man called Stephen Colwell who was shot dead by a police officer at a checkpoint which had been set up to stop a car which had been reported to have been stolen. That investigation is almost completed. We are awaiting a small amount of expert evidence and a pathologist's report. Then we can move to publication of some results.

Growing community confidence

Another case involved the death of a well respected man in Bellaghy in County Derry.

Sean Brown was murdered by loyalists after being abducted as he locked the gates of the local GAA ground. He was taken several miles, past a police station and his body was dumped in a roadside. His family came to me alleging failure to investigate and police collusion. We examined the investigation and found serious deficiencies – witnesses had not been interviewed, forensic exhibits had not been examined, material from the investigation had disappeared. Because of the distrust of the police by local people there had been very little cooperation with the police investigation. We conducted a lengthy investigation, and made recommendations for a renewed police investigation of the actual murder. We engaged with the Brown family and explained to them all that we had found. We found no collusion. Police had not conspired with the loyalists to kill Sean Brown, but they had not investigated properly. We worked closely with the family and the PSNI. A new investigation took place, and eventually the GAA decided to call on the people to assist the police investigation. It was a very important moment for policing in South Derry. People seem to have been convinced that the

accountability mechanism had worked and this gave them the assurance to move forward into cooperation with the police.

Saying the unsayable

On Saturday 15 August 1998 at about 3.15 pm a terrorist bomb exploded in Omagh. Three telephone calls were made, the first at 2.29 pm warning that a bomb was going to detonate in the town. Police were clearing the streets when the bomb exploded. 29 people and 2 unborn children died. Some 250 people were injured, some of them seriously. It was, and remains, the single worst terrorist incident in the United Kingdom or Ireland. The bomb was claimed by RIRA. It was the eighth explosion in 1998:

- Enniskillen 24.01.98
- Moira 20.02.98
- Lisburn 30.04.98
- Belleek 09.05.98
- Newry 13.07.98
- Banbridge 01.08.98

The persons responsible for that bomb were the terrorists who planned and planted it.

An RUC investigation team was established. Assurances were given that no stone would be left unturned and that all necessary resources would be dedicated to it.

Newspaper stories in 2001 suggested that the bomb could have been prevented and I decided that it was in the public interest to investigate this matter. As the investigation unfolded it became clear that the Omagh investigation was very flawed, and that it did not have the necessary resources. I reported on 12

December 2001 reporting major failings of investigation by the RUC, but also criticising the judgement and leadership of the then Chief Constable and his Assistant Chief Constable. I said that there had been defective leadership, poor judgement and a lack of urgency. It was a very difficult report to issue. But it was a very important report and it led to a new Omagh Bomb Investigation. A man is currently on trial in Belfast charged with the Omagh murders and a number of other offences.

It was important too because I made recommendations, not only that there should be a new investigation, but also that there should be an investigation linking all the 1998 bombings. This was done. Because I was concerned about the murder investigation process in the RUC I recommended there be a review of terrorist linked murders. This was done. I had grave concerns about RUC processes for the management and dissemination of information held by Special Branch. I therefore recommended a review of the role and function of Special Branch and that Special Branch should be fully integrated into the PSNI. Major change has now occurred. Finally I recommended that the PSNI should adopt a new policy incorporating best practice with regard to reviews of murder investigations. This too was done.

From this one investigation therefore, came not only significant change in PSNI investigative structures and processes and in the arrangements for Special Branch, but also a renewed investigation of the bombing itself, the consequence of which is the trial which is running in Belfast at the present time.

One of our earliest investigations was into the death of a man called Sam Devenny:

Mr Samuel Devenny was a husband and father of nine children who were aged between 21 years and three years old when he died on 17 July 1969. He was attacked by police on 19 April 1969. There had been rioting in Derry and Mr

Devenny was standing at his front door talking to a friend when he saw six landrovers coming down the road. Mr Devenny and his friend went into his house and shut the door and as he did so, eight boys ran past him and into his house. Police broke their way into the house, kicked and beat Mr Devenny and his friend who was left unconscious in the hall. Mr Devenny went into the little sitting room where six of his younger children were. Police followed him and batoned and kicked both him and some of the children including Cathy who had just had surgery. It was a scene of mayhem and violence. They made no attempt to find the boys who had run into the house. Mr Devenny, his friend and Cathy were taken to hospital. Other children were treated at home for injuries received.

Mr Devenny was discharged from hospital on 22 April, but never recovered. He suffered a heart attack on 23 April and a second heart attack on 16 July from which he subsequently died.

