

**REDUCING POLICE-CIVILIAN CONFLICT:
AN ANALYSIS OF ASSAULT COMPLAINTS
AGAINST QUEENSLAND POLICE**

March 1997

Research and Coordination Division

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ABBREVIATIONS

ABS	Australian Bureau of Statistics
HREOC	Human Rights and Equal Opportunity Commission
CJC	Criminal Justice Commission
LAPD	Los Angeles Police Department
OPM	Operational Procedures Manual
PSU	Professional Standards Unit
QPS	Queensland Police Service
RCADIC	Royal Commission into Aboriginal Deaths in Custody

EXECUTIVE SUMMARY

The investigation of complaints of assault made against police places substantial demands on the resources of the Criminal Justice Commission (CJC) and the Queensland Police Service (QPS). It also causes stress to the civilians and police involved, regardless of whether the complaints are substantiated.

While it is very important that complaints of assault continue to be investigated vigorously and that nothing be done to discourage people who have concerns about police conduct from making complaints, deploying significant additional resources to the processing and investigation of complaints of assault may not represent the most cost-effective use of limited resources.

The purpose of this report is to identify the conditions that give rise to complaints, so as to help the QPS implement strategies to minimise the potential for conflict between police and members of the public while at the same time allowing police to do their job.

Study design

Data for this study were obtained from CJC complaints files, which were taken from a sample of all assault complaints against Queensland police finalised in the period between July 1990 and June 1995

Cases were only included if they met one or more of the following criteria:

- one or more independent witnesses had described seeing police use force towards the complainants
- there was medical evidence or other objective evidence (e.g. photographs) of injuries to the complainants
- the officers involved acknowledged that an incident of some kind had occurred, although not necessarily as described by the complainants.

Information was collected on such matters as:

- the location of the incident and other situational characteristics
- the characteristics of the police officers involved
- the characteristics of the civilians involved
- the behaviour of the police officers and civilians during the incident.

Key findings

The key findings of the study are:

- Most complaints of assault against police were first made to other (usually more senior) police officers, who then forwarded the complaint to the CJC.
- Eighty per cent of the complaints related to incidents involving police officers who were on duty at the time of the incident.
- In more than two-thirds of the complaints studied, there was either no evidence of injury to the complainant or the only injury alleged was minor, such as bruising, swelling and/or abrasions.
- In almost half of the incidents, it was alleged that the police officers involved had punched or kicked the complainant; in slightly more than a fifth of the incidents, a baton or other object was allegedly used.
- In two-thirds of cases, officers who were the subject of the complaint acknowledged that an incident of some kind had occurred. These officers generally justified their use of force by asserting that it was necessary in the circumstances, or constituted self-defence.
- Where police officers provided witness statements, these almost invariably supported the officers who had been complained against. Only once did a police witness statement unequivocally support the complainant's account.
- Civilian witnesses were considerably more likely to support the complainant's account of the incident.
- Because of the difficulty of proving allegations to the necessary legal standard, few of the complaints examined resulted in a recommendation that disciplinary or criminal action be taken against the subject officers.
- On or off duty, female police officers were much less likely to have complaints of assault made against them than were male officers.
- Officers from the lower ranks were over-represented among police involved in on-duty incidents, probably because they have more contact with members of the public and less experience in dealing with conflict. The rank distribution was more even for off-duty incidents.
- Most officers involved in conflictual incidents had not been subject to previous complaints, but a small number had an extensive complaint history. Significantly more officers involved in off-duty incidents had been the subject of previous complaints than officers involved in on-duty incidents.
- Most of the complainants involved in on-duty incidents were young and male.
- Fifty-nine per cent of complainants in on-duty incidents had previously been charged with criminal offences. However, only 6 per cent had previously made a complaint against a police officer.
- Indigenous people accounted for 11% of the complainants in on-duty incidents, a proportion which reflects the over-representation of indigenous people in the criminal justice system generally.
- Civilians involved in off-duty incidents were less likely than those involved in on-duty incidents to be charged with a criminal offence, less likely to have a criminal record, and more likely to be female.

- Incidents leading to assault allegations were most likely to occur in the late evening, with the largest numbers occurring on Fridays, Saturdays and Sundays.
- On-duty incidents were most likely to occur in police-controlled space (such as police vehicles, cells, interview rooms, watch-houses) or in a public space. The most common locations for off-duty incidents were private spaces and licensed premises.
- The greatest number of incidents occurred in places where there were no other people about, and the least number occurred in crowded places.
- In almost half of the on-duty incidents examined in the study, police had been called to attend an incident or a disturbance, or to provide some other assistance.
- In 17 per cent of on-duty incidents, the conflict arose from police-initiated contacts, or what could be broadly described as discretionary police activity.
- In more than half of the on-duty incidents, there was either no evidence of provocative behaviour on the part of the complainants, or the provocation did not extend beyond the use of disrespectful language towards the police officers.
- In about a fifth of the on-duty incidents, there was evidence that the civilians involved had used serious physical provocation towards the police, such as punching or kicking.
- In two-thirds of the on-duty incidents, there was evidence that the civilians involved had used alcohol or drugs. In most cases where the complainant had used alcohol, there was evidence that he or she had displayed either physical or verbal provocation towards the police.
- In a quarter of the on-duty incidents, a civilian was arrested for a minor offence, such as offensive language, drunkenness or disorderly conduct. This finding raises questions about the wisdom of police exercising their arrest powers for such matters, particularly considering the QPS policy advising use of the complaint and summons procedure for minor offences.
- In 17 per cent of on-duty incidents, there was evidence that the officers had not told the complainants why they had been approached. In 10 per cent of incidents, most of which had involved plain-clothes officers, police appear not to have initially identified themselves.
- Off-duty incidents that occurred in licensed premises were most commonly altercations between male officers and male civilians, both of whom were drinking at the licensed premises and were not known to each other before the incident.
- The majority of off-duty incidents in private space were domestic disturbances.
- Alcohol and drug use for off-duty officers involved in conflictual incidents was similar to that for civilians involved in these incidents. In two-thirds of the off-duty incidents, there was evidence of alcohol or drug use by at least one of the parties involved.

Policy implications

Complaints of assault against police are among the most difficult allegations to substantiate. Given the resources required to investigate these complaints, and the stress involved for officers and complainants alike, it makes sense to put more effort into preventing such incidents from occurring in the first place.

Possible strategies for reducing complaints of assault against on-duty police include:

- improving rostering and supervision practices
- providing more and better training in communication and the proper exercise of discretion
- ensuring that police clearly identify themselves to members of the public and make it clear why they have approached them
- making greater use of female police in operational situations
- implementing procedures for identifying and managing officers who are the subject of significant numbers of complaints
- enhancing the monitoring of police activity by such means as the installation of video cameras in interview rooms, cells and police watch-houses, and the mandatory use of tape-recorders by police officers in the field
- implementing a comprehensive policy on the use of force, including establishing a use-of-force register.

Regulation of the behaviour of off-duty police is more difficult. However, appropriately targeted campaigns promoting responsible alcohol consumption and denouncing domestic violence, and the provision of suitable support services, could go some way towards reducing the frequency with which off-duty officers are involved in conflict with members of the public.

PROJECT RATIONALE

Every day, officers of the QPS are involved in thousands of encounters with members of the community in which no force is used or is alleged to have been used.² However, although most police encounters with members of the public do not result in any complaint of assault, there are, nonetheless, several compelling reasons for seeking to minimise such complaints:

- Complaints against the police have been described as a form of feedback on the performance of the police organisation (Goldsmith 1991). Excessively coercive police procedures or behaviour can severely damage relations between the police and the community. This can inhibit police effectiveness, given that the police depend upon the community for assistance to perform their duties, and are accountable to it.
- The financial and other costs to both the CJC and the QPS—and ultimately the public—of investigating allegations of police misconduct are substantial. The QPS has estimated that the direct cost of investigating a standard complaint is about \$500.³ The cost for the CJC is likely to be higher, given that it investigates matters of greater complexity and seriousness. Any initiative that can lead to a reduction in the number of complaints about the use of force by police is therefore worthwhile, as it means that valuable law enforcement and investigative resources may be used for more productive purposes.
- The personal and emotional costs of misconduct investigations—for both citizens and police officers about whom complaints are made—can be very high. Officers who are subject to complaints investigations often find the process to be extremely stressful, even if the complaint is found not to be substantiated. Complainants also experience considerable stress or uncertainty. Moreover, because such complaints are difficult to prove, there is a high level of complainant dissatisfaction with the process.
- Research recently published by the CJC's Research and Coordination Division (1996) has shown that the circumstances in which assault complaints are most likely to arise are very similar to the circumstances in which police themselves are likely to be injured as a result of an assault. Strategies which can reduce the number of assault complaints are also likely to be effective in reducing the number of assaults against police.

This research project falls within the CJC's statutory responsibilities under section 23(h) of the *Criminal Justice Act 1989*, which states that the CJC is responsible for:

providing the Commissioner of the Police Service with policy directives based on the Commission's research, investigation and analysis, including with respect to law enforcement priorities, education and training of police, revised methods of police operation, and the optimum use of law enforcement resources (Section 23(h) *Criminal Justice Act 1989*).⁴

2 There are no Queensland data available on the proportion of police-civilian interactions that degenerate into use of force, but data from North America indicate that such conflicts are the exception rather than the norm (see Croft 1985 and Ostrom, Parks & Whittaker 1977 cited in Geller & Toch, 1995, p. 41). There is no reason to believe that police officers in Queensland are more likely than their North American counterparts to use force in their encounters with civilians.

3 This estimate is based on the results of a costing survey of investigator time involved in the resolution of complaints conducted by the QPS Professional Standards Unit (PSU) between July and September 1995.

4 The CJC has interpreted this provision as including the making of recommendations.

Also relevant is section 29(3) which specifies that one of the functions of the Official Misconduct Division is 'to offer and render advice and assistance to law enforcement agencies . . . concerning the detection and prevention of official misconduct'.⁵

STUDY DESIGN

DATA SOURCE

Data for this study have been obtained from CJC complaints files. Under the provisions of the *Criminal Justice Act 1989*, all allegations of police misconduct are required to be investigated by the CJC. The Official Misconduct Division and, more particularly, the Complaints Section, is responsible for receiving and investigating these complaints (see next chapter). Each complaint file contains the paperwork generated and acquired during the course of the investigation of the complaint. Complaints files in which the principal allegation is that a police officer has assaulted a person, or used unreasonable or unnecessary force towards that person, usually include the following information:

- the initial complaint, including details of place, time, date, the names of the officer(s) against whom the allegations are made, and a broad outline of the incident
- detailed statements and/or records of interview from the complainant and any corroborative witnesses
- photographs of alleged injuries and accompanying medical reports, and the opinions of medical examiners in relation to the likely causes of such injuries
- detailed statements and/or records of interview from the police officer(s) involved in the incident and any corroborative witnesses
- other relevant information, such as copies of police patrol logs, excerpts from police notebooks, watch-house keepers' records, and photographs of the scene
- copies of the criminal records of persons involved in the incident the subject of the complaint, together with charge sheets and transcripts of court proceedings in which charges arising out of the incident may have been determined.⁶

Unless the complaint is clearly out of the CJC's jurisdiction (in which case it is not investigated further) or is a matter which would be referred to the QPS, much of the information described above is collected within the first 48 hours after a complaint is received.

⁵ Section 56(2) provides for the Research and Coordination Division to initiate research in response to requests from other divisions of the Commission.

⁶ Transcripts of court proceedings are often used as a source of evidence. In court cases arising in the aftermath of conflictual encounters, complainants have an opportunity to more fully ventilate their allegations against the police as part of their defence. Additionally, defense counsel can cross-examine the police, thereby extracting admissions from the police, or otherwise damage the credibility of the police version of the conflictual encounter. This evidence may then serve to buttress the substance of the complaint. Conversely, evidence adduced in subsequent court proceedings may support the police version of events.

WHY WE USED COMPLAINTS FILES

Complaints files were chosen as our data source for three main reasons:

- the data were readily accessible and could be collected economically
- this methodology enabled us to collect data on a sufficiently large number of cases to undertake quantitative analysis
- alternative data collection strategies were too resource intensive and also presented several methodological difficulties.

Most previous research on the use of non-lethal force by the police has been based on data collected through 'ride-along' observations of officers on patrol (Geller & Toch 1995, p. 39). Direct observation of police at work enables the collection of data about forms of behaviour that cannot be reliably obtained through other sources, such as reviews of police reports or arrest data. In particular, observational studies provide one means of measuring the extent of unreported use of force by police. Such studies also allow researchers to collect data on other important dimensions of the subject or incident that are ordinarily considered too inconsequential to require official reporting; for example, information on the settings or location in which force is used, or the nature of the interaction between the police officer and the civilian leading up to the use of force.

Although observational studies have generally been considered to be the preferred method of conducting research on issues relating to the use of force by police, there are practical and methodological difficulties with undertaking this type of research. In particular:

- Direct observation is time-consuming, costly and logistically difficult, requiring researchers to spend large amounts of time in the company of police on patrol. Much of this time is 'down time'; that is, spent in activities which are not the subject of the study. Police work 24-hour rotational shifts, and each of these must be observed by researchers. Very often only small amounts of useable research information are obtained despite the substantial investment of time and resources.
- The presence of the researcher may impede the operational effectiveness of the police officers being observed. The researcher may get in the way, be exposed to dangerous situations that he or she has no training to deal with, or take up space in police vehicles that could otherwise be used for conveying prisoners or suspects.
- The presence of a researcher, especially one attached to an investigative body such as the CJC, may lead officers to behave differently from how they would otherwise.
- Because of the qualitative nature of the data which are gathered, there can be difficulties achieving consistency in the interpretation of similar situations and events which are observed by different researchers accompanying different groups of police. This factor also makes it very difficult to replicate such studies.

SCOPE OF STUDY

For the purposes of this study, we collected data from a sample of all assault complaints made to the CJC (excluding those which were obviously false) rather than restricting the focus only to substantiated complaints. In many complaints involving allegations of assault against police, subsequent investigations have shown that the police behaviour may have constituted a justified or 'lawful' use of force (see

chapter 2), or at the very least, there was insufficient evidence to prove the complainants' allegations to the necessary legal standard. On the other hand, in most cases there was evidence that a conflict of some kind had occurred and that the subject officer(s) had used force against the complainant(s). Given that our major objective in undertaking this study is to find ways of reducing the number of assault allegations and the conflict which gave rise to them, it is largely immaterial whether such allegations are subsequently legally proven or not. The aim of this research is to gain a better understanding of the *situational and social contexts* of conflict between the police and members of the public, rather than to apportion responsibility or make findings on the facts of individual cases.

Because the study encompasses a considerable number of unsubstantiated complaints, we have used the neutral term 'conflictual incident' throughout this report, rather than 'police assault'. Also, to describe these cases as 'assaults' or 'assault allegations' might suggest that the police are always the principal protagonists in these types of conflict, whereas other studies indicate that police violence is often interactional or transactional in nature (Toch 1969; 1980). In this regard the concept of the 'conflictual incident' helps to underscore the role of *both* parties in the interactions which give rise to complaints of assault.

SAMPLING METHODOLOGY

In drawing the sample for the study, we identified from the CJC complaints database matters that met the following three criteria:

- Assault was the *major* allegation. (A complaint comprises one or more allegations. Files which featured assault as an allegation, but not as the principal allegation, were excluded from the scope of the study.)
- The complaint had been made against police officers serving in the QPS.
- The CJC investigation/assessment of the matter had been completed in the period between July 1990 and June 1994.

These criteria gave us a sampling frame of 973 files. The sample was broken down by the financial years in which the investigation/assessment of the complaint was completed. A sample of one in every three files was then drawn proportionately from each year, providing a potential sample of about 350 files. However, because of difficulties locating and coding some of the files, only 320 were able to be coded. Consequently, some files from 1993-94 were under-represented.

From the sample of 320 files, we excluded 49 cases where there was no *prima facie* evidence that a conflictual incident had occurred, leaving a final sample of 271 complaints. Cases were excluded if they did *not* meet one or more of the following criteria:

- one or more independent witnesses had described seeing police use force towards the complainant(s)
- there was medical evidence or other objective evidence (e.g. photographs) of injuries to the complainant(s)
- the officer acknowledged that an incident of some kind had occurred, although not necessarily as described by the complainant.

DATA COLLECTION METHODOLOGY

A coding booklet was devised for recording relevant data extracted from the files.⁷ This booklet was designed to provide a detailed picture of the incident which triggered the complaint of assault. Information was collected on such matters as:

- the location of the incident and other situational characteristics
- the characteristics of the police officer(s) involved
- the characteristics of the civilian(s) involved
- the behaviour of the police officer(s) and civilian(s) during the incident.

Two university law students were employed as research assistants to read each file in the selected sample and complete the matching coding sheet. An acceptable level of inter-coder reliability was assured by conducting initial training sessions and regular meetings between the coders and their supervisor. These sessions provided the coders with an opportunity to discuss anomalies in the coding process with the project coordinator and served as a method for maintaining quality control.

The data obtained via quantitative analysis of the sampled files were later supplemented by case studies of selected complaints from the same sample. These files were selected to illustrate the types of incidents identified in the quantitative study. In all, approximately 50 files were read in detail. Data obtained in this way have been used to expand observations made later in this report, and to construct the case studies that are presented.

STUDY LIMITATIONS

As discussed above, a study based on complaints files can be conducted far more expeditiously (and economically) than an observational study. In addition, complaints files represent a source of research data about police practices that has largely been untapped. Such data can therefore provide unique insights into the circumstances and causes of incidents involving the use of force by police. However, it is also important to acknowledge the limitations of this approach:

- The matters which are the subject of complaints to the CJC are not necessarily representative of the full range of conflictual incidents between police and civilians. For example, a recent CJC survey of nearly 500 defendants appearing in Childrens and Magistrates Courts found that only 12 per cent of those defendants who claimed to have been assaulted by police reported making a complaint to the QPS or CJC (CJC 1996).
- The complaints files do not contain the level of detailed contextual information that can be obtained from first-hand observations.
- Much of the information contained in the file reflects the divergent perceptions of different participants in the incident, rather than being based on objective observations of what occurred. The ambiguity of the evidence often makes it difficult to characterise the circumstances of the incident with any precision.

⁷ A copy of this booklet is available from the CJC Research and Coordination Division on request.

Because of these limitations, we make no claims as to the definitiveness of this study and readily acknowledge the need for other work to be undertaken using different approaches. However, used in conjunction with other research and other information sources such as our study of assault-related injuries incurred by police (CJC 1996a), data from the complaints files can help in the development of strategies for reducing the number of assault complaints and the incidence of police-citizen conflict generally.

STRUCTURE OF REPORT

Chapter 2 provides a general overview of the complaints which form the subject of this study. It presents information about the complaints through all stages of the complaints process, from initiation to finalisation.

Chapter 3 describes the personal characteristics of police officers and civilians involved in conflictual incidents.

Chapter 4 examines the physical and temporal context in which the complaints of assault arose. In particular the chapter presents and analyses data in relation to when and where the incidents occurred and whether other people (police and civilians) were around at the time.

Chapter 5 focuses on the interaction between the police and civilians involved in these incidents. Aspects of the incidents analysed include the reason for the police-civilian contact, the behaviour of the civilians during the incident, the role of alcohol and drugs, and the policing styles employed in these interactions.

Chapter 6 outlines the limitations of case-by-case investigation of complaints as a means of dealing with assault complaints against police and suggests a range of managerial and organisational strategies for reducing the number of such complaints.

Appendix I contains a brief outline of the law of assault and the law relating to police use of force, and discusses some relevant evidentiary issues. The purpose of this appendix is to assist readers to understand how it is decided whether an officer should be charged in relation to an allegation of assault.

Appendix II contains four case studies which illustrate how inappropriate policing styles can escalate police-civilian conflict and give rise to a complaint of assault.

CHAPTER 2

AN OVERVIEW OF THE ASSAULT COMPLAINTS USED IN THE STUDY

This chapter provides a general overview of the complaints which form the subject of this study. It presents information about the complaints through all stages of the complaints process, from initiation to finalisation.

Data are presented on the following aspects:

- how the complaint was made to the CJC
- the nature and seriousness of the alleged assault
- how the officers who were the subject of complaints responded to the allegations
- the involvement of police and civilian witnesses
- the action taken by the CJC in response to the complaints.

HOW THE COMPLAINT WAS MADE TO THE CJC

Complaints against police can be made to the CJC or the QPS, either orally or in writing, by the public and QPS officers. When a member of the public makes a complaint to the QPS, the QPS officer receiving the complaint must record it on a complaint form known as a Form 307⁸ and then pass the form on to the CJC. A person may also complain directly to the CJC.

As shown by table 2.1, the main methods of lodgement of the complaints examined for this study were as follows:

- the complainant complained to another (usually more senior) police officer (60% of cases)
- the complainant telephoned or wrote to the CJC directly (30% of cases).

⁸ See 18.2.1 QPS HRM Manual Section 18 Discipline.



TABLE 2.1 — METHOD BY WHICH COMPLAINTS OF ASSAULT WERE MADE TO THE CJC

Method of complaint	Number	Per cent
Police Notice of Complaint form	163	60
Correspondence from complainant	46	17
Phone call to CJC staff	35	13
Correspondence from QPS	16	6
Interview by CJC	8	3
Other	3	1
TOTAL	271	100

Note: Because of rounding, percentages do not add up to 100.

Seventy-nine per cent of the complaints were made by the person allegedly assaulted. Most of the remaining 21 per cent were made by either friends or relatives of the person.⁹

DUTY STATUS OF SUBJECT OFFICER

Of the 271 complaints examined for this study, 217 (80%) pertained to incidents involving on-duty police officers. A total of 328 officers were alleged to have been involved in these incidents. Another 52 incidents (19%) involved complaints against police officers who were off-duty.¹⁰ There were 60 officers involved in these incidents.

As detailed in the following chapters, there were some significant differences in the characteristics of on-duty and off-duty incidents. For this reason, data relating to these two types of incidents are generally presented separately.

NATURE AND SERIOUSNESS OF THE COMPLAINT

EXTENT OF INJURY

For the purposes of the study, photographs of injuries, medical reports and/or witness statements on the files were used to determine the extent and nature of injuries alleged to have been sustained during the incident.

⁹ The term 'complainant' is used in the following discussion to refer to the person who was the subject of the alleged assault, regardless of whether he or she personally made the formal complaint to the CJC or QPS.

¹⁰ In two cases, it was not possible to determine from the file whether the police officer was on or off duty.

Table 2.2 shows the types of physical injuries alleged, on an ascending scale of seriousness.¹¹ In 68 per cent of incidents, the person who was allegedly assaulted ('the complainant') either had no evidence of injury or suffered only minor injuries (defined as bruising, inflammation, swelling, abrasions and/or general pain). In the remaining 32 per cent of incidents, there was evidence that more serious injuries had been incurred.

TABLE 2.2 — CONFLICTUAL INCIDENTS: MOST SERIOUS TYPE OF INJURY SUSTAINED BY CITIZEN

Type of injury	Number	Percentage
No evidence of injury	90	33
Bruising, inflammation, swelling, abrasions, general pain	96	35
Lacerations, penetrating wounds, punctures, bites	48	18
Fractures, broken bones	22	8
Loss of consciousness	10	4
Internal injuries	5	2
TOTAL	271	100

In considering these data, it is important to be aware of the interactive nature of the incidents examined for this study. In some cases, there was evidence suggesting that the complainant's own behaviour contributed to his or her injuries. Some injuries may have been sustained before the encounter with police (e.g. where the citizen had been involved in a fight). Moreover, many of the injuries were incurred in the context of the person resisting an arrest. This resistance often resulted in an escalating encounter in which the police used increasing levels of force to overcome resistance. In these cases, the injuries may not have occurred had the citizen behaved differently.

In many cases, there was evidence that the citizen was affected by alcohol at the time of the encounter (see chapter 5). In some instances, excessive consumption of alcohol may have affected the person's actions and behaviour and, therefore, may have contributed to his or her injuries. This factor also may have affected the person's recollection of how the injury was sustained.

TYPE OF FORCE ALLEGEDLY USED

The type of force alleged to have been applied in the incident was categorised on an ascending scale with threats categorised as the lowest level, progressing up to sexual assault. Table 2.3 shows the highest level force alleged by the citizen(s) in each of the incidents studied.¹²

¹¹ Many of the incidents involved allegations of a number of different types of injury suffered by the citizen. This table shows the most serious injury recorded in each case.

¹² Many of the incidents involved a number of allegations of different types of force.

TABLE 2.3 — CONFLICTUAL INCIDENTS: HIGHEST LEVEL OF FORCE ALLEGED BY COMPLAINANT

Type of force	Number	Percentage
Threats	4	2
Grab, grapple, push, poke	66	24
Headlock, choker hold	12	4
Punch, kick	122	45
Baton, hitting with or against an object	60	22
Sexual attack	7	3
TOTAL	271	100

The types of force most frequently alleged to have been used by police were punches and kicks (45% of incidents), and baton blows, or hitting with or against objects such as cars or cell walls (22.1%).¹³

Generally speaking, the more severe the alleged force, the greater the probability that the complainant showed signs of having been injured. For example, in 26 per cent of the on-duty incidents where batons or other objects were allegedly used, the complainant had sustained internal injuries, fractures or loss of consciousness, compared with 16 per cent of incidents where punches or kicks were alleged.

OFFICERS' RESPONSE TO ALLEGATIONS

Table 2.4 shows the response of the subject officers to the allegations made against them.¹⁴ For those cases where the officers admitted using some force in the incident, the table also details the main justifications given for the use of that force.

¹³ Baton blows have also been taken to include police striking citizens with other baton-like objects, such as metal police torches.

¹⁴ Several incidents involved more than one officer. However, officers in these situations invariably gave the same response to the allegation.

TABLE 2.4 — OFFICERS' RESPONSE TO ALLEGATIONS: ON-DUTY AND OFF-DUTY INCIDENTS

Officers' response to allegations	On duty % (n=217)	Off duty % (n=52)
Denied using force	37	38
Admitted using some force and justified it on basis of:		
Self-defence	7	28
Necessary force	50	16
Lost temper	1	8
Under influence of alcohol	nil	4
Other	6	6
TOTAL	100	100

Notes:

1. Because of rounding, percentages may not add up to 100.
2. The table is incident, not officer, based. In cases where there was more than one subject officer, officers invariably agreed on their response to the allegation.

In 37 per cent of the on-duty incidents and 38 per cent of the off-duty incidents, the officers concerned denied any involvement in the alleged incident. In the remaining incidents, the officers admitted engaging in some act of force, although not necessarily as described by the complainant.

In the on-duty incidents, by far the most common justification offered by the officers was that the force used was necessary in the circumstances. (As outlined in appendix I, the law allows police to use reasonable force to overcome any force used by a person to resist an arrest or to prevent a person from escaping from lawful custody.) There were only two incidents where officers admitted that they might have behaved improperly by losing their temper.

The breakdown for off-duty incidents showed a somewhat different pattern. Self-defence (28%) was the most common justification given, with 'necessary force' given in only 16 per cent of the incidents. 'Lost temper' was offered as the justification in four (8%) cases and 'under the influence of alcohol' in two (4%).¹⁵

WITNESSES TO THE INCIDENT

Where a complainant's allegations have been denied by the subject officer(s), the investigator must look for evidence such as a statement from a witness which might corroborate (i.e. support) one or other version of the incident. Statements or evidence from one or more witnesses were obtained in 58 per cent of on-duty incidents and 63 per cent of off-duty incidents. (See appendix I for an explanation of corroborative evidence and its relevance to the substantiation of complaints.)

¹⁵ Data were missing for one case.

Police witnesses

In 52 per cent (112) of the on-duty incidents and 38 per cent of the off-duty incidents, one or more police officers who were not directly involved in the incident provided a witness statement. Table 2.5 shows whose version of the incident the police witnesses supported.

**TABLE 2.5 — WHOSE VERSION OF INCIDENT SUPPORTED BY POLICE WITNESS STATEMENT:
ON-DUTY AND OFF-DUTY INCIDENTS**

Version supported	On duty % (n=112)	Off duty % (n=20)
Complainant's account	1	5
Subject Officer's account	88	70
Both accounts	9	25
Neither account	3	nil
TOTAL	100	100

Note: Because of rounding, percentages may not add up to 100.

As table 2.5 indicates, in 88 per cent of the 112 on-duty incidents where police gave witness statements, the evidence supported the account of the subject officer(s). In another 9 per cent of incidents, the testimony supported aspects of both accounts. A striking finding is that of the 112 on-duty incidents where police officers gave witness statements, there was only one incident where the police witness statement unequivocally supported the complainant's version of the incident.

Off-duty incidents provide slightly different results from the on-duty incidents, but the trends are similar in terms of support for subject officers. In the 20 incidents where there were police witnesses, the statements supported the subject officer's account of the incident in 70 per cent of cases. In only one case did the police witness unequivocally support the complainant's version of the incident.

Civilian witnesses

In 66 per cent (144) of the on-duty incidents and 77 per cent (40) of the off-duty incidents, at least one civilian gave a statement which was recorded on the CJC complaints file. Table 2.6 shows which version of the incidents the civilian witnesses' statements supported.

TABLE 2.6 — WHICH VERSION OF INCIDENT WAS SUPPORTED BY CIVILIAN WITNESS STATEMENTS: ON-DUTY AND OFF-DUTY INCIDENTS

Version supported	On-duty % (n=144)	Off-duty % (n=40)
Complainant's account	36	43
Subject Officer's account	36	23
Both accounts	22	35
Neither account	6	nil
TOTAL	100	100

Compared with the findings for police witnesses, these data show much greater support for the complainant's account of the event. However, in a number of these cases the credibility of the witness may have been diminished by the fact that he or she was known to or associated with the complainant, was alcohol- or drug-affected at the time, and/or had a criminal history.

Incidents witnessed by both police and civilians

There were 96 on-duty incidents in which both a police officer and a civilian provided a witness statement. We analysed these statements to find out how much they concurred or diverged. Table 2.7 shows the results of this analysis.

TABLE 2.7 — CONCURRENCE/DIVERGENCE OF POLICE AND CIVILIAN WITNESSES

		Civilian witness statement supported			
		Complainant's account			
		Subject Officer's account			
		Both accounts			
		Neither account/not available/other			
		TOTAL			
Police witness statement supported	Complainant's account	1			1
	Subject Officer's account	23	59		82
	Both accounts	4	2	3	9
	Neither account/not available/other				4
	TOTAL	28	39	23	96

The table indicates that there were 82 incidents where the police witness statement supported the subject officer's account of the incident and there was also at least one civilian witness. Of these 82 incidents, the civilian witnesses supported the complainant in 23 cases (28%), the subject officer in 35 cases (43%) and both or neither in 24 cases (29%). Conversely, for the 28 incidents where the civilian witnesses supported the complainant's account, there was only one case where a police witness also provided support. These data point to a considerable degree of divergence in the evidence given by police and civilians.

ACTION TAKEN BY CJC

After a complaint has been investigated, the CJC investigator, in consultation with the team leader, sends a report to the Chief Officer, Complaints Section, either recommending that the complaint be dismissed or stating that a *prima facie* case of official misconduct, misconduct or breach of discipline has been found.¹⁶

If the Chief Officer believes that the evidence supports disciplinary action for misconduct or a breach of discipline, the matter is referred to the Commissioner of Police.¹⁷ If not, the Chief Officer may simply find that the complaint has not been substantiated, and no further investigation is warranted. In either event,

¹⁶ Misconduct is defined as conduct which:

- is disgraceful, improper or unbecoming an officer;
- shows unfitness to be or continue as an officer; or
- does not meet the standard of conduct reasonably expected by the community of a police officer (s. 1.4 *Police Service Administration Act 1990*).

¹⁷ See ss. 36A and 38(4) *Criminal Justice Act 1989*.

the Chief Officer notifies the complainant, the police officer and the QPS of the outcome of the investigation.

If an investigation discloses evidence of a criminal offence or official misconduct, the report of the investigation is forwarded to the Director of the Official Misconduct Division, who must report to the Chairperson of the CJC.¹⁸ The Chairperson may authorise:

- referral of matters assessed as warranting disciplinary action for misconduct or a breach of discipline to the QPS for action¹⁹
- referral of matters which disclose a criminal offence to the Director of Public Prosecutions (the DPP) or other prosecuting authority with a view to determining whether criminal charges should be laid
- referral of matters which disclose evidence of official misconduct to the Executive Director of the CJC with a view to bringing the matter before a Misconduct Tribunal.

The CJC may only make recommendations to the DPP and QPS. It has no authority to compel compliance with its recommendations.

¹⁸ Section 33 *Criminal Justice Act 1989*.

¹⁹ In some circumstances, although no disciplinary action is considered warranted, the CJC may recommend the officer be chastised or corrected by way of guidance (s. 11 Police Service (Discipline) Regulation). This is not regarded as a disciplinary sanction but as training.

Table 2.8 shows the disposition or outcomes of the 271 complaints files examined for this study.

TABLE 2.8 — DISPOSITION OF COMPLAINTS

Complaint outcome	Number	Per cent
Not investigated	40	15
Withdrawn	6	2
Not substantiated	142	52
Referred to Misconduct Tribunals	4	1
Referred to QPS for informal resolution or for investigation of minor misconduct or breach of discipline	56	21
Recommended to Commissioner of QPS criminal charges	3	1
Recommended to Commissioner of QPS disciplinary action for misconduct	9	3
Recommended to Commissioner of QPS disciplinary action for breach of discipline ²⁰	4	1
Recommended to the Commissioner of QPS correction/chastisement	4	1
Recommended procedural changes ²¹	1	1
Referred to the DPP	1	1
Other	1	1
TOTAL	271	100

Note: Because of rounding, percentages do not add up to 100.

The following points should be noted concerning this table:

- Fifteen per cent (40) of the complaints were assessed by the CJC as not warranting further investigation. In about half of these cases, it was decided that a court would provide the best forum for resolving the matter. This assessment was made in cases where the circumstances of the assault allegation were inextricably interwoven with the complainant's arrest on other charges. In most of the remaining cases, the CJC could not productively investigate the allegation because the information given by the complainant was not sufficiently detailed or was inconclusive.

20 A breach of discipline is a breach of any provision of the *Police Service Administration Act 1990* or directions of the Commissioner. Breaches can commonly be described as a violation or dereliction of duty.

21 In addition to recommending that action be taken in response to individual cases, the CJC can recommend changes in organisational policies and procedures where deficiencies have been found in the course of an investigation. Section 29(3)(e) of the *Criminal Justice Act* empowers the CJC to 'offer and render advice or assistance by way of education or liaison to . . . units of public administration concerning the detection and prevention of official misconduct'.

- Twenty-one per cent of the complaints were referred to the QPS for investigation under the supervision of the CJC. Data on the outcomes of these investigations were not collected for this study.²²
- Only 9 per cent of the complaints examined could be regarded as substantiated,²³ in that they resulted in:
 - * a referral to the Misconduct Tribunal
 - * a recommendation to the Commissioner of the QPS that the officer should be charged with a criminal offence, face disciplinary action for misconduct or a breach of discipline, or be corrected or chastised
 - * a referral to the DPP or other prosecution authority for criminal charges to be brought against the officer.

Of these outcomes, the most common was a referral to the Commissioner of the QPS for disciplinary action. There were only a few cases where criminal charges were recommended. Not all matters referred to the QPS or DPP resulted in charges and not all charges were later proven. This is particularly so for criminal matters. For the period 1991-92 to 1995-96, only 32 per cent of the cases where criminal charges were preferred against an officer resulted in a guilty verdict. By contrast, 74 per cent of cases where disciplinary charges were recommended, or the matter was referred to a Misconduct Tribunal, resulted in a finding of guilt or the officer resigning from the service.²⁴

- Fifty-two per cent of the complaints were investigated by the CJC and assessed as not having been substantiated. However, it should be emphasised that this assessment simply means that there was insufficient evidence to warrant recommending disciplinary or criminal action against the officer(s) concerned; such a finding does not *necessarily* mean that the alleged incident did not occur or that there was no suggestion of misconduct on the part of the subject officer.

SUMMARY

This chapter has provided a descriptive analysis of some of the general features of the complaints of assault examined for this study. In particular, it has identified that:

- Most complaints of assault against police were first made to other (usually more senior) police officers, who complete a Notice of Complaint form and send it to the CJC.

22 Our analysis of CJC complaints data for the period 1 July 1991 to 30 June 1995 shows that 24% of assault allegations were referred to the QPS for investigation. Of those, 0.6% resulted in the officer being found guilty of criminal charges and 8.6% resulted in disciplinary action or the resignation of the officer. Data on the proportion of matters where criminal or disciplinary charges were preferred were not available.

23 The *overall substantiation rate* (that is, the proportion of *all* complaints made to the CJC that are substantiated by the CJC) may seem low, but this figure does not include the outcomes for matters which were referred to the QPS for investigation. It should also be noted that the *overall substantiation rate* is calculated as a proportion of matters which were not investigated by the CJC for various reasons (see above) or which were withdrawn. An alternative approach is to calculate the substantiation rate as a proportion of the matters which were the subject of investigations by the CJC. The *investigated complaints substantiation rate* is 15%.