The family complained to me on 20 April 2001, and we investigated. It was established that police officers had been responsible for the injuries suffered by Mr Devenny, his friend and his children, and that no one had ever been prosecuted in part because of difficulty in allocating individual responsibility and in part because on 6 May 1969 an amnesty was announced by the Prime Minister of Northern Ireland in respect of criminal offences committed between 5 October 1968 and 6 May 1969. Nobody could therefore be prosecuted. All the relevant facts and information was made available to Mr Devenny's very courageous and wonderful family.

Making the accountability process effective

We received 20 complaints from 'The Sunday Times' newspaper, two journalists and a former RUC officer about a PSNI operation that led to questions being asked of Prime Minister Tony Blair in the House of Commons. The complaints

arose from a series of searches and arrests following the publication on Tuesday April 29, 2003 of the paperback edition of a biography of Sinn Fein MP Martin McGuinness. The book included material which was alleged to be secret and to which it was said the authors should not have had access – a transcript of an alleged telephone conversation between the then Secretary of State Mo Mowlam and Martin McGuinness. In essence, I strongly criticised the handling of the searches at the homes of the former RUC officer and two journalists and described the seizure by police of journalistic material as unlawful.

I upheld a complaint from the former policeman that the timing of the search of his house, which began shortly after midnight, was unreasonable and that it could have waited until seven o'clock in the morning . The main purpose of the searches had been to recover the 'secret material", which was alleged to have come from the former police officer to the Sunday Times, in case the policeman had destroyed it, but the book containing the material had already been on sale 15 hours earlier," I also supported the man's complaint that the search compromised the safety of his family: he and his family have since moved home. I said that I was satisfied that the police failed to give the manner of the search due consideration and their approach risked compromising the safety of the family.

But I also upheld the right of the police to make arrests during the operation and found no evidence to suggest that the Chief Constable misled the Policing Board about the matter.

I concluded that the subsequent search at the home of two journalists who had written the book was poorly led, was an unprofessional operation, and was lacking in the minimum standard of supervisory control. I upheld a complaint from the journalists that the particular search warrant the police had obtained from a Justice of the Peace did not allow them to seize material being held for journalistic reasons.

The journalists had also complained that police officers did not allow them to move freely around their house, make telephone calls or allow them adequate time during the search to make arrangements for the care of their daughter, who had been sleeping at a neighbour's house:

The (journalists)..were not under arrest whilst the search took place and there should not have been any restrictions whatsoever placed on them, including their movement or right to make telephone calls. They were not in any way hindering the police search. I said that the complainant should have been allowed to go to her neighbours or at the very least telephone them whilst the search was taking place to make alternative arrangements (for her daughter) and should not have had to wait until 1.30 am when she was told she was under arrest.

I also substantiated complaints from the Sunday Times that the search of its premises in Belfast was illegal and the seizure of material unlawful. I upheld the complaint that the decision, made by police, to force an entry into the building was wrong. I said it was unreasonable and disproportionate of the police to force an entry into the newspaper offices, particularly as one of the journalists had offered to supply a key. Decisions of this nature can be crucial to the reputation of the PSNI. The breaking down of the door produced a media frenzy and resulted in the Prime Minister being asked questions in the House of Commons.

I did not substantiate complaints from the journalists about the need for their arrests, their allegations that the timing of the arrests was disproportionate or that their detention was unlawful. I took a similar view on a complaint about the use of armed officers. I concluded that it would have been unreasonable for police to travel with firearms on their belts as is normal, and then set them to one side before executing a search warrant, even at a house where there was no perceived threat.

I found no evidence to support an allegation that the Chief Constable later misled the Policing Board about his knowledge of the matter: He was aware of the general nature of the allegation (about the information in the book) but was not involved in the actual decision making process of the search and arrest operation. This was correctly left to other subordinate senior police officers.

I acknowledged that the officer leading the operation had been on continuous duty for 36 hours which may have impacted on decisions made. However I made disciplinary recommendations in respect of eight officers involved in the operation, ranging in rank from Constable to Chief Superintendent.

I also made a series of recommendations to PSNI arising from the investigation, including the introduction of new policy whereby a PSNI officer of a least Assistant Chief Constable rank would take the lead in dealing with such high profile and potentially sensitive incidents, thereby ensuring proper strategic planning, management and oversight. This case demonstrates, I think, the contribution which my Office makes to change in policing and the levels of accountability which exist. I read recently that the journalists received substantial damages in respect of the way in which the searches were conducted.

Another case involved the death of young man called Eoin Morley:

On Easter Sunday 15 April 1990 Eoin Morley was at his girlfriend's house in Newry, when at about 10.00 pm 2 masked gunmen knocked on the door. Eoin Morley was shot twice. He died of his injuries. The Provisional IRA claimed responsibility for his murder. No one was ever charged with Eoin Morley's murder.