24 Based on information obtained from the CJC charges register as at August 1996.

- Eighty per cent of the complaints related to incidents involving police officers who were on duty at the time of the incident.
- In more than two-thirds of the complaints studied, there was either no evidence of injury to the complainant or the only injury alleged was minor, such as bruising, swelling and/or abrasions.
- In almost half of the incidents, it was alleged that the police officers involved had punched or kicked the complainant; in slightly more than one-fifth of the incidents, a baton or other object was allegedly used.
- In two-thirds of cases, officers who were the subject of the complaint acknowledged that an incident of some kind had occurred. They generally justified their use of force by asserting that it was necessary in the circumstances, or constituted self-defence.
- Where police officers provided witness statements, these almost invariably supported the subject officers. In only one case did a police witness statement unequivocally support the complainant's account.
- Civilian witnesses were considerably more likely to support the complainant's account of the incident.
- Because of the difficulty of substantiating allegations to the necessary legal standard, very few of the complaints examined resulted in a recommendation that disciplinary or criminal action be taken against the subject officers.

CHAPTER 1 INTRODUCTION

BACKGROUND TO THIS REPORT

The CJC has a statutory responsibility to investigate allegations of misconduct against police.¹ One of the most common allegations made by members of the community is that they were assaulted by one or more police officers, or had unnecessary or unreasonable force used against them.

The investigation of complaints of assault against police places substantial demands on the resources of the CJC and the QPS. In 1995–96 assault allegations accounted for around 20 per cent of all complaints of police misconduct received by the CJC. Between 1991–92 and 1995–96 the number of such allegations rose by 73 per cent, from 401 to 695. For various legal and evidentiary reasons, such complaints are very difficult to substantiate, a factor which limits the deterrent value of the complaints investigation process. Consequently, there is a need to complement investigative strategies with a preventive focus designed to change the systemic and situational factors that contribute to these complaints.

This report presents the findings of an analysis of more than 300 CJC complaints files. It aims to facilitate the development of a preventive focus by:

- identifying the characteristics of police officers and members of the public involved in assault complaints and the circumstances in which these incidents occurred
- on the basis of this analysis, proposing organisational and managerial strategies for reducing complaints of assault against police officers.

This introductory chapter:

- provides the rationale for the study
- describes the study methodology
- addresses several methodological and theoretical issues arising from the study design.

¹ Section 29(3)(d) of the *Criminal Justice Act 1989*.

CHAPTER 3

CHARACTERISTICS OF POLICE OFFICERS AND CIVILIANS INVOLVED IN CONFLICTUAL INCIDENTS

This chapter examines the personal characteristics of the police officers and civilians involved in the complaints examined for this study. In relation to police, data are presented on gender, rank, years of service, nature of duties performed and previous assault complaints made against the officer. For civilians, aspects examined include age, gender, Aboriginality, disability, previous contact with the police, and whether the complainant had a history of making complaints against police officers.

The following discussion deals with incidents involving on-duty and off-duty officers separately.

ON-DUTY INCIDENTS

OFFICER CHARACTERISTICS

GENDER

We found that 95 per cent of the subject officers involved in conflict while on duty were male. This indicates a significant over-representation of males. Over the period covered by the study (July 1990 to June 1994), the percentage of sworn female police officers in the QPS ranged from 9 per cent in 1990-91 to 12 per cent in 1993-94.²⁵ Most of these women (87%) were employed in the 'frontline' ranks of constable and senior constable, where the likelihood of being the subject of an assault complaint is greatest.

Our findings concerning the over-representation of male officers are supported by an analysis of the complaints database of the Professional Standards Unit (PSU) of the QPS which we recently undertook (CJC 1996c). This study confirmed that males were more likely than females to attract more serious misconduct complaints, with the difference being most marked in the case of complaints involving allegations of assault.

These findings concerning gender are consistent with the view that female police officers are generally less confrontational in their manner and more adept at handling conflict than are males (Sherman 1975; Grennan 1987; Bell 1982; van Wormer 1981, Wilson and Braithwaite 1996). In their study of police-civilian interactions undertaken for the National Police Research Unit, Wilson and Braithwaite (1996) analysed the communication and policing styles used by police officers. The study recorded various behaviours of police officers and civilians during their interactions and found differences in the patterns of interaction of male and female officers. Females preferred to use information exchange and were more likely to use sequences of supporting²⁶ or rejecting²⁷ comments. Males were more likely to make threats and to take a dominating, controlling²⁸ role rather than maintain a dialogue. Civilians interacting with female officers displayed less verbal abuse and defensive behaviour and they participated more in the

25 These percentages are of sworn female officers, not of overall female employees of the QPS.

26 This category of behaviour included instances of humor, empathy or concern for the civilian, compliments, emphasising the commonalities between the officer and the civilian and indicating knowledge or appreciation of the civilian's feelings.

27 This category of behaviour included rejecting the behaviour or statements of the civilian, disapproval or criticism, blaming or accusing the civilian.

28 This category of behaviour included statements directing the behaviour of the civilian (e.g. 'Go home', 'Don't come back'), controlling the emotion of the civilian (e.g. 'Get a hold of yourself'), controlling the flow of the interaction (e.g. 'Don't interrupt').

exchange of information. Threats by police were associated with conflict escalation. Physical acts by officers were preceded by declining information exchange. The study also found that male officers were more likely to receive verbal abuse and to experience more physical resistance than female officers.

While the Wilson and Braithwaite study is persuasive, other possible explanations for gender differences identified by the CJC's research for this study cannot be completely discounted at this stage, such as that female police are less likely to be deployed to deal with potentially conflictual situations; or that members of the public react differently to female officers.

RANK AND YEARS OF SERVICE

Table 3.1 shows the proportion of police officers of different ranks involved in conflictual incidents and compares these data with the rank distribution for the QPS as a whole. The key point to note is that while constables make up only 37 per cent of the QPS, they were involved in 52 per cent of the complaints of assault. By contrast, other ranks were under-represented.

The over-representation of constables in the study is most likely due to a combination of two factors:

- Constables perform much of the general duties work of patrolling and responding to calls for service. As a consequence, officers of these ranks have the most contact with civilians and, therefore, the greatest potential to be the subject of complaints. There is also evidence that junior officers are particularly likely to be assigned to shifts where the risk of attracting an assault complaint is highest. For example, our analysis of rosters for a three-month period in 1996 for a busy station in South-East Queensland showed that, in 38 per cent of the shifts in the 10.00 p.m. – 6.00 a.m. slot, there was no officer rostered on higher than constable compared with only 16 per cent of the 6.00 a.m. – 2.00 p.m. shifts. As discussed in the following chapter, late evening is the most common time when assault complaints arise whereas the morning is the least common.
- Lower ranked officers generally have less experience and may have less skill in dealing with conflict than higher ranked officers. In accordance with this analysis, we found that, of the 120 subject officers for whom data on length of service were available, 40 per cent had been in the police service for three years or less and 24 per cent had one year or less of service. While length-of-service data are not available for the QPS as a whole, it is clear that inexperienced officers were heavily over-represented in the study.

TABLE 3.1 — RANK OF POLICE OFFICERS INVOLVED IN ON-DUTY INCIDENTS

Rank of officer	Number	Percentage of officers in study	Percentage of sworn officers in the QPS
Constable	159	52	37
Senior Constable	66	21	27
Sergeant/Commissioned Officer	82	27	36
TOTAL	307	100	100

Note: Data for 21 officers were missing.

These findings are also consistent with a recent CJC (1996a) study, *Assault-Related Injuries Reported By Queensland Police Officers*. It found that officers of the rank of constable and senior constable are the most likely to incur assault-related injuries, with constables experiencing by far the highest injury rate (83.4 per 1,000 officers, compared with 49.5 for senior constables). The study also found that officers with seven years' service or less accounted for 64 per cent of all assault-related injuries and those with three years' service or less for 27 per cent of reported injuries.

Professor James Fyfe (1989), a former patrolman in the New York Police Department, has argued that there is a critical distinction between police use of force that is illegal and abusive and that which is the result of police incompetence or inexperience. It is important to recognise this distinction in order to develop appropriate policies and interventions to tackle the causes of complaints against police. For example, the incidence of assault complaints might be reduced by ensuring that junior officers are teamed with more experienced officers, especially on high-risk shifts, and by having supervisors spend more time 'in the field'.

DUTIES — PLAIN CLOTHES V. UNIFORMS

In 80 per cent of the incidents involving on-duty police officers, the officers were in uniform. Whether a police officer is in uniform or plain-clothes often dictates the duties that he or she will perform. Junior uniformed officers undertake most of the general patrols and are most likely to be the officers who respond to calls for service. As a result, these officers have the greatest contact with the public, thereby increasing the likelihood of their involvement in conflict. Uniforms also make police officers more visible, hence possibly an easier target for people seeking confrontation with police.

Plain-clothes officers are more often detectives who undertake criminal investigations, or, alternatively, are general duties police who have been deployed in more strategic, pro-active policing activities, such as responding to disturbances in and around particular nightclubs or licensed premises.

There are many more uniformed than plain-clothes officers. However, because we do not have data on the proportion of plain-clothes (as against uniformed) officers who undertake patrols, it is not possible to assess the extent, if any, to which uniformed officers were over-represented in the sample.

PREVIOUS COMPLAINTS AGAINST THE POLICE OFFICERS

Data on the numbers of previous complaints against subject officers are presented in table 3.2 (below). Of the 328 on-duty officers in the study, only 35 (11%) were recorded as having been the subject of a previous complaint of assault. Of these 35 officers, 23 had attracted only one other complaint. Of the remainder, four officers had been subject to five or more complaints, with one officer having been subject to 11 previous complaints and one to 14 complaints.

TABLE 3.2 — POLICE OFFICERS INVOLVED IN ON-DUTY INCIDENTS WHO HAD BEEN THE SUBJECT OF PREVIOUS ASSAULT COMPLAINTS

Previous assault complaints	Number of officers in study	Percentage of on-duty officers in study
No evidence of prior complaints	293	90.4
One	23	7.0
Two	6	1.8
Three	1	0.3
Four	1	0.3
Five to nine	2	0.6
Ten +	2	0.6
TOTAL	328	100.0

In its review of the Los Angeles Police Department (LAPD), the Christopher Commission²⁹ examined citizen complaints against LAPD officers involved in use-of-force incidents. It found that 5 per cent of the officers involved accounted for more than 20 per cent of all reports. A similar analysis of complaints filed with the internal affairs office of 'a large police department in the south-east' of the USA (Lersch & Mieczkowski 1996) found that 7 per cent of the sworn officers accounted for 35 per cent of the total number of complaints over a three year period. The study also found that 46 per cent of the sworn force did not receive a single complaint of misconduct over that period.

We undertook a similar analysis of complaints data from the PSU of the QPS, covering the period January 1992 to May 1996. This analysis showed that of all the police officers against whom allegations of assault or use of excessive force were made, 5 per cent accounted for 15.3 per cent of the assault allegations made over this period.³⁰

In summary, the data indicate that assault complaints are 'one-off' or infrequent events for most officers. However, a small number of officers display recurring patterns of involvement in conflictual incidents. As discussed in chapter 6, this finding points to the importance of management strategies designed to identify and deal with such officers.

²⁹ Independent Commission on the Los Angeles Police Department 1991.

³⁰ For all types of allegations against police officers, 5% of officers were the subject of 19.2% of the allegations.

CIVILIAN CHARACTERISTICS

ARREST AND CHARGE STATUS

In 71 per cent of the on-duty incidents examined, the civilian who alleged that he or she had been assaulted had been arrested and charged with a criminal offence. This is consistent with our study of assault-related injuries reported by Queensland police, which found that police-civilian conflict is most likely to occur at the time of, or immediately following, an arrest (CJC 1996a).

Table 3.3 shows the most serious offence with which civilians involved in incidents were charged. In 1996, the CJC conducted a survey of approximately 500 defendants appearing in the Magistrates Court charged with criminal offences (CJC 1996b). The results of that survey indicate that the personal characteristics of the defendants closely match those of people who make complaints of assault against police (see further discussion below).

TABLE 3.3 — ON-DUTY INCIDENTS: MOST SERIOUS OFFENCE WITH WHICH COMPLAINANT WAS CHARGED

Offence type	Number of incidents	Percentage
Assault civilian	14	6
Property	34	16
Drug	8	4
Traffic	26	12
Good order (e.g. offensive language, drunk and disorderly)	46	21
Assault police	18	8
Against police (e.g. resisting arrest, obstructing etc.)	8	4
Not charged	63	29
TOTAL	217	100

Note: In two of the incidents where a complainant was charged with an 'assault police' offence, he or she was also charged with an 'other unspecified' offence. For the purposes of the offence hierarchy used for this analysis, 'other unspecified' offence was categorised as being less serious than the 'assault police' and 'against police' offences. In those two cases, the other offences were 'breaching a domestic violence order' and 'going armed in public'.

The most common charges were 'good order' offences followed by 'property' and 'traffic' offences. In a total of 35 cases (23 per cent of the incidents which resulted in a charge), a complainant was charged with an 'assault police' offence.

CRIMINAL HISTORY

According to material contained in the complaints files, 59 per cent of civilians involved in incidents with on-duty police officers had been charged previously with criminal offences.³¹

The major explanation for this finding is that people who have offended before are more likely to commit other offences and therefore to come to the attention of the police.

Other possible contributing factors are:

- Previous contact with police may predispose some people to make a complaint against the police out of malice, or because of feelings of anger or injustice about the circumstances of their previous contact with the police.
- If the person is 'known' to the police because of previous arrests and charges, this knowledge may influence the way the police handle that person in later contacts and may operate as a precipitating factor in conflictual incidents.

In relation to this last factor, we found that 31 per cent of the civilians who had been charged previously with offences were acquainted with the police officer(s) involved in the incident. Qualitative examination of files also indicated that prior dealings between the police and the complainant were sometimes the catalyst for the contact made by the police with the complainant. A number of the cases examined involved 'stop and question' contacts. The complainants' views of these approaches were that they were being harassed and that these unwelcome and unfounded approaches intruded on their rights to go about their business freely. The police view, on the other hand, was generally that stopping and questioning persons 'known' to them was a legitimate policing technique (see case study 4 in appendix II for an example).

COMPLAINTS HISTORY

Police officers frequently express concern that the complaints process can be abused by members of the community who have personal reasons for wanting to cause difficulties for the police — such as, people who have previously been charged with offences and have some personal animosity towards the police, or who make complaints against police because they have been charged with an offence and think that the complaint may assist their defence. However, we found that of the 249 civilians involved in the on-duty conflictual incidents examined, only 16 (6%) were recorded as having made a complaint against a police officer previously. This is a surprising finding, especially taking into account the high percentage (59%) of complainants who had been charged previously with offences. It suggests that previous contact with police does not predispose people towards complaining about police behaviour — in fact, the opposite might well be the case.

AGE OF COMPLAINANT

Sixty-two per cent of the civilians who complained of an assault by an on-duty police officer were 24 years of age or less, with 37 per cent being youths between the ages of 10 and 19 years. Around three-quarters of all the incidents examined involved people 29 years of age or less.

31 Strictly speaking, charges previously (as opposed to convictions) against a person do not form part of that person's criminal history.

This indicates considerable over-representation of young people. During the period 1990 to 1994, young people between the ages of 10 to 19 averaged 16 per cent of the Queensland population (ABS 1990-1994). During the same period, 10 to 29 year-olds averaged 32 per cent of the Queensland population (ABS 1990-94).

The main reason for young people being over-represented in conflictual incidents involving police officers is that they are more likely to offend and come to police attention than older members of the community (CJC 1995). There is, therefore, a greater potential for conflict with young people. Statistics on the age distribution of people appearing in the Magistrates Court for the 1991-92 financial year show that people between 17 and 29 years of age constitute 60 per cent of total court appearances for which the age of the defendant was recorded (ABS unpub.).³² These data are consistent with the findings in our Defendants' Survey (CJC 1996b) in which this age-group accounted for 62 per cent of respondents.

Younger people are also more likely than older people to spend a lot of time in public places such as shopping centres and malls. People who congregate and socialise in such places are particularly 'visible' to other members of the public and the police. These locations have been described as 'key sites for conflict between youth and police' (Blagg & Wilkie 1995, p. 35). Police may approach people in these locations or may be called by shop owners and business people to move on groups of young people because of concerns that their presence may intimidate patrons and damage business (see the discussion in Blagg & Wilkie 1995, pp. 35-43). The same factors contribute to conflict between police and Aboriginal and Torres Strait Islander peoples.

Further, nightclubs and bars attract a young patronage. Our data show that a substantial proportion of complaints of assault against police arise out of incidents which occurred in or around licensed premises (see chapter 4). Young people are often less experienced in the consumption of alcohol and in handling its effects (Hamel et al. 1994).

GENDER OF COMPLAINANT

In the overwhelming majority of the on-duty incidents in our study (82%), the civilian who was the subject of the alleged assault was male. The over-representation of males is most likely a result of the greater number of contacts generally that men, as opposed to women, have with police officers. (The CJC's Defendants Survey (1996b) found that 84 per cent of the people appearing in the Magistrates Court on criminal charges were male.)

The interrelationship between masculinity and violence generally is also well recognised in the research literature. Although men constitute only 50 per cent of the general population:

... the vast majority of those who commit acts of violence are males. Over 80 per cent of all homicide offenders, and well in excess of 90 per cent of those charged with serious assault, robbery, and sexual assault, are men.

With the important exceptions of sexual assault and domestic violence, men are also more likely to become the victims of violence (National Committee on Violence 1990, p. 33).

32 For 1990-91, the total number of appearances in the Magistrates Court was 180,176. Data on the age of persons appearing in the Magistrates Court were recorded in 108,201 cases.

ABORIGINALITY

In 11 per cent of the incidents involving on-duty officers, the civilian who was alleged to have been assaulted was identified as an Aboriginal or Torres Strait Islander person.

According to the 1991 Census, Aboriginal and Torres Strait Islander peoples accounted for only 2.4 per cent of the Queensland population (Government Statistician's Office 1995, p. 3). However, they are heavily over-represented in police custody, the prison population and in the criminal justice system generally (RCADIC 1991). Considering this disproportionate representation, it is not surprising that indigenous people are over-represented among people involved in conflictual incidents with police.

Aboriginal and/or Torres Strait Islander peoples constituted 12.5 per cent of the respondents in the CJC's Defendants Survey (1996b). That study also found that indigenous defendants were slightly more likely than non-indigenous defendants to allege that they had been assaulted by police, but the difference was not statistically significant. To the extent that there was a difference, it was most likely a function of the types of offences for which indigenous people were arrested.

PEOPLE WITH DISABILITIES

Information contained in the complaints files indicated that 7 per cent of complainants had either a physical or cognitive disability at the time of the incident. Table 3.4 shows the breakdown of the data for incidents involving on-duty officers, according to the type of disability suffered by the civilian.

TABLE 3.4 — DISABILITY OF CIVILIANS INVOLVED IN ON-DUTY INCIDENTS

Disability	Number	Percentage
Psychiatric illness	11	4.5
Intellectual disability	1	0.5
Physical disability	3	1.0
Multiple disabilities	2	1.0
No evidence of disability	232	93.0
TOTAL	240	100.0

As can be seen from table 3.4, psychiatric illness was the most common disability. As is evidenced by case study 3 presented in appendix II, it is often the symptoms of psychiatric illness which cause the person to come to the attention of the police in the first place. Thereafter, the symptoms can contribute to the conflictual nature of the encounter and its escalation.

The Report of the National Inquiry into the Human Rights of People with Mental Illness (Burdekin 1993), conducted by the Human Rights and Equal Opportunity Commission (HREOC) was scathing in its criticism of the mental health system and its failure to identify and appropriately assist mentally ill people in the community. The Report found that a consequence of this failure was that much of the 'official' intervention with the mentally ill falls, by default, to the police.

Reluctance to identify young people as mentally ill leads to them being treated in a default system. Without assessment and an appropriate range of intervention services they just 'slip between the cracks of the various systems and end up in the juvenile justice system'. (Burdekin 1993, p. 634)

The HREOC Report expressed particular concern about how the criminal justice system treats young people and indigenous people who are mentally ill, but recognised that the problem was not confined to these groups within the community. The Report (Burdekin 1993, p. 757) noted that many people are taken into custody as a direct or indirect consequence of their mental illness going untreated.

According to HREOC, the primary difficulty for mentally ill people who are dealt with by the police is the absence of specialised mental health 'crisis teams' which can be called upon to assist in the management, assistance and care of the mentally ill (Burdekin 1993, p. 784). Without such support, the police are often required to deal with episodes of mental illness, even where no offence has been committed. The report noted that police are ill-equipped and substantially under-trained to deal with such episodes (Burdekin 1993, p. 784).

OFF-DUTY INCIDENTS

This study included data on 52 conflictual incidents involving off-duty police officers. These incidents involved 60 police officers and 64 civilians. This section analyses the characteristics of the police officers and civilians involved in these incidents.

POLICE OFFICERS

GENDER

Of the 60 off-duty police officers, 59 (or 98%) were male. This proportion was similar to that for on-duty incidents, in which 95 per cent of the officers were male.

RANK

The ranks of the off-duty officers involved in conflictual incidents generally reflected the rank distribution of the QPS as a whole. For instance, officers of the rank of constable or senior constable represented 65 per cent of the officers involved in off-duty incidents. These ranks also constitute about 65 per cent of sworn police officers. This is in contrast with on-duty incidents, where constables were over-represented.

PREVIOUS COMPLAINTS AGAINST THE POLICE OFFICERS

Of the 64 police officers involved in conflictual incidents while off duty, 22 per cent (13) had previously had complaints of assault made against them.³³ By comparison, only 11 per cent of the officers involved in on-duty incidents had been the subject of a previous assault complaint. This difference was statistically significant.³⁴

These data suggest that there may be other factors operating in incidents involving off-duty police officers which may be ongoing or have ongoing effects. Factors such as the gender of the civilians involved in incidents, a previous acquaintanceship between the officer and the complainant, and the location of the incidents (e.g. in licensed premises or private space) can provide some context and possible explanation for these findings. However, few conclusions can be drawn because data were not collected about the circumstances of the incidents which gave rise to previous complaints of assault.

CIVILIANS

CHARGES

A civilian was charged with a criminal offence either before, or as a result of, the incident in only 19 per cent of the incidents involving off-duty police officers. This finding contrasts markedly with that for on-duty incidents, where a person was charged with a criminal offence in 71 per cent of the incidents (see above). Table 3.5 shows the most serious offences with which the civilians involved in off-duty incidents were charged.

TABLE 3.5 — OFF-DUTY INCIDENTS: MOST SERIOUS OFFENCE WITH WHICH CIVILIAN WAS CHARGED

Offence type	Number of incidents
Assault (civilian) offence	2
Property offence	1
Drug offence	NIL
Traffic offence	2
Good order offence	4
Assault (police) offence	1
Against police offence (resisting arrest, obstructing etc.)	NIL
TOTAL	10

33 In four cases data were missing.

34 Chi-square = 5.0, df 1, $p < .05$.

PERSONS PREVIOUSLY CHARGED WITH AN OFFENCE

Only 25 per cent (16) of the civilians involved in conflict with off-duty police officers had been charged previously with a criminal offence, compared with 59 per cent of civilians involved in on-duty incidents.

This variation is most likely explained by two factors. First, a considerable number of the off-duty incidents involved females who had been in a personal relationship with the officer involved (see below). These complainants are less likely to have been charged previously with offences. Secondly, the types of interactions which are likely to give rise to a conflictual incident involving an off-duty police officer will be different from those where a police officer is performing police duties. In the latter situation, officers are more likely to come into contact with people who are committing or have committed a criminal offence and who, therefore, are more likely to have been charged previously with an offence.

GENDER AND RELATED INTERACTIONAL FACTORS

Two-thirds of the civilians who were involved in conflict with off-duty police officers were male. In statistical terms, significantly more female civilians were involved in conflict with off-duty police officers than with on-duty police officers.³⁵ In addition, in significantly more off-duty incidents, the officer and the civilian were previously acquainted with each other.³⁶ Further, significantly more incidents involving off-duty officers occurred in licensed premises.³⁷

These data indicate that the interactional factors at work in incidents involving off-duty police are substantially different from the factors which give rise to on-duty incidents. (These issues receive further attention in chapter 5.)

SUMMARY

This chapter has examined the characteristics of police officers and civilians involved in conflictual incidents which resulted in a complaint of assault against one or more officers. The key findings are:

On-duty incidents

- Female police officers were much less likely to have complaints of assault made against them than were male officers.
- Officers of the rank of constable were over-represented. This is most likely due to a combination of two factors:
 - these officers have the most contact with civilians and the greatest potential to be the subject of complaints
 - lower ranked officers generally have less experience and may have less skill in dealing with conflictual situations.

³⁵ In the case of on-duty incidents, 83% of the civilians were male and 18%, female. Chi-square = 8.5, df 1, $p < .005$.

³⁶ Chi-square = 20.8, df 1, $p < .005$.

³⁷ Chi-square = 24.7, df 1, $p < .005$.

- Only 11 per cent of the officers against whom a complaint had been made had been the subject of a previous complaint of assault. Of those, a very small proportion had an extensive complaint history.
- Most of the complainants involved in the incidents studied were young and male.
- Eleven per cent of the complainants were Aborigines or Torres Strait Islanders, which is broadly reflective of the over-representation of indigenous people in the criminal justice system generally.
- Fifty-nine per cent of the complainants had previously been charged with criminal offences. However, only 6 per cent had previously made a complaint against a police officer.

Off-duty incidents

- As was so with on-duty incidents, most officers involved in off-duty conflictual incidents were male.
- In contrast with the findings for on-duty incidents, the ranks of police officers who were involved in conflictual incidents while off duty generally reflected the rank distribution of the QPS as a whole.
- A significantly higher proportion of officers involved in off-duty incidents had been the subject of previous complaints of assault. These data suggest a pattern of behaviour among a few officers which is giving rise to a disproportionate number of assault complaints relating to off-duty incidents.
- Compared with on-duty incidents, civilians involved in off-duty incidents were:
 - less likely to be charged with a criminal offence
 - less likely to have a criminal record
 - more likely to be female.

CHAPTER 4

THE CONTEXT OF CONFLICTUAL INCIDENTS

INTRODUCTION

To understand the circumstances that give rise to assault complaints, it is important to examine the context in which these incidents occur. Identifying these contributing factors or characteristics can assist in developing strategies to reduce the frequency of these incidents, either by enabling police officers to avoid situations that lead to conflict, or by better equipping them to deal with such situations when they occur.

This chapter presents and analyses data on such factors as the time when the incident occurred, the location of the incident (i.e. whether it occurred in public, private or police space), and whether other people were present.

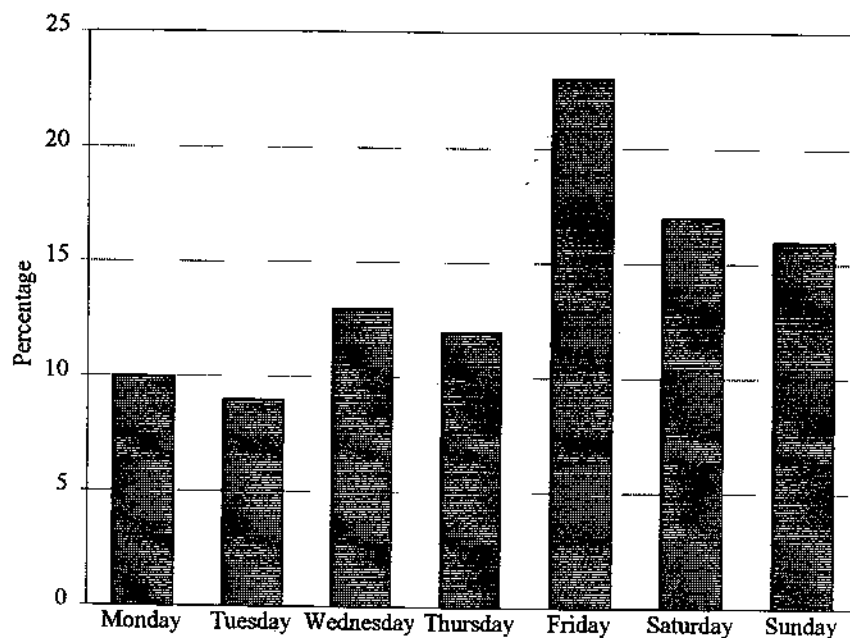
TIME AND LOCATION

DAY OF WEEK

Incidents which gave rise to complaints were more likely to occur towards the end of the week, with 23 per cent of all complaints relating to incidents which occurred on Fridays and more than half (56%) on either a Friday, Saturday or Sunday (see figure 4.1). Statistics on calls for service attended by police in the Brisbane Metropolitan area in 1992-93 indicate that these are also the days on which police are most likely to be called to deal with public disturbances (QPS Statistical Review 1992-93). The data relating to time of day are not distinguished according to whether the police officers involved were on or off duty, as there were no statistically significant differences between these two groups in terms of this variable.³⁸

38 Slightly less incidents involving on-duty officers (56%) occurred on a Friday, Saturday or a Sunday compared with 59% of off-duty incidents. Slightly more incidents involving on-duty officers occurred on a Friday (25%) compared with off-duty incidents (18%); the trend was reversed on Sundays on which 14% of on-duty and 22% of off-duty incidents occurred.

FIGURE 4.1 — CONFLICTUAL INCIDENTS: DAY OF WEEK

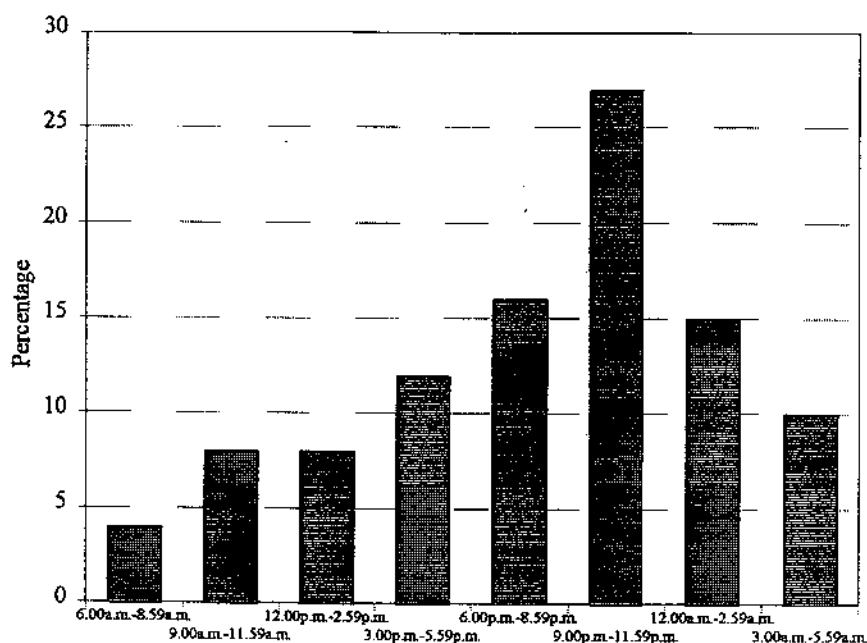


Note: n = 271

TIME OF DAY

Two-thirds of the complaints related to incidents which occurred between the hours of 6.00 p.m. and 6.00 a.m. This finding is consistent with our analysis of assault-related injuries reported by police (CJC 1996a). The analysis showed that the most common time period for incidents was the three hours between 9.00 p.m. and midnight, which accounted for 27 per cent of all assault complaints (figure 4.2). This pattern again broadly corresponds with the distribution of calls relating to disturbances. There were no significant differences between on-duty and off-duty incidents in terms of the time of day when they occurred.

FIGURE 4.2 — CONFLICTUAL INCIDENTS: TIME OF DAY



Notes:

1. Data were unavailable for seven files.
2. n = 264

LOCATION

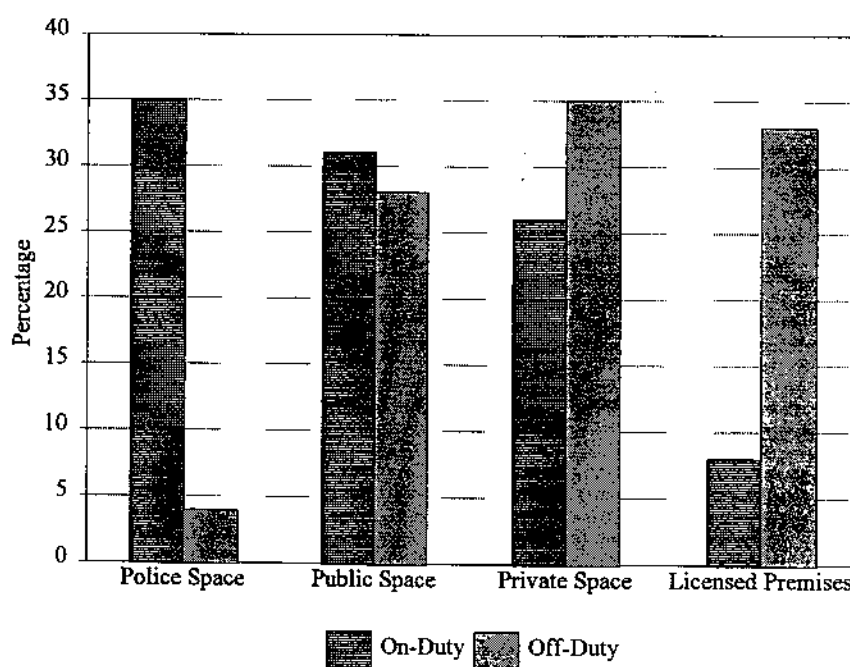
Figure 4.3 shows the location of conflictual incidents according to whether the police officers were on or off duty. This figure indicates that conflictual incidents involving on-duty police officers were most likely to occur in police space (35% of on-duty incidents) whereas this was the least likely location for incidents involving off-duty officers (4% of off-duty incidents).³⁹ The reason for this variation is obvious — police who are off duty are generally unlikely to be in police space.

Figure 4.3 also shows that only 8 per cent of the on-duty incidents occurred in or around licensed premises compared with 33 per cent of the off-duty incidents.⁴⁰ This finding indicates that alcohol consumption by the off-duty police officers involved may have been a factor in these incidents. In addition, a slightly higher percentage of off-duty incidents (35%) than on-duty incidents (26%) occurred in private space.

39 chi-square = 19.2, df 1, $p < .01$.

40 chi-square = 22.5, df 1, $p < .01$.

FIGURE 4.3 — LOCATION OF ON-DUTY AND OFF-DUTY INCIDENTS



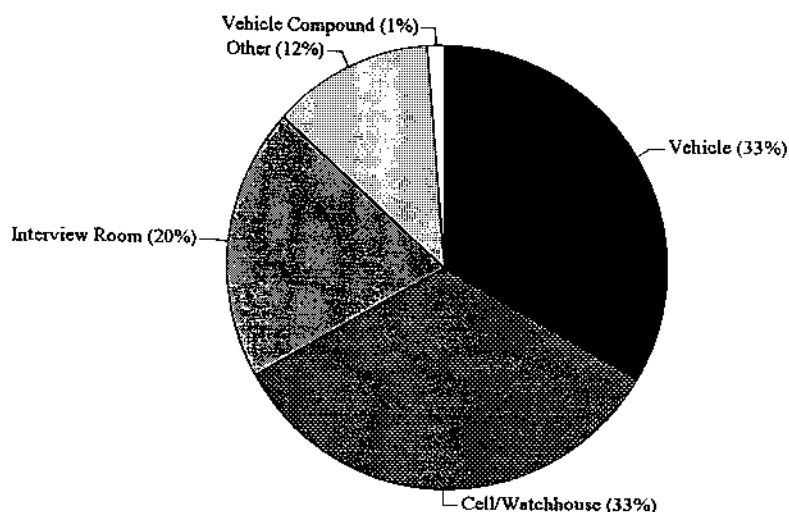
Notes:

1. On-duty incidents n = 215.
2. Off-duty incidents n = 51.

POLICE SPACE

As shown in figure 4.3, the largest proportion of conflictual incidents involving on-duty police officers occurred in police space. A breakdown of these incidents is contained in figure 4.4, which shows that these incidents were most likely to occur in police vehicles, cells and interview rooms.

FIGURE 4.4 — ON-DUTY INCIDENTS IN POLICE SPACE



The ranks of officers involved in incidents occurring in police space (70 incidents) generally reflected the rank distribution in the QPS, with constables and senior constables accounting for 64 per cent of the cases (45 incidents).

A more detailed analysis of 'police space' incidents is provided below.

POLICE VEHICLES

As indicated, one-third of the on-duty incidents which occurred in police-controlled space occurred in or around police vehicles. These incidents accounted for 12 per cent of all on-duty incidents in the study.

An examination of files relating to incidents in and around vehicles showed that these incidents could be broken down into three main categories:

- *'In-transit' use of force.* Complaints in this category alleged assaults by police (punches, assaults with objects such as metal torches) while in police vehicles, either while the vehicles were stationary or in transit to the police station.
- *'Loading incident' use of force.* These complaints involved incidents alleged to have occurred when arrested people were being loaded into police vehicles. Allegations included being thrown against, pushed or tripped towards the exterior of the police vehicle, or thrown into the vehicle when this was not necessary. For example, some complainants alleged that their heads were deliberately banged against the doorjambs of police vehicles as they were being loaded.
- *Other injuries sustained in-transit as a result of police action.* These complaints generally related to dangerous or erratic driving which gave rise to injuries. They included allegations that a police officer drove a police wagon containing prisoners at excessive speed, cornering sharply and causing prisoners to 'roll around like tennins'; and that a police officer driving a police car braked suddenly, causing prisoners in the rear seat to be thrown forward into the perspex screen between the front and rear seats of the car.

The following factors may account for the relatively large number of incidents occurring in or around vehicles:

- Vehicles are the most common mode of transport within the QPS; over 50 per cent of on-duty incidents involved police officers who were patrolling in vehicles at the time of the initial contact with the complainant.
- Police vehicles are typically used to transport people after their arrest to police stations and watch-houses. The time during and soon after an arrest is when police officers and people whom they have arrested are most likely to be agitated and conflict is most likely to occur.
- Vehicles provide a level of privacy or protection from observation.
- Officers patrolling in police vehicles are commonly lower-ranked, less experienced officers. Because of the nature of police vehicle patrols, supervision of these officers by other, more senior or experienced officers is often minimal.