A complaint was made: That the RUC failed to carry out a proper and thorough investigation, that they knew who had done the murder, that they failed to arrest the known suspect, and that Eoin Morley was murdered at the instigation and

behest of the police to create a feud between PIRA and the IPLO, to which , it was alleged Eoin Morley had transferred from PIRA.

A lengthy and difficult investigation ensued. We found many failings in the investigation, particularly failure to provide intelligence held in Special Branch to the RUC investigator. We found that the murder weapon was found with other things likely to be of use to terrorists and that forensic opportunities had not been pursued. I found that the Investigating officer, then a Detective Inspector, did not ensure that all evidential opportunities were identified and acted upon. He should have been properly supervised and supported. This did not happen.

Following recommendation by this office a new murder investigation has been launched. Since then a man calling himself Kevin Fulton has published a book "Unsung Hero: How I saved dozens of lives as a secret agent inside the IRA". in which he states that he carried out the murder of Eoin Morley. It is to be expected that there will be further developments in the police investigation.

Policing in Northern Ireland is normalising. The pattern of our complaints is changing. When I was appointed 49% of our complaints were about oppressive behaviour by police. Only 23% were about failures of duty. Now it is a completely different picture. Some 41% are failures of duty and only 37% are assaults and other such allegations against the police. This reflects two things. One is that policing is changing. There is less use of batons and guns. AEPS were used only in 2005 during very serious loyalist rioting after a parade was banned. Apart from that they have not been used. We have made hundreds of recommendations about necessary changes in policing – from training in weapon use, to the necessity for proper procedures for police car pursuits, and the need for reviews of murder investigations at regular intervals. I see part of my job being to help improve policing. We do this by investigating not just the officer on the ground who did not do what he should. We look at his managers – the

sergeants and inspectors and the senior officers and where necessary we recommend disciplinary action against those officers too. The police have been doing their part by responding positively to the recommendations we make. Now our people believe that we make a significant contribution to improving policing.

What do our people think of us? They believe that we are independent. The work of my Office is evidence based. We make recommendations for the prosecution of police officers when they must be made, and we move to ensure that officers are disciplined where necessary. When policing has been properly conducted we will say so. When officers have acted bravely, we will say so. Where what has gone wrong is not the fault of a junior officer but rather a failure of management or supervision we will deal with that failure.

It really is a quite different situation from that which existed before my Office came into existence. When people see officers convicted of criminal offences, when they see officers dismissed, required to resign and disciplined after a complaint they grow in confidence in the police complaints system. When we explain that officers have not been properly trained and that for that reason we are recommending training rather than discipline, they understand why we are doing this. Of course not everyone is satisfied, and not everyone believes that the system will work. We have much to do. We can only work with evidence. Evidence comes from witnesses. So we have to be able to assure people that it is safe to be a witness or a complainant and that they won't be harassed by police if they complain. The service we offer in my office must be a service for the people and so if you want to complain you can walk through the door and you will be seen within three minutes. You don't have to fill in a form. We can come to you if necessary. We will do all we can to secure evidence. We will seek medical technical and other expert evidence. The important thing is that when an officer has done wrong they be dealt with, and when they have done no wrong that too must be articulated. We too must be, and are, accountable. There is a procession of Commissioners who examine my work – the Criminal Justice

Inspector, the Surveillance Commissioner, the Interception Commissioner and many others. It is right that this should happen and I am proud that, thanks to my loyal and dedicated staff, we have not been found wanting.

Our society must have a police service in which all the people have confidence (other than those engaged in serious crime who never appreciate the police). Our people's attitude to policing is changing. In some areas it is quite slow. In others the change is more marked. People are working with the police, sometimes discretely and sometimes overtly. Policing is changing. We now have a police force which is 20% Catholic – and that means that probably up to one in three of the officers out on the ground are Catholic. It is making a difference. We have a long way to go and on our journey we need the support of everyone so that we can ensure that we do all we can to ensure that policing in Northern Ireland is professional and accountable. That is my role. I am very proud to have held this office for the past six years and to have been given the task of creating the first independent police complaints system in Northern Ireland.

Now we are being called upon to deal with all the cases from the Troubles in which people have died as a result of police action. They are coming to us, not because people have complained but because the Chief Constable has decided that every murder of the Troubles will be re-examined. He cannot do those in which police were allegedly involved. That is my job. It will be a massive task.

In closing may I thank you for listening to me as I have attempted to give you some idea of what happens in the office of the Police Ombudsman for Northern Ireland.

Nuala O'Loan

Police Ombudsman for Northern Ireland.

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