WATCH-HOUSES, CELLS AND INTERVIEW ROOMS

Incidents in police cells and interview rooms represented 53 per cent (40 incidents) of the on-duty incidents that occurred in police-controlled space.

Officers of sergeant rank and above were involved in 47 per cent of these complaints, a substantially higher proportion than for other incidents involving on-duty officers. This finding is to be expected, as more senior officers perform the types of duties — watch-house management or investigative duties — which require them to spend time in police stations and watch-houses interviewing suspects and processing people who have been arrested.

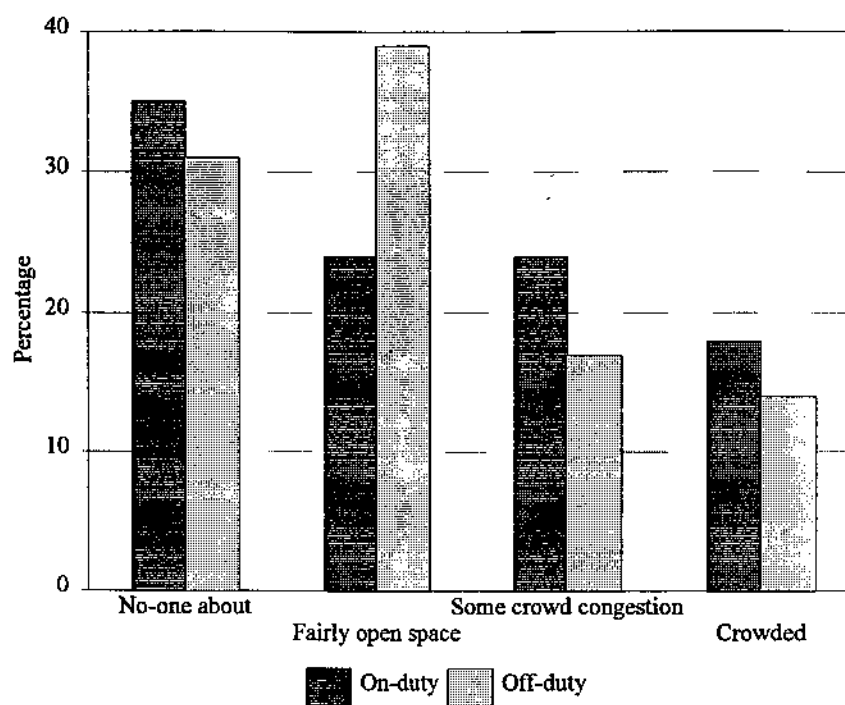
Officers of the rank of sergeant and above were involved in eight of a total of 21 incidents occurring in police cells for which data on rank were available. It is likely that most of these officers were senior watch-house staff.

Nine of the 15 incidents in police interview rooms involved officers of the rank of sergeant or above. This is consistent with the finding that 70 per cent of the officers in this study who performed investigative/CIB/task force duties were of the rank of sergeant or above.

CROWD DENSITY

Another relevant contextual factor is whether the place where the incident occurred was occupied at the time by people other than those involved in the incident (figure 4.5). This is a measure of the potential of the incident to have been witnessed by other people (either police officers or civilians) who were not involved.

**FIGURE 4.5 — CONFLICTUAL INCIDENTS (ON AND OFF-DUTY):
DENSITY OF OCCUPATION OF AREA**



Notes:

1. Total on-duty n = 215.
2. Total off-duty n = 51.

Figure 4.5 shows that the greatest proportion of both on-duty and off-duty incidents occurred in places where there were few, if any, other people about, while the least number of incidents occurred in crowded places. One possible explanation for this pattern could be that police are more likely to become involved in incidents when there are potentially fewer witnesses to their misbehaviour. On the other hand, it could be argued that complaints of assault are more likely to be made against police when there are few, if any, witnesses to dispute the complainant's version of events.

Surprisingly, the highest proportion of incidents occurring in crowded places were 'police space' incidents (29%). Further, 66 per cent of incidents in police space were witnessed by one or more civilians who were not involved in the incident. These results suggest that the presence of other people who may witness the incident (including other civilians) has little or no effect on the occurrence of incidents in police space.

SUMMARY

This chapter has examined the context in which conflictual incidents involving police officers and civilians occurred. Key findings are:

- Incidents leading to assault allegations were most likely to occur in the late evening, with the largest numbers occurring on Fridays, Saturdays and Sundays.

REDUCING POLICE-CIVILIAN CONFLICT

- On-duty incidents were most likely to occur in police-controlled space (such as police vehicles, cells, interview rooms, watch-houses) or in a public space. The most common locations for off-duty incidents were private spaces and licensed premises.
- The greatest number of conflictual incidents occurred in places where there were no other people about, and the least number occurred in crowded places.

CHAPTER 5

BEHAVIOURAL FACTORS

INTRODUCTION

The two previous chapters have examined the personal characteristics of the police and civilians involved in conflictual incidents and the physical and temporal context of these incidents. However, while these factors obviously contributed in various ways, and to varying degrees, to the occurrence of these incidents, it is the behaviour of two or more people in a given situation that largely decides whether conflict results.

This chapter analyses data relating to the behaviour of the parties involved in on-duty and off-duty incidents. Aspects of incidents involving on-duty police officers that are examined are:

- whether the officers were responding to a call or the contact was police initiated
- the behaviour of the complainants during the incidents
- whether there was evidence that alcohol or drugs had been used by the complainants or police officers involved
- the policing styles employed, with particular emphasis on:
 - police use of arrest powers
 - whether the police officers had identified themselves as police
 - communication styles.

Off-duty incidents are examined with reference to the interaction of the following factors:

- the gender of the civilians
- whether the officers and civilians involved in the incidents had been acquainted previously
- the location of the incidents e.g. private space, licensed premises
- whether there was evidence that either party had used alcohol or drugs.

ON-DUTY INCIDENTS

REASONS FOR POLICE–CIVILIAN CONTACT

A useful way to analyse the interaction between police and civilians involved in conflictual incidents is to examine the relevance, if any, of the 'catalyst' for the police–civilian contact; that is, the event or factor which triggered the contact between the police officer(s) and the civilian complainant(s). Such incidents could include a random roadside breath test, a call to deal with a disturbance, or an approach by a police officer while on patrol in a street mall.

For this analysis, we excluded incidents which occurred in police stations or watch-houses as in these cases the incident which generated the assault complaint was some distance removed from the initial contact. The remaining incidents were categorised as follows:

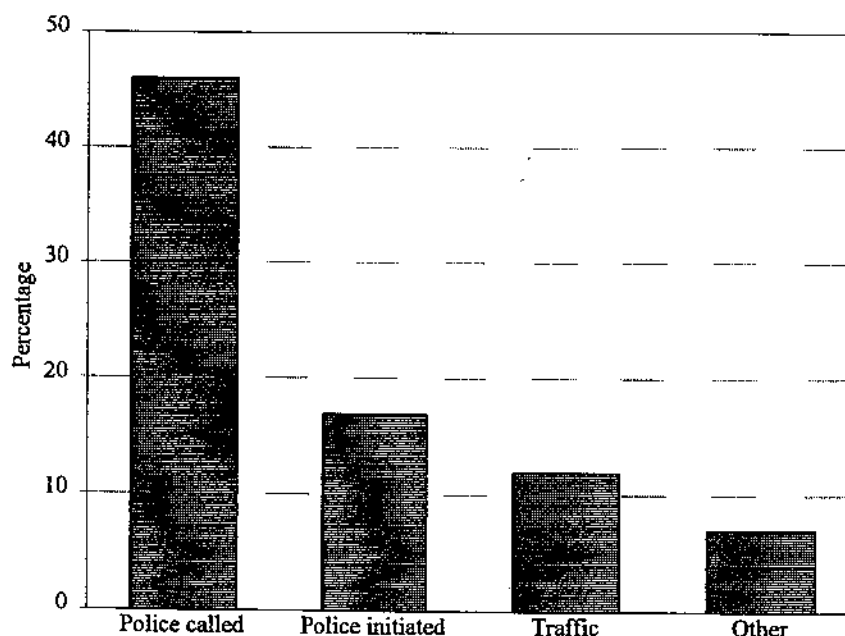
- 'traffic' incidents relating to the enforcement of traffic laws
- 'police called' incidents where police were called to attend an incident or disturbance, or to provide some other assistance
- 'police initiated' incidents where the police officer(s) initiated the contact with the complainant either by approaching the person to:
 - (i) make a general inquiry; or
 - (ii) question or arrest the person in connection with an alleged offence.

Figure 5.1 shows that the largest proportion of incidents occurred after police had been called to attend a location. This finding is consistent with other research (CJC 1996d), showing that responding to calls for service constitutes the bulk of the work carried out by general duties police.

Often when police respond to a call for service, they are entering a situation that has the potential for conflict. For example, Toowoomba calls for service data for February 1993 to January 1995 show that 'disturbances' such as unruly or rowdy behaviour, neighbourhood disputes, offensive language and complaints of excessive noise constituted the largest single category of calls for service (CJC 1996d).⁴¹ People whom the police deal with when responding to calls of this nature may be angry, upset, injured, embarrassed or wanting to avoid arrest or police intervention. Drugs or alcohol may also be involved. These situations all have the potential for conflict.

⁴¹ A study of West End Division calls for service showed a broadly similar pattern to Toowoomba, with disturbances accounting for 21% of calls during the nine-month period ending November 1995 (CJC 1996d).

FIGURE 5.1 — REASON FOR INITIAL CONTACT: ON-DUTY INCIDENTS



Notes:

1. Does not include incidents which occurred in a 'station/watch-house'.
2. n = 178.

The second largest category of incidents were those which arose from 'police initiated' contacts. These incidents stemmed from what could be described as pro-active police activity, meaning that the contacts depended upon particular policing strategies and discretionary decisions by individual police officers about how, when and why to make contact with civilians.⁴² These contacts should be contrasted with those arising from calls for service, to which the police are more or less compelled to respond.

The number of incidents resulting from traffic contacts is relatively low, especially in view of the vast number of contacts police have with members of the public each year over traffic violations.

PROVOCATIVE BEHAVIOUR BY CIVILIANS

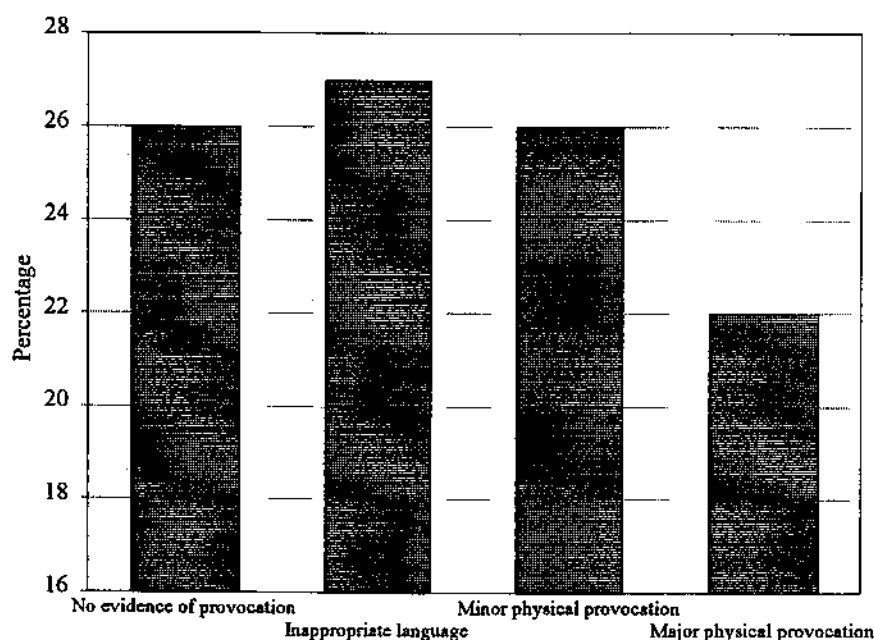
Using the complaints files, we sought to identify incidents where the complainants may have provoked or contributed to the conflict. These behaviours included verbal provocation, such as speaking to a police officer disrespectfully or swearing, and physically provocative behaviour such as poking or punching.

Figure 5.2 shows that in 26 per cent of on-duty incidents there was no evidence of provocation. A further 27 per cent of the incidents involved only the use of inappropriate language by the complainant. These two categories together comprise more than half of the on-duty incidents studied (53%). These findings raise concerns about why the police officers involved in these incidents considered there were grounds for the use of *any* force in the circumstances. The use of inappropriate language could be interpreted as evidence

42 Of course, a number of these contacts could have involved police reacting to people whom they observed committing offences or causing a disturbance.

of a civilian seeking to 'demonstrate disrespect' towards the police. However, such behaviour would not justify the police using force against a civilian solely to enforce respect for the police. On this issue, in the United States, the President's Commission on Law Enforcement and the Administration of Justice (1967) observed that the 'officer . . . must remember that there is no law against making a policeman angry and that he cannot charge a man with offending him' (p. 181).

**FIGURE 5.2 — LEVEL OF PROVOCATIVE BEHAVIOUR EXHIBITED BY COMPLAINANT:
ON-DUTY INCIDENTS**



Note: $n = 217$.

Resort by the police to the use of force in response to verbal provocation by civilians has been reported in previous studies. For example, Chevigny's (1969) study of use-of-force complaints against New York police officers reported that most complaints arose out of citizens' defiance of police authority, usually by means of speech rather than acts. Use of force in such circumstances has come to be described in the literature as police applying 'street justice'. This is the term used to describe a certain response by police to what they interpret as a show of disrespect or a lack of deference by a civilian. This show of disrespect has been described (Hindelang 1976; Skolnick & Fyfe 1993) as the failure by the citizen to pass the police 'attitude test'. Westley (1970), observed:

The officer thinks of himself not as an instrument of the government, but as a person in interaction with another person. He tends to feel that the derived [coercive] power is in himself and, that by with-holding it he *himself* is doing the other person a favour. He therefore expects gratitude for his personal favour, gratitude and acknowledgement of his own competence. The man who typifies the antithesis of both these reactions is the 'wise guy', a recurrent character in the drama of the police versus the public. (Westley 1970, p. 59, in Geller & Toch 1995, p. 106)

Van Maanen (1974) draws a comparable analogy, this time describing the citizen who is the target of police coercion as the 'Asshole'.

In essence, the 'Asshole' is one who refuses to accept (or, at least, remain silent for) the officer's definition of the situation. Hence the person complains loudly, attempts to fight or flee, disagrees with the officer, does not listen, and generally, in the officer's eyes, makes a nuisance of himself . . . From the patrolman's view, the Asshole is one who makes his job more difficult, and such actions are not looked upon kindly. In fact, if the Asshole persists in his actions and pays no heed to an officer's repeated warnings to 'shape-up', he may find himself charged with considerably more than he thought. Or, in the extreme case, he may be severely 'thumped' if the officer is so inclined. In the patrolman's world, such physical retaliation for the antics of an 'Asshole' is justified according to the doctrine of 'street justice'. This form of police action is designed both to punish the offender immediately, and to reestablish the officer's control of the situation. (van Maanen 1974, p. 119, cited in Geller & Toch 1995, p. 106)

The Queensland equivalent of the 'wise guy' or 'asshole' is the 'grub'. Information in a number of the complaints files examined suggests that in some instances police officers may have been dispensing 'street justice' along the lines described by the above authors. The case studies presented in appendix II provide several examples of this.

INVOLVEMENT OF DRUGS AND ALCOHOL

The complaints files were studied for evidence of the use of alcohol or drugs by complainants or police officers involved in conflictual encounters. Whether a person has used drugs or alcohol will frequently affect the way he or she interacts with other people, increases the potential for conflict, and may also affect the person's recollection of the incident.

Table 5.1 shows that in 61 per cent of the on-duty incidents, there was evidence that the civilians involved had been using alcohol. (There were only four incidents where the police officers had used alcohol but this is to be expected, given that the officers were on duty.)

**TABLE 5.1 — EVIDENCE OF USE OF DRUGS OR ALCOHOL BY POLICE AND CIVILIANS:
ON-DUTY INCIDENTS**

Evidence/ Type of drug	Percentage (n = 217)
None	34
Alcohol	
Police	2
Civilians	61
Prescribed drugs	
Police	0
Civilians	7
Unprescribed drugs	
Police	nil
Civilians	6

Note: There were nine incidents in which there was evidence that the civilian had used both alcohol and prescribed drugs, eight incidents where the civilian had used both alcohol and unprescribed drugs, one where the civilian had used both prescribed and unprescribed drugs and one where the civilian had used alcohol, prescribed and unprescribed drugs.

Alcohol-affected people are more likely to behave aggressively or disrespectfully towards police. This hypothesis was confirmed by our research, which found that in 83 per cent of the on-duty incidents where there was evidence that the complainant had used alcohol (132 incidents), there was also evidence that the complainant had behaved provocatively towards the police.

Additionally, a person's responses are slowed when affected by alcohol. This slow response time may sometimes be misinterpreted by police officers as a refusal to carry out a lawful direction, or as a sign of disrespect. This may cause police officers in some situations to overreact to an alcohol-affected person and to take physical action to make the person comply with their directions.

It is not possible to determine how many of the incidents studied could have involved a misinterpretation by police of complainants' behaviour. However, the large number of cases in which there is evidence that the complainants were affected by alcohol or drugs illustrate the importance of police having skills in the management of people who are so affected. These findings also suggest that strategies to reduce the incidence of excessive alcohol consumption at licensed venues and events could reduce the frequency of conflictual incidents between police and civilians.

POLICING STYLES

USE OF ARREST POWERS

As noted in chapter 3, a complainant was charged with a criminal offence in almost three-quarters of the on-duty incidents (see table 3.3). In 33 per cent of these incidents, the most serious offences brought against the complainant were 'good order', 'assault police' and 'against police' offences.

The number of incidents involving only apparently minor offences that escalated into conflict was high enough to warrant closer examination. We therefore selected a sample of files to examine in more detail. Some of these case studies are reproduced in appendix II.

Chevigny (1969) has observed that charges of resisting arrest, using obscene language or of assaulting police are commonly used by police to 'cover', or disguise, a use of force where the need to take this action may be in doubt. As discussed above, Chevigny suggests that the use of force is a form of summary or 'street justice' used by police to punish civilians who fail to show sufficient respect or who challenge their authority. In Australian policing parlance, this combination of charges is known by police as the 'trifecta', the 'holy trinity' and the 'ham, cheese and tomato' of public order policing (Blagg & Wilkie 1995, p. 22).

In its 1987 Annual Report, the Queensland Police Complaints Tribunal expressed concern about the use by police of their powers of arrest without warrant for minor offences under the *Vagrants Gaming and Other Offences Act 1931* (such as obscene language, insulting words, unruly conduct). This practice was common despite the existence of General Instruction 1.23 of the Commissioner of Police which provided that:

members of the Police Force, even though authorised by law, should abstain, unless specially instructed to the contrary, from making an arrest for a minor offence where proceedings by complaint and summons against the offender would be effective.

The Tribunal found that the police officer's discretion to exercise the power to arrest was not being exercised as objectively as required. The report stated that there is:

a perceived tendency to effect an arrest because the power to do so exists, irrespective of what real mischief has been caused by the mere uttering of words which in many respects have lost any power to offend or induce revulsion in any ordinary persons (which after all is the test of obscenity). (Police Complaints Tribunal 1987, p. 3)

The Tribunal also suspected that the making of an arrest in a number of these cases was often a 'knee-jerk' reaction which was intended as a 'get square' or 'teaching a lesson measure'. It also expressed concern at the potential flow-on effect of the exercise of these arrest powers:

Frequently, the arrest for one of these offences triggers off allied offences, such as resisting arrest, and assault on a police officer in the execution of his duty. The offender, on many occasions, has been taken from or near his home; locked up for several hours; fingerprinted; searched; photographed and generally treated as a criminal. (Police Complaints Tribunal 1987, p. 3)

Furthermore, the Tribunal pointed out that the outcome of such cases was often the forfeiture of bail as a matter of convenience, which meant that there was no opportunity for the courts to review the officer's exercise of the power to arrest.

In its *Report on a Review of Police Powers in Queensland Volume III: Arrest Without Warrant, Demand Name and Address and Move-On Powers* (CJC 1993), the CJC noted the concerns of the Police Complaints Tribunal and recommended that police reduce their reliance upon the power to arrest and use the complaint and summons process more frequently.

The QPS Operational Procedures Manual (OPM), which came into operation in December 1994, contains a similar policy to the previous General Instruction:

In the case of minor matters where proceedings by way of complaint and summons would be effective police officers should refrain from arresting an offender, even though the statutory authority to arrest may exist. (Para. 3.5.9)⁴³

Despite the existence of the OPM, police officers are continuing to rely heavily on their arrest powers when dealing with people who have committed minor offences. Sometimes this may be an appropriate exercise of discretion (for example, where the arrest was necessary to prevent a disturbance from escalating). However, it is highly doubtful whether all, or even most, arrests for minor offences can be justified on these grounds.

COMMUNICATION ISSUES

The likelihood of a police-civilian contact escalating into a conflictual incident is dependent upon the behaviour of both participants (Wilson & Braithwaite 1996). Since police officers are performing professional functions during these interactions, they largely bear the responsibility for maintaining control of the interaction. Poor communication can contribute to the escalation of the conflict and result in the officer losing control of the situation and ultimately having to resort to the use of force. Conversely, good communication skills are invaluable for avoiding an escalation of conflict.

In 17 per cent of complaints involving on-duty police officers, there was evidence that the officers had not communicated to the civilians their reasons for approaching them.

43 The paragraph goes on to outline the circumstances in which the arrest of an offender would be appropriate.

A South Australian study undertaken for the National Police Research Unit (Wilson & Braithwaite 1996) examined police-civilian interactions and analysed the various communication and policing styles used by the police officers. It found that:

Good communication, which can be defined as providing an 'acceptable' and reasoned explanation for police behaviour, may 'set the tone' for subsequent behaviour and steer the interaction along a path toward a resolution. For example, Wiley and Hudik (1974) demonstrated that, by simply offering an explanation for a field interrogation to a citizen, officers were able to prolong the amount of time the citizen spent co-operating with the officer. (p. 2)

Our analysis of files also identified a number of cases where officers, by behaving in an aggressive or officious manner, appeared to have contributed to the escalation of the incident (see appendix II for some examples).

FAILURE TO IDENTIFY

In 10 per cent of incidents involving on-duty police officers, there was evidence on the file that the officers had not identified themselves as police to the civilians involved in the incident.⁴⁴ In 16 (76%) of the 21 on-duty incidents where it was alleged the officers had not identified themselves as police, the officers were wearing plain clothes.

Possible explanations for this finding include:

- there is more chance for confusion when the officer is not in uniform
- plain-clothes police officers may not be identifying themselves, and confusion about their identity (and consequently their authority) may be leading to conflict
- civilians involved in incidents may view the fact that the police officer involved was wearing plain clothes as providing a convenient excuse for their actions, on the basis that they could claim later that they did not know that the officer was, in fact, a police officer.

OFF-DUTY INCIDENTS

CIRCUMSTANCES UNDER WHICH INCIDENTS OCCURRED

As noted in chapter 4, we identified that off-duty incidents were more likely to:

- occur in licensed premises
- involve a female civilian
- involve a civilian who was acquainted with the subject officer.

The circumstances which gave rise to off-duty incidents related very much to where that incident occurred; in particular, whether the incident occurred in licensed premises or private space.

⁴⁴ Often this 'evidence' is an allegation by the complainant. This is not to say that this 'evidence' is accepted as fact.

Table 5.2 presents data on off-duty incidents which occurred in and around licensed premises. Eighteen (35%) of the 52 incidents involving off-duty police officers occurred in this location compared with only 8 per cent of on-duty incidents. These 18 incidents involved 18 civilians. Of those civilians, 16 were male and two female. Only four of the civilians had been acquainted previously with the police officer concerned. Of those four, three had had a personal relationship (e.g. as a friend or a spouse) and one was known to the officer as an offender.

TABLE 5.2 — ANALYSIS OF OFF-DUTY INCIDENTS IN LICENSED PREMISES BY GENDER OF CIVILIAN AND PREVIOUS ACQUAINTANCE WITH POLICE OFFICER

Type of previous acquaintance with police officer	GENDER OF CIVILIAN	
	Male	Female
None	14	0
Previous offender/other negative contact	0	1
Personal relations	2	1
TOTAL	16	2

Note: Number of incidents = 18.

These data indicate that incidents involving off-duty officers in licensed premises are most commonly altercations between male officers and male civilians. In more than three-quarters of the cases, the officer and the civilian did not know each other prior to the incident. Off-duty incidents which occurred in other public places had a similar profile.

By contrast, table 5.3 shows the majority of incidents involving off-duty police officers which occurred in private space were domestic disturbances. Most (78%) of these incidents involved female complainants and all but one of these complainants had been in a personal relationship with the officer.

TABLE 5.3 — ANALYSIS OF OFF-DUTY INCIDENTS IN PRIVATE SPACE BY GENDER OF CIVILIAN AND PREVIOUS ACQUAINTANCE WITH POLICE OFFICER

Type of previous acquaintance with police officer	GENDER OF CIVILIAN	
	Male	Female
None	1	0
Previous offender/other negative contact	0	1
Personal relations	3	13
TOTAL	4	14

Note: Number of incidents = 18.

These data contrast markedly with incidents involving on-duty police officers, where the officer and the civilian had been acquainted previously in only 22 per cent of cases (generally because the civilian was known to the officer as an offender or as a result of a previous negative contact).

Table 5.4 shows the results of an analysis of incidents involving off-duty police officers which occurred in public space.

INVOLVEMENT OF DRUGS AND ALCOHOL

The data relating to the use of drugs or alcohol by complainants or the police officers involved in off-duty incidents presents a markedly different picture from incidents involving on-duty officers (table 5.4). The extent of alcohol and drug use by off-duty officers involved in conflictual incidents was similar to that for civilians involved in these incidents generally. In 54 per cent of the incidents, there was evidence that the off-duty police officers involved had used either alcohol or drugs. There was evidence of alcohol or drug use by at least one of the parties in 65 per cent of the incidents involving off-duty police officers.

**TABLE 5.4 — EVIDENCE OF USE OF DRUGS OR ALCOHOL BY POLICE AND CIVILIANS:
OFF-DUTY INCIDENTS**

Type of drug	Percentage	No. of incidents (n=52)
Alcohol		
Police	52	27
Civilians	44	23
Prescribed drugs		
Police	2	1
Civilians	4	2
Unprescribed drugs		
Police	2	1
Civilians	4	2

Note: One incident of police officer using both alcohol and unprescribed drugs. One incident of civilian using both alcohol and unprescribed drugs.

These data raise issues about police officers' use of alcohol generally. Research into alcohol consumption levels among police officers has found that while police officers drink less frequently compared with Australian population norms, when they do drink, the usual quantities consumed are far greater than those of the general population (McNeill & Wilson 1993). Further, 'binge' drinking is more prevalent among police, particularly female police, than the general population (McNeill & Wilson 1993).

SUMMARY

On-duty incidents

- In almost half of the on-duty incidents examined in the study, police had been called to attend an incident or a disturbance, or to provide some other assistance.
- In 17 per cent of on-duty incidents, the conflict arose from police-initiated contacts, or what could be broadly described as discretionary police activity. These contacts depended upon particular

policing strategies and decisions by individual police officers about how, when and why to make contact with civilians.

- In more than half of the incidents, there was either no evidence of provocative behaviour on the part of the complainants, or the provocation did not extend beyond the use of disrespectful language towards the police officers.
- In about a fifth of the incidents, there was evidence that the civilians involved had used serious physical provocation towards the police, such as punching or kicking.
- In two-thirds of the incidents, there was evidence that the civilians involved had used alcohol or drugs. In most cases where the complainant had used alcohol, there was evidence that he or she had displayed either physical or verbal provocation towards the police.
- In a quarter of the incidents, a civilian was arrested for a minor offence, such as offensive language, drunkenness and disorderly conduct. This finding raises questions about the wisdom of police exercising their arrest powers for such matters, particularly considering the QPS policy advising use of the complaint and summons procedure for minor matters.
- In 17 per cent of incidents, there was evidence that the officers had not told the complainants why they had approached them. In 10 per cent of on-duty incidents, most of which had involved plain-clothes officers, the officers appear not to have initially identified themselves as police.

Off-duty incidents

- Off-duty incidents that occurred in licensed premises were most commonly altercations between male officers and male civilians, both of whom were drinking at the licensed premises and were not known to each other before the incident.
- The majority of off-duty incidents that occurred in private space were domestic disturbances.
- Alcohol and drug use for off-duty officers involved in conflictual incidents was similar to that for civilians involved in these incidents generally. In two-thirds of the off-duty incidents, there was evidence of alcohol or drug use by at least one of the parties involved.

CHAPTER 6

POLICY IMPLICATIONS

This final chapter discusses the main policy implications arising from the research and suggests several strategies for reducing the number of complaints of assault against police. This discussion is organised under the following headings:

- why it is important to reduce assault complaints
- the limitations of the disciplinary model
- strategies for reducing complaints of assault against on-duty police.

WHY IT IS IMPORTANT TO REDUCE ASSAULT COMPLAINTS

As discussed in the introductory chapter, there are several reasons for seeking to reduce the number of assault complaints made against police:

- A continuing high level of assault complaints is likely to undermine public confidence in the police. Furthermore, assault complaints are indicative of conflict between police and civilians. In a peaceable, democratic society, our aim should be to keep such conflict to a minimum.
- Substantial CJC and QPS resources are currently devoted to responding to and investigating complaints of assault by police. If the number of complaints could be reduced, these resources could then be diverted to other areas.
- Regardless of whether police are to 'blame' for the high number of assault complaints, it is in the interests of the organisation — and of individual officers — to seek to minimise the number of such complaints. The police officers who are the subject of complaint investigations often find the process highly stressful, even though most complaints end up not being substantiated. Where stress levels are high, work performance is likely to suffer. Some incidents also have the potential to lead to civil claims against the police organisation for the misconduct of its officers, with associated legal costs and damages.
- The circumstances in which complaints of assault are most likely to be made against police are also those in which police themselves are most likely to be assaulted. Implementation of strategies for reducing the level of police-civilian conflict would therefore not only result in fewer complaints, but would also enhance officer safety. As employers, police organisations have a responsibility to manage and, if possible, minimise the risks to which police officers are exposed (Wilson 1996).

Some sceptics might argue that police operational effectiveness will be diminished if undue emphasis is placed on reducing the number of assault complaints. From this viewpoint, police who are 'doing their job' will inevitably generate some complaints, given that they are required to deal with difficult people in volatile situations where it is often necessary to resort to the use of force. According to this argument, the only practical way of getting the number of complaints down (short of dissuading people from complaining) is for police not to enforce the law, thereby minimising the risk of conflict with civilians. However, this argument erroneously assumes that there is only one way of 'doing business'. As we discuss in this chapter, there are a variety of initiatives which can be taken to reduce the level of police-civilian conflict without making it any more difficult for police to respond to problems of crime and disorder.

Indeed, these initiatives have the potential to increase police operational effectiveness, by enhancing the skills of police officers and reducing the time and resources diverted into dealing with complaints.

THE LIMITATIONS OF THE DISCIPLINARY MODEL

Traditionally, police organisations and oversight bodies have relied heavily on the disciplinary process as a mechanism for modifying the behaviour of police. A key assumption of this model is that police will be deterred from behaving inappropriately by the fear that misconduct will be reported, investigated and punished.

It is very important that complaints of assault — especially those of a more serious nature — continue to be investigated vigorously, in order to preserve public confidence in the complaints process and to maintain a credible deterrent to police misconduct. It is also crucial that nothing be done to discourage people who have concerns about police conduct from making complaints to police organisations or external oversight bodies like the CJC. Complaints provide a valuable barometer of public satisfaction in police and are an important source of information about policing practices (as shown by the present study). However, deploying significant *additional* resources to the processing and investigation of complaints of assault may not represent the most cost-effective use of limited resources.

The experience of the CJC and other investigative bodies is that complaints of assault against police are among the most difficult allegations to substantiate. By way of illustration, of the complaints of assault *investigated* by the CJC between 1990–91 and 1995–96, only 13 per cent resulted in a recommendation of disciplinary or criminal charges against the officers concerned. By comparison, the overall substantiation rate for complaints investigated by the CJC is around 30 per cent.⁴⁵ In New South Wales in 1994–95, the Ombudsman reported that of 1,287 allegations of assault (which included harassment and threats), only 59 (4.6%) were sustained (NSW Ombudsman, p. 24). In Victoria the rate of assault allegations found to be 'established' between 1988–89 and 1992–93 ranged between 4.1 per cent and 5.3 per cent (The Ombudsman Victoria 1993, p. 38). Those rates were significantly lower than the overall rates for all allegations against Victorian police. A US national survey of law enforcement agencies noted that other studies have shown substantiation rates for complaints about police misconduct between zero and 25 per cent, and that in general, complaints about the use of excessive force are sustained at lower levels than other types of complaints (Pate & Fridell 1993).⁴⁶

As shown by our study, several factors contributed to the relatively low rate of substantiation of assault complaints.

- As to be expected, officers who were the subject of such complaints rarely admitted to having acted improperly (see page 12 'Officers' response to allegations').
- Many of the complainants would probably have made poor witnesses. In our study, we found that 61 per cent of complainants in incidents involving on-duty police were alcohol-affected at the time of the incident. In many circumstances this may have reduced the accuracy of the complainant's recall and also raised concerns that his or her behaviour may have contributed to the incident. In addition, 59 per cent of complainants involved in incidents with on-duty police had been charged

45 These rates are only for matters *investigated* by the CJC. The rates for complaints *received* are considerably lower because, as discussed in chapter 2, a substantial proportion of complaints are not investigated or are referred back to the QPS for investigation.

46 CJC data about the outcome of complaints of assault by police are not directly comparable with data from other jurisdictions. Some jurisdictions report on the outcome of allegations rather than complaints (a complaint may include several allegations of various types of misconduct). Also, different jurisdictions may not use the same definition of substantiation. However, these data do illustrate the relative difficulty of proving assault allegations.

with a criminal offence on one or more previous occasions — a factor which is likely to detract from a complainant's credibility and raise doubts about his or her motives for complaining.

- It is often very difficult to rebut the police assertion that the force used was 'necessary' in the circumstances. Many assault allegations arose in the context of the complainant being arrested or restrained by police, or acting in such a way as to attract police attention. In 71 per cent of the on-duty incidents where a complaint of assault had been made, the complainant had been charged with a criminal offence. Moreover, in 74 per cent of on-duty incidents, there was evidence that the complainant had verbally or physically provoked the subject officers.
- There appears to have been a marked reluctance on the part of police to give evidence against colleagues who have been subject to an assault complaint. Thus, where other police provided witness statements, their testimony almost always supported the subject officers' version of events (page 14 'Police witnesses').
- Civilian witnesses provided statements which clearly supported the complainant's account of events in only 36 per cent of the on-duty incidents examined. Moreover, the credibility of a number of these witnesses would have been adversely affected by the fact that they were under the influence of alcohol, were associated with the complainant, and/or had a criminal history.

Taking account of these findings, and of the constraints imposed by legal and evidentiary requirements, it seems very unlikely that the substantiation rate for complaints of assault against police could be increased significantly, even if substantial additional resources were devoted to the investigation of such complaints. Hence, there is only limited scope, at least in the Queensland situation, for further enhancing the deterrent effect of the current disciplinary system.

A more general limitation of the disciplinary process is that it is essentially reactive; that is, it is geared to responding to events after they have occurred. Given the resources required to investigate assault complaints, and the stress involved for officers and complainants alike, it makes sense to put more effort into preventing such incidents from occurring in the first place. An additional consideration is that assault complaints often arise from police behaviour which, while perhaps unwise or inappropriate, would not warrant the imposition of a sanction. Such behaviour requires a managerial, rather than disciplinary, response.

REDUCING COMPLAINTS OF ASSAULT AGAINST ON-DUTY POLICE

The research reported in this paper has suggested a number of ways in which the QPS and other policing organisations might be able to reduce the number of assault complaints against their members. These potential strategies will be briefly discussed under the following headings:

- improved rostering and supervision
- training in communication skills
- greater use of female police
- reduced reliance on the use of arrest for minor offences
- better identification and management of 'at risk' officers
- enhanced monitoring of police activity

- better design of police vehicles
- formulation and implementation of a policy on police use of force.

Improved rostering and supervision

Our study found that relatively inexperienced constables attracted the largest proportion of assault complaints. This group also incurred the highest rate of assault-related injuries (CJC 1996a). In part, junior officers experience above average rates of complaints and injuries because they are more likely than other ranks to be deployed on 'frontline' duties. However, inexperience in handling conflict is also likely to be a contributing factor. It therefore may be possible to reduce the incidence of assaults by, and of, police by making a greater effort to ensure that junior officers are paired with more experienced colleagues, especially for those shifts where the risk of police-civilian conflict is greatest (particularly Thursday, Friday and Saturday evenings), and by improving the supervision of 'frontline' officers.

As discussed in chapter 3, a CJC analysis of the general duties rosters for a busy station in South-East Queensland over a three-month period in 1996 found that it was quite common for junior officers (constables or first year constables) to be paired together on mobile patrol duties, particularly for the high-risk shifts. These shifts were also the least likely to have any sergeants on duty. This situation may be partly attributable to staff shortages and to industrial relations constraints, but it is nonetheless important to investigate whether there is scope to make greater use of more experienced officers on such shifts.

It is particularly important that supervisors should be 'on the street' as often as possible to:

- provide direct supervision and an example for inexperienced and low-ranking officers, especially in high-risk situations, thereby reducing the risk of conflict and injury to officers and civilians
- identify problem areas and issues within the local community and develop a police response appropriate to the particular community.⁴⁷

The study also highlights the importance of proper procedures for selecting and training officers to act as supervisors. Primary responsibility for ensuring compliance by police officers with the organisation's philosophy, policies and procedures falls to those officers who perform supervisory roles. These officers are the link between management and the rank-and-file police. The quality of supervision provided to inexperienced and lower-ranked police officers and the example set by supervisors through their exhibited commitment to the organisation's philosophy, policies and procedures play a critical role in minimising incidents involving the use of excessive force by police. It is therefore essential that the selection processes for appointment of people to these positions reflect the requisite skills and commitment to the goals of the organisation. Relevant criteria should include:

- communication skills
- personnel management skills, including the ability to direct, correct and discipline as necessary
- ability to provide appropriate role models
- ability to accept and implement organisational change.

⁴⁷ In Ipswich, senior sergeants and sergeants have been redeployed at the 'street level' providing direct supervision for more junior staff. According to the QPS, complaints against police in the District for the month of January decreased from 28 in 1995 to 4 in 1996 and 7 in 1997, while total complaints against police in the Ipswich District decreased from 139 for the 1995 calendar year to 71 in 1996.

Improved communication skills

In several cases examined for this study, inadequate communication by police seemed to have contributed to an escalation of police–civilian conflict (see the case studies in appendix II). We also found that in 17 per cent of complaints involving on-duty police, the officers apparently had not communicated to the civilians their reasons for approaching them.

Enhanced training in communication and conflict resolution would assist police to deal more effectively with difficult people while keeping conflict and resistance to a minimum. There is a range of packages available for teaching conflict resolution skills (Wilson 1996), although only some have been designed specifically for use by police. Of the latter, a technique called ‘verbal judo’ is the best known (see Thompson and Jenkins 1993).

A recent risk management study conducted by the National Police Research Unit identified five specific strategies to be included in conflict resolution training. These were summarised in the following instructions (identified by the acronym TRUCE) for police attending any situation:

- | | | |
|----|----------------|--|
| 1. | Topic: | Tell the person why you’re there. |
| 2. | Resolution: | Discuss what you hope to achieve and negotiate. |
| 3. | Under control: | Stay cool and focused in the face of escalating hostility. |
| 4. | Communicate: | Maintain the dialogue — avoid physical contact. |
| 5. | Evaluate: | Monitor the outcomes and be prepared to adapt. |

Another relevant finding from our study was that in 7 per cent of on-duty incidents there was evidence that the civilians involved had a mental illness or a disability and in 66 per cent there was evidence that the civilians had used alcohol or drugs. These findings indicate that police officers would particularly benefit from training in methods of dealing with people who are mentally ill, have a disability, or are alcohol or drug affected.⁴⁸

Greater use of female police

As discussed in the recent CJC Research Paper, *Gender and Ethics in Policing* — and as confirmed by this study — rank and file male officers are considerably more likely than female officers of equivalent rank to be the subject of complaints of assault. Recent NPRU research into risk management (Wilson & Braithwaite 1996) also found that the interactive styles of male officers increased the likelihood of verbal abuse and physical resistance in interactions with civilians; in contrast to the styles exhibited by female officers, who were more likely to maintain an ongoing verbal exchange. These findings indicate that increased recruitment of women may help dilute some of the more aggressive aspects of police culture. In addition, consideration should be given to making more use of females as mentors and Field Training Officers to increase the exposure of trainees to less confrontationist policing styles.

⁴⁸ The QPS Competency Acquisition Program contains a unit called ‘People with Disabilities’. However, it is not mandatory for police to complete this module.

REDUCING RELIANCE ON THE USE OF ARREST FOR MINOR OFFENCES

It may be appropriate in certain situations involving minor criminal conduct for police to exercise the power of arrest. However, in several incidents examined for this study, conflict may have been avoided if the offices had exercised their discretion not to take action at all against the person, or had opted to use the complaint and summons procedure, rather than using their powers of arrest.

As far back as 1987, the Queensland Police Complaints Tribunal expressed concerns about the manner in which Queensland police used their arrest powers for minor offences such as bad language. The CJC has also previously expressed concern about police relying on the power of arrest for minor matters rather than using the more appropriate summons procedure.⁴⁹ The CJC has recommended that legislation be enacted to impose a statutory obligation on police officers to consider alternatives to arrest before exercising this power, and that simpler procedures to the complaints and summons be developed.⁵⁰ It would also be advisable to review the almost mechanical practice of police officers to arrest and charge people over minor language or conduct offences even when the offence was only heard or observed by a police officer. In addition, proper training and supervision is required to ensure that police are exercising their discretion appropriately.

BETTER IDENTIFICATION AND MANAGEMENT OF 'AT RISK' OFFICERS

As noted in chapter 3, while complaints of assault are 'one-off' or infrequent events for most officers, a small number of police display a recurring pattern of involvement in such incidents. For example, our analysis of PSU data showed that 5 per cent of police officers against whom allegations of assault or use of excessive force were made accounted for 15.3 per cent of all assault allegations. In some cases, officers with a high number of complaints may simply have been unlucky, or may have been employed in activities where there was a high risk of being subject to a complaint. However, the accumulation of a large number of similar complaints against an officer — even if most or all of these complaints have not been substantiated — will often be indicative of an unduly confrontational style of policing or a pattern of inappropriate behaviour (Pate & Fridell 1993, p. 31).

It should be possible to reduce the overall number of assault complaints against police by developing strategies for identifying 'at risk' officers, and by setting in place protocols for dealing with them once they have been identified. Options could include provision for counselling, retraining, transfer to different duties where there is less contact with the public, and psychological evaluations (Major City Chief Administrators National Executive Institute Associates 1991).

The simplest way of identifying 'at risk' officers is to routinely monitor complaints data to see which officers have generated more than a certain number of assault-related complaints within a specified time frame. However, before any managerial action is taken in such cases, there would need to be a review of the individual complaints files to ascertain if there are any extraneous factors which might account for this

49 As was observed in chapter 5, arrests for minor offences have continued to be common despite the existence of the Police Commissioner's General Instruction 1.23 (prior to September 1993) and paragraph 3.5.9 of the QPS's OPM (which has been operating since) both of which require police officers to use the complaint and summons procedure in the case of minor offences.

50 See the CJC publication *Report on a Review of Police Powers in Queensland Volume III: Arrest Without Warrant, Demand Name and Address and Move-on Powers*, November 1993, pp. 597-604.

high rate of complaints, such as the type of duties undertaken by the officer or the area in which he or she is deployed.⁵¹

A more sophisticated approach to identifying 'at risk' officers would be to develop a comprehensive 'early warning system', such as has been used by US law enforcement agencies for some years (Major City Chief Administrators National Executive Institute Associates 1991). In addition to scanning complaints data, these agencies routinely monitor information such as:

- personnel records
- sick leave reports
- use of force reports (see below)
- the number of times an officer is assaulted or resisted in the course of making an arrest, as well as the number of injuries sustained by an officer or civilians as a result of conflictual incidents
- the number of critical incidents in which that officer has been involved
- the image of the officer derived from supervisory evaluations, letters and other reports.

In addition to assisting to reduce the number of assault complaints against police, an effective early warning system can:

- identify certain types of undesirable behaviour before that behaviour becomes a problem, thereby preventing damage to public confidence in the police organisation
- enable managers to intervene to correct inappropriate behaviour before the employee faces disciplinary action; if the conduct arises from inadequate training, substance abuse, domestic or personal problems, the intervention could result in positive changes in the officer's personal life and career
- ensure that the organisation is aware of behaviour on the part of officers which may indicate patterns of misconduct — an important consideration, given that failure to monitor such behaviour and provide corrective supervision can expose police organisations to legal liability (Major City Chief Administrators National Executive Institute Associates 1991).

ENHANCED MONITORING OF POLICE ACTIVITY

Traditionally, policing has been a low-visibility activity characterised by numerous unsupervised encounters with civilians, where the detection of misconduct is extremely difficult (Elliston and Feldberg 1985, pp. 1-2). As discussed above, many complaints of assault examined for this study likewise arose in circumstances where there was no-one else present except the subject officer(s), the complainant and,

51 In February 1996, the PSU of the QPS introduced a system for identifying and profiling officers who are the subject of multiple complaints and initiating a managerial review of the officers at regional and local levels. The impact and operation of this initiative are yet to be evaluated.

REDUCING POLICE-CIVILIAN CONFLICT

sometimes, other police (who almost invariably provided testimony which supported the subject officers' account of events). However, modern technology now provides a facility for monitoring police interactions with civilians much more closely than in the past, using such means as video cameras and tape-recorders. Such monitoring can:

- act as a deterrent to improper behaviour by increasing the likelihood that such behaviour will be detected
- provide an effective safeguard for police officers by making it easier to disprove unfounded allegations of misconduct
- reduce the time and cost involved in investigating complaints by providing investigators with a first-hand record of what occurred (as opposed to having to rely on the often unreliable, or conflicting, testimony of witnesses and participants).

The form of monitoring employed will obviously depend on the circumstances. As discussed in chapter 4, around 23 per cent of all on-duty complaints examined for this study occurred in interview rooms, cells and police watch-houses. Activities in these locations could be routinely monitored by the installation of video cameras. It is more difficult to monitor police behaviour in incidents which occur in public or private space, or inside police vehicles. However, the mandatory use of tape-recorders by police officers in the field would certainly assist in this regard.⁵² Although there would be no visual record, it ought to be possible in many cases for investigators to infer from the tape whether the officer had behaved in an unduly aggressive or threatening manner, and to check the claims made by the complainant. Consideration could also be given to installing video cameras in police cars, as has now been done in a large number of overseas jurisdictions, to record interactions which take place in or near police vehicles.

The up-front cost of installing video cameras and providing for the general issue of tape-recorders would appear, at first glance, to be quite substantial. However, these initiatives ought to generate considerable savings in the longer term, by reducing the number of complaints and making them easier to investigate. In addition, the routine use of tape-recorders could help eliminate much of the legal argument which currently takes place over the admissibility and veracity of statements made by suspects 'in the field'.

IMPROVED DESIGN OF POLICE VEHICLES

In several of the incidents which occurred in police vehicles, the complaint was that people had been injured as a result of dangerous or erratic driving by police when prisoners were not restrained by seat belts or other safety restraints. These complaints require particular attention, as police organisations have a duty of care to all persons who are transported in its vehicles. Installation of video cameras in police cars *might* make it easier to detect such behaviour on the part of police, but consideration should also be given to fitting all police vehicles, including vans for the transportation of prisoners, with seat belts or other safety restraints and requiring their use when transporting civilians.

52 The *Report on the Review of the Queensland Police Service*, July 1996 (p. 91) recommended that 'all police officers in regular and substantial contact with the public be issued with a personal tape-recorder for the purpose of recording from first contact all interviews with persons who are, or may be, suspected of committing an offence' (rec. 41).

FORMULATION AND IMPLEMENTATION OF A POLICY ON THE USE OF FORCE

Specific measures to reduce the level of police-civilian conflict, such as those documented above, will have the greatest effect if they are underpinned by an organisational philosophy or value statement and a policy on the use of force (Major City Chief Administrators National Executive Institute Associates 1991, pp. 22-23). Values provide the foundation for the development of policy for the organisation. They also dictate the culture of the organisation and ultimately the way it makes decisions and delivers service to the community. It has been suggested that 'an absence of values could lead to a culture where the organisation's members view unauthorised force as an acceptable way of resolving conflict' (Major City Chief Administrators National Executive Institute Associates 1991, p. 23). Policies and procedures provide a statement of the position of the organisation on particular issues. In addition, they serve the purpose of defining behaviours and activities that are not acceptable to the organisation. For example, the use-of-force policies of a number of police organisations in the United States have included explicit statements such as:

- 'protection of life'
- 'the ultimate value of human life will guide officers'
- 'never appropriate to inflict physical penalties'
- 'never use violence after resistance has ceased'
- 'every person is entitled to respect and dignity'
- 'unwarranted physical force will not be tolerated at any time, or under any circumstances'.

A key element of a use-of-force policy is the development of appropriate data/record collection procedures to support management and quality assurance needs. A recent initiative in this regard is the Use of Force Register, introduced by the Victoria Police in September 1995 as part of 'Project Beacon'. The basis for the register was that 'While analyses undertaken so far have provided meaningful insights to violent (or potentially violent) situations, a more professional and comprehensive approach to determining appropriate levels of force for dealing with such situations was required' (Victoria Police 1996, p. 13). This register is intended to record and analyse each incident where force is used or threatened by or against a police officer, and to provide management with accurate data on whether the new operational safety and tactics, training and equipment are working effectively (Victoria Police 1996, p. 13). Comprehensive information about police use of force can also be used to assess and manage the risks associated with certain police duties.⁵³

The QPS Project Lighthouse Report (1996b) examined this issue and noted, at the time, that:

At present the situational 'Use of Force' model is taught at the Academy to pre-service personnel. Sworn members who have greater than five years service have not had the opportunity to be exposed to this model ... there is a consequent imbalance in the levels of knowledge of sworn members. (p.106)

The Report observed that while the QPS had an 'Operational Procedures Manual' which outlined the Service policy and procedures on a range of operational areas, use of force was not specifically addressed in this manual (p. 107). The report recommended the development and formalisation of a use-of-force

⁵³ In a recent report on the risks of police patrols, Wilson (1996) identified:

the important role the police organisation must play in managing the behaviours of its employees in order to decrease risk of injury to officers (and citizens) and ... manage the financial and social costs of employee injury while on patrol ... it is important that risk management become a priority at all levels. Agency wide endorsement and application of risk management would demonstrate police commitment to employee and community safety (p. v).

philosophy and policy for the QPS (Recommendations 2 and 3).⁵⁴ It also proposed the establishment of a comprehensive use-of-force register. In response to these recommendations, the QPS has implemented a use-of-force policy and has commenced the complementary Police Operational Skills Training course. However, as yet, the recommendation regarding establishment of a use-of-force register has not been implemented by the QPS.

OTHER ISSUES

OFF-DUTY ASSAULTS

A substantial proportion of complaints of assault against police officers examined for this study (19%) related to incidents involving officers who were off-duty at the time. Moreover, officers involved in off-duty incidents generally had a more extensive history of complaints than those involved in on-duty incidents — indicating that there may have been longstanding behavioural and attitudinal problems with some of these officers.

Regulation of the conduct and activities of police officers in the performance of their official duties is indisputably the responsibility of the QPS, as it is of all policing organisations. However, regulation of the behaviour and actions of police officers in the conduct of their private lives while off duty is a less clear-cut issue, not the least because of the potential for undue invasion of the privacy of employees.

While formal regulation of the private activities of police officers may not be possible or desirable, there may be some strategies or programs that could be implemented to reduce the number of complaints of assault against off-duty police officers.

Analyses of the files used for this study revealed that excessive alcohol consumption and domestic violence figured prominently in incidents involving off-duty police officers. The provision of appropriately targeted education campaigns to promote responsible alcohol consumption and denounce domestic violence, complemented by confidential counselling and assistance for individual officers who seek it, could go some way towards solving these problems. However, the success of such programs would lie in how effectively they targeted, and the extent to which they were taken up by, the 'at risk' officers.

CIVILIAN BEHAVIOUR

Although the focus of this discussion has primarily been on modifying police behaviour, it must be recognised that complainants, by their actions, often precipitate, or contribute to, the conflict which gives rise to complaints of assault against police. Regulating the behaviour of civilians and how they interact with police is a much more difficult task, which needs to be approached in the context of reducing the level of violence and unruly behaviour in the community generally. This is an area of concern well beyond the scope of the present study, but some of the findings reported here are relevant to this larger exercise because they highlight, yet again, the strong correlation between alcohol consumption and aggressive behaviour. As discussed, in 61 per cent of on-duty incidents there was evidence that the complainant had been drinking. Alcohol also figured prominently in off-duty incidents. Promotion of more responsible alcohol consumption and serving practices, and improved regulation of licensed premises, therefore, must form part of any long-term effort to reduce the incidence of violence within the community.

⁵⁴ The establishment of a nationally compatible Use of Force database based on the 'Use of Force' Register operated by the Victoria Police was also recommended by the most recent Australasian Seminar on National Standards for Operational Safety Tactics Training.

SUMMARY

This final chapter has considered the implications of our research for the development of strategies for reducing the incidence of assault complaints against police. Key points arising from this discussion are as follows:

- It is unlikely that the substantiation rate for complaints of assault against police can be increased significantly, even if substantial additional resources were to be devoted to the investigation of such complaints.
- A variety of strategies are required to reduce the incidence of assault complaints against police to take account of the range of different circumstances in which such complaints arise.
- Possible strategies for reducing complaints of assault against on-duty police include:
 - improving rostering and supervision practices
 - providing more and better training in communication skills and the proper exercise of discretion
 - ensuring that police clearly identify themselves to members of the public and make it clear why they have approached them
 - making greater use of female police
 - implementing procedures for identifying and managing officers who are the subject of a significant number of complaints
 - enhancing the monitoring of police activity
 - implementing a comprehensive policy on the use of force.
- Regulation of the behaviour of off-duty police is more difficult. However, appropriately targeted campaigns promoting responsible alcohol consumption and denouncing domestic violence, and the provision of suitable support services, could help reduce the involvement of police in off-duty incidents.

APPENDIXES

APPENDIX I

INVESTIGATION OF ASSAULT ALLEGATIONS: LEGAL AND PROCEDURAL FRAMEWORK

This appendix describes the legal framework for the investigation of complaints. It provides an outline of:

- the law of assault
- the standard of proof required to support a prosecution of a breach of discipline, misconduct or a criminal offence
- the relevance of corroborative evidence.

THE LAW OF ASSAULT

THE GENERAL LAW

Under Queensland law, a person commits assault if he or she applies force to another without that person's consent, or attempts or threatens to do so in circumstances where he or she has an apparent ability to carry out the threat (*Criminal Code* s. 245). Assault is usually committed by striking or touching a person, but it may also be committed by applying heat, light, gas or any other substance to a degree which causes injury or personal discomfort.

While actual contact is not necessary for an assault to be committed, a threat to apply force must be more than mere words; the threat must be by a physical act or gesture. For example, assault may be committed by pointing a loaded gun at someone, or pretending that an unloaded or imitation gun used in such circumstances is loaded.⁵⁵

Assaults are often classified as 'common' assaults, meaning unlawful physical contact (s. 343), and 'aggravated' assaults, which are more serious offences involving additional or aggravating factors (s. 344). Those factors might include whether the victim was a particularly vulnerable person such as a child, whether an offensive weapon was used and whether particular harm was inflicted.⁵⁶

The other requirement for the offence of assault is that the use of force must be unlawful, that is, not authorised or justified or excused by law (s. 246). There is a range of circumstances where the use of force is justified or excused by law and where, even if serious injury results, no assault is committed. These include:

- acts which are accidental (that is, not resulting from criminal negligence)
- acts done in execution of the law (s. 31(1)) (see below)

⁵⁵ *Brady v. Schatzel* [1911] St R Qd 206.

⁵⁶ There are various other assault offences in the *Criminal Code*, including assault occasioning bodily harm (s. 343A), indecent assault (s. 337) and assault in interference with trade or work (s. 346). There are also offences of unlawful wounding and doing grievous bodily harm (ss. 317, 323).

- acts which are reasonably necessary 'to resist actual and unlawful violence' threatened to that person or to another person in his or her presence (s. 31(3); see also s. 271)
- acts done to save oneself from 'immediate death or grievous bodily harm' (s. 31(4))⁵⁷
- acts to aid someone in lawful self-defence, provided the person who is providing assistance is acting in good faith and uses a similar degree of force to that which it is lawful for the person under attack to use in their own defence (s. 273)
- acts caused by provocation, that is, a wrongful act or insult which would be likely to deprive an ordinary person of self-control and induce the person to assault, and which actually does so (s. 268)⁵⁸
- acts to prevent a breach of the peace (s. 260) or to suppress a riot (ss. 261-263)
- acts to prevent the commission of an offence for which the person could be arrested without warrant,⁵⁹ or to prevent violence by a person who is reasonably believed to be of unsound mind within the meaning of the *Mental Health Act 1974* (*Criminal Code* s. 266)

Even where the use of force is lawful, no more force than is proportionate to the immediate need must be used; the use of force exceeding that required by the circumstances will be unlawful (*Criminal Code* s. 283).

USE OF FORCE BY POLICE

In addition to the situations outlined above, police officers have a range of common law and statutory powers which give them authority to use force in the execution of their duties. These include powers to arrest with or without warrant, to forcibly detain, search and fingerprint suspects and to search and seize suspects' property, including clothing. If those acts are committed without lawful authority they may constitute assault.

The breadth of the powers granted to police varies between statutes.⁶⁰ However, the general rule is that police officers may use force which is 'reasonably necessary' to carry out their lawful duties (see below). What amounts to reasonable force will depend on the circumstances of the case.

One of the most common situations where force may be used by a police officer is in relation to the power of arrest. When arresting a person, a police officer may use reasonably necessary force:

- To overcome any resistance by the person being arrested (*Criminal Code* s. 254). There is no requirement that the force the officer uses is proportional to the seriousness of the offence for which the person is being arrested.

57 Section 271 also provides that if an assault is of 'such violence as to cause reasonable apprehension of death or grievous bodily harm' and the person reasonably believes that he or she cannot otherwise defend himself, herself or another person from death or grievous bodily harm, any necessary force may be used.

58 The force used must not be disproportionate to the provocation, and not be intended and not be likely to cause death or grievous bodily harm (s. 269). A person may also use reasonable force to prevent repetition of the provocation (s. 270).

59 The law concerning the circumstances in which and the offences for which a person may be arrested without warrant is complex and inconsistent — see CJC 1993a, pp. 586-589. Generally, however, this category includes the more serious offences.

60 See CJC 1993a and 1993b.

- To prevent the escape of a person from being lawfully arrested. There are some restrictions on the force which may be used in this situation. Force which is intended or likely to cause death or grievous bodily harm may not be used, except where the person is reasonably suspected of having committed an offence punishable with imprisonment for life and he or she has been called on to surrender (s. 256).

A police officer may also use force which he or she reasonably believes is 'necessary' to prevent the escape or rescue of a person after he or she has been arrested, provided that, in the case of an offence for which a person may not be arrested without a warrant (generally, less serious offences), the degree of force used is not intended or likely to cause death or grievous bodily harm (s. 258).

Police officers may also detain and search people in a variety of circumstances and may use force to carry out that purpose. Section 259 of the *Criminal Code* gives police officers a general power to search accused persons in lawful custody, including the power to take anything (including clothes) which may afford evidence of the commission of the offence. Officers may use reasonable force to carry out authorised searches.⁶¹ Reasonably necessary force may also be used to compel an arrested person to have his or her fingerprints or photograph taken.⁶²

Under other legislation, police may stop, detain and search people in a variety of circumstances; for example, where they reasonably suspect a person to have possession of prohibited drugs,⁶³ a weapon liable to seizure⁶⁴ or stolen goods.⁶⁵

In some cases, invasive searches are permitted without the need for authorisation by a magistrate. For example, section 17 of the *Drugs Misuse Act 1986* provides for a police officer of or above the rank of inspector to require a person reasonably suspected of having secreted within his or her body a dangerous drug to submit to an internal examination by a medical practitioner. If the suspect refuses, the examination may be conducted using such force as is reasonably necessary.

POLICE GUIDELINES ON USE OF FORCE

Very little guidance about the way in which force may be exercised is provided in current QPS operational guidelines. Some contain restrictions; for example, juveniles may not be handcuffed unless the juvenile cannot be controlled by other means and other pre-conditions are met (QPS *Operational Procedures Manual* s. 5.6.17). However, most guidelines provide only a general discretion to be exercised by the officer in certain circumstances. For example, section 13.11.22 specifies that batons are made available to officers for self-defence and to prevent unlawful acts such as escape, and that the degree of force used 'will be determined by the circumstances existing at the time'.

61 The search must be carried out by a police officer of the same sex as the accused, or by a medical practitioner acting under the direction of a police officer. Medical practitioners and dentists may also be authorised by a magistrate to examine the person and take forensic samples under this section.

62 Section 23 *Drugs Misuse Act 1986*; s. 10.22.2A *Police Service Administration Act 1990*; see also s. 43 *Vagrants, Gaming and Other Offences Act 1931*.

63 Section 15 *Drugs Misuse Act 1986*.

64 Section 4.3 *Weapons Act 1990*.

65 Section 24(b) *Vagrants, Gaming and Other Offences Act 1931*.

EVIDENTIARY REQUIREMENTS

THE STANDARD OF PROOF

For a person to be found guilty of a criminal offence, a Magistrate or a jury (in the case of a trial for an indictable offence in a higher court) must be satisfied *beyond a reasonable doubt* of that person's guilt. In disciplinary proceedings for misconduct or proceedings before a Misconduct Tribunal for official misconduct, the standard of proof is the lower civil standard, that is, a finding of guilt *on the balance of probabilities*. However, the 'balance of probabilities' test requires more than that the facts alleged are marginally more probable than not.

Sanctions which may be imposed by the QPS for misconduct include dismissal, demotion or reduction in salary, depending on the seriousness of the matter. A finding of official misconduct against a police officer or an employee of a 'unit of public administration'⁶⁶ attracts similar sanctions to those applicable in misconduct matters. Accordingly, depending on the circumstances of the case, the consequences of a finding of misconduct or official misconduct against a police officer can be very serious. These consequences directly affect the *level of satisfaction* required for a finding of misconduct or official misconduct against the officer.

The accepted test is the *Briginshaw* test.⁶⁷ In that case, the High Court held that in civil proceedings the facts must be established to the 'reasonable satisfaction' of the relevant tribunal. What is required for a tribunal to be reasonably satisfied will vary according to the seriousness of the allegations, the inherent unlikelihood of an occurrence and the consequences if the person is found to have committed the acts alleged (per Dixon J at 363).⁶⁸ In more serious matters 'inexact proofs, indefinite testimony, or indirect references' should not be sufficient.⁶⁹ Consequently, in cases which involve allegations of, for example, serious assault which may result in grave consequences for the officer against whom the complaint is made, a tribunal would require a higher level of proof before it could be reasonably satisfied, than it might require in a civil case involving a question of whether a person acted negligently.⁷⁰

The High Court has clearly distinguished the standard of proof in criminal cases from the standard which applies in civil proceedings, even where the facts, if proven, would amount to the commission of a criminal offence.⁷¹ Nevertheless, bodies investigating complaints against police have made it clear that where the parties' accounts are directly in conflict, convincing evidence is required before a serious complaint will be considered substantiated.⁷²

66 See section 32 of the *Criminal Justice Act 1989*.

67 *Briginshaw v. Briginshaw* (1938) 60 CLR 336.

68 See also Latham CJ at 343-344 and Rich J at 354, where he stated that 'the nature of the allegation requires ... the careful weighing of testimony, the close examination of facts proved as a basis of inference and a comfortable satisfaction that the tribunal has reached both a correct and just conclusion'. See also D Byrne and J D Heydon *Cross on Evidence* paragraph [9050].

69 Dixon J at 363.

70 See also Denning LJ in *Bater v. Bater* [1951] 2 All ER 458 at 459 (CA), referring to 'degrees of probability' within the civil standard of proof and the requirement for a 'degree of probability which is commensurate with the occasion'. His remarks have been given frequent judicial approval.

71 *Reffek v. McElroy* (1965) 112 CLR 517.

72 For example, the WA Parliamentary Commissioner for Administrative Investigations stated that 'in relation to the more serious allegations (such as assault occasioning actual bodily harm) the standard of proof I must apply approaches, for practical purposes, that of proof beyond reasonable doubt' (WA Parliamentary Commissioner for Administrative Investigations *Annual Report 1994*, p. 41).

THE CJC INVESTIGATIVE PROCESS

Because of the potentially serious consequences of a finding of misconduct or official misconduct against a police officer (or other employee of a unit of public administration) and the high standard of proof required to be satisfied, CJC investigators generally need to obtain evidence which corroborates the complainant's account of the incident. The Complaints Section also seeks evidence in support of the officer's version of the incident which could refute the allegation(s) or explain the reasons for the officer's actions.

Collateral to its responsibilities to investigate allegations of misconduct and official misconduct, the CJC has a responsibility to act with integrity and to use its resources as efficiently and effectively as possible. Accordingly, as a matter of principle, it does not pursue misconduct or official misconduct charges against police officers or other persons subject to its jurisdiction which have no chance of succeeding.

CORROBORATIVE EVIDENCE

Where the complainant's allegations are denied by the subject police officer, the investigator must look for evidence which will corroborate (i.e. support) one or other version of the incident if there is to be any chance of a substantive result from the investigation. Corroborative evidence can take the form of:

- statements from eyewitnesses
- medical evidence of the nature and extent of any injuries suffered by the complainant or the subject police officer
- circumstantial evidence, such as a patrol log which indicates that the officer concerned was at a different place from where he or she indicated when interviewed
- evidence as to how soon the complaint was made after the alleged incident.

As discussed in chapter 6, the availability (or, conversely, the lack) of corroborative evidence can have a significant bearing on the likelihood of substantiation of a complaint.

APPENDIX II CASE STUDIES

The four case studies presented in this appendix provide examples of incidents where poor communication and inappropriate policing styles contributed to an incident that resulted in a complaint of assault to the CJC. The case studies were selected because they provided good illustrations of the effect of inappropriate policing styles and poor communication. However, it is suggested that these incidents are necessarily 'typical' of the types of police-civilian contacts which result in conflict.⁷³

In most of the case studies, it appears that the civilians involved had not committed any offence but, for some reason or another, had attracted the attention of the police. The police officers involved in the incidents used what could be described as a 'pro-active' policing style to initiate the contact with the civilian, even though there was no reason to suspect that the person had committed any offence. A couple of the civilians had a history of contact with the police; one had a history of mental illness which was either known to the police officers or should have been apparent from her behaviour. In each of the four cases, the complainant had been arrested, even though the file records suggested that the matter could have been resolved without recourse by the police officer(s) to their power of arrest. In each case, the basis for the arrest was the use by the person of language that the police considered to be obscene, insulting or offensive. In no case was the language used by the civilian directed towards another member of the public.

CASE STUDY 1

The complainant (C) was a soldier on leave. Late one evening, when C, who had been out celebrating with members of his unit after their return from overseas, went to purchase a hot dog from a street vendor, he saw a group of three police officers standing nearby. C made what he said he thought was a jocular comment to the police, but directed towards one of the officers in particular, whom he had observed was wearing muddy shoes: *What, don't you blokes ever bother to shine your boots?*

C stated that the police officer reacted immediately and aggressively to C's comment, saying words to the effect of: *You're a smart arse, you want to cause trouble or something? Are you a smart arse, are ya? How would you like to spend the night in the cells?*

C stated that he responded to this unexpected reaction from the police officer by saying: *No, not really*, before attempting to walk away towards a nearby taxi rank. The officer involved in this conversation insisted instead that C did not respond civilly, but said words to the effect of: *Yeah, I have got a problem, I hate fuckin' coppers*, before turning away and attempting to enter a nearby taxi.

C was arrested on charges of having used insulting language. C refused to submit and continued in his efforts to board the cab. According to C, the police never told him that he was under arrest, simply grabbing him, saying: *Righto mate, you're going to gaol!* C was handcuffed and forcibly placed in the back of a police car. One of the three officers sat in the back seat with him, while the other two sat in the front of the police car.

C alleged that, while in the police car, the officer in the back seat grabbed him in a headlock, making it difficult for him to breathe. C said that, despite his pleas, the officer refused to loosen the grip he had on

⁷³ With particular reference to Case Study 2, it should be noted that some of the behaviour of the officers involved was clearly unlawful and that this case is not typical of most of the assault complaints received by the CJC. It has been used, however, because it was a substantiated complaint and provides a good example of the identification issues which can arise when police officers are in plain clothes, and the problems that result when police employ an aggressive policing style, compounded by poor communication skills.

him. C also alleged that the officer sitting in the front passenger seat reached across and punched him in the stomach, twice, 'just for good measure'.

C further claimed that upon arrival at the police station, he was forcibly hauled from the police car, causing him to fall backwards onto his hands, which had been restrained by handcuffs behind his back. This fall resulted in injury to both his wrists and also to the lumbar region of his spine. C asserted that the police forcibly lifted him to his feet by his shirt, causing his shirt to tear. According to C, the officer who did this then said flippantly: *Oh, look, you have fallen over!*; and *Oh look, you have ripped your shirt!*

C later made a complaint about the actions of the police.

Because this case was assessed as involving only minor allegations of misconduct, it was referred back to the QPS by the CJC for investigation, pursuant to standard procedures. C had medical reports on his injuries that were consistent with his version of the events. The three police officers all corroborated one another, denying that C had been placed in a headlock or had been punched, or that his shirt had been ripped as a consequence of their actions. There were no other witnesses to events in the police car. Independent witnesses at the place where the initial interaction between the police and C occurred had not observed it in sufficient detail to shed further light on what had happened before C's arrest.

The investigation noted that eight previous (and similar) complaints had been made against one of the officers about whom C had complained, but only one of these had been substantiated.

The investigation found insufficient evidence to conclude that there had been misconduct or a breach of discipline on the part of the officer, but that the officer should nonetheless be counselled to show 'more tolerance' of the harmless behaviour of intoxicated people. The charges against C (of having used insulting language) were withdrawn after the police prosecutor assessed that the words allegedly used were not words capable of being insulting at law.

Comments made by the officer in this case during his record of interview with the Inspector who conducted the official investigation of C's complaint clearly indicate that the primary motive for C's arrest was his failure to show sufficient respect towards the police, thus failing the police 'attitude test':

Yeah I spoke to the Prosecutors . . . [about their decision to withdraw the charge against C] . . . I didn't want to withdraw it. They reckoned that I should, [but] I can't see why they did . . . I mean, when you're insulted you're insulted . . . he was dead set having a go at me on purpose to make me flare up . . . he was insulting my uniform and me.

COMMENT

This case study illustrates the problems that can arise when an officer's persona as a police officer becomes confused with his or her own identity. This confusion may result in coercion being used in support of the officer's *personal standing*, rather than in enforcement of the law, with the officer acting under the misapprehension that his or her actions constituted an exercise of legitimate authority.

Brown (1981) has described an 'attitude test' which he says is used by police officers to evaluate the demeanour of civilians they have contact with.

A rough but accurate definition of the attitude test is that the person confronted by police authority must exhibit acceptance of that authority and deference to the officer and his admonishments . . . The attitude test is a way of maintaining police authority and punishing those who would defy it . . . A person's 'attitude' toward the law and, in particular, his feelings about the violation he may have committed become rough criteria for whether a citation should be written or a warning given (p. 196).

According to Brown, disrespect includes failure to accept and defer to officers' authority as well as a failure to show deference to the law which police believe they symbolise. On Brown's analysis, C failed the 'attitude test' and suffered the consequences.

CASE STUDY 2

The complainant (C) says that he was walking through an inner city suburb at about 1.00 a.m. when he was approached by a man who was in the company of two other men. The man did not introduce himself, but demanded to know the contents of an 'A4' yellow envelope that C had under his arm. C alleges that the man was abusive, and, before he could respond to his demand to know what was in the envelope, he was grabbed and frogmarched to a nearby vehicle where he was bundled into the back seat. Another passenger in the back seat then showed C a sign indicating that they were police. C attempted to climb out of the vehicle but was restrained. The first man then searched the contents of C's envelope. Apparently satisfied, the man returned C's envelope and the three men allowed C to get out of the vehicle. Two of the men also alighted and made towards another vehicle that was parked nearby.

C called after the officers, indicating that he was going to make a complaint about the way he had been treated. The two men again approached C, grabbed him and dragged him into a nearby alleyway. C alleges he was then punched in the mouth and generally 'roughed up'. C suffered grazing to his forehead and elbow and the buttons were ripped from his shirt. The two men then jumped into their unmarked vehicle and drove away. C was then approached by a female taxidriver who had been at a nearby taxi rank and had witnessed the incident. The taxidriver gave C a piece of paper on which she had written the registration details of the vehicle that was being driven by C's assailants.

THE CJC INVESTIGATION

Investigations revealed that the vehicle was registered to the QPS. C indicated to CJC investigators that he believed that the men who assaulted him had been drinking. Medical evidence confirmed that C had injuries that were consistent with his version of the events, including his having been punched in the mouth. Scrutiny of police vehicle logs revealed the identity of the police officers who were most likely involved in this alleged assault. Perusal of the logs also indicated that two of the officers had spoken to C in relation to using abusive language, and that he had been cautioned. The log did not indicate the names of the police allegedly involved in cautioning C, which is unusual as ordinary procedures require the officers to enter their names under each activity report in the log.

C appeared to be a credible witness who had a clear and consistent recollection of the events. He had also made a prompt complaint at a nearby police station, and there was independent corroborative evidence from an eyewitness (the female taxidriver). According to the taxidriver, the unmarked police car was driving past where C was walking and stopped when C was spotted. Although the taxidriver did not see the actual assault in the alleyway, she stated that C went into the alleyway looking 'neat and tidy' and re-emerged some minutes later looking distressed and dishevelled. The taxidriver also confirmed that she had driven C to a nearby police station immediately after the incident.

The police involved in this incident agreed that they had spoken to C on the night in question, but denied taking C into an alleyway and assaulting him. The officers also denied that C was forced into the police vehicle, saying he entered the vehicle of his own accord. They were also adamant that they had clearly identified themselves to C as police officers, and only sought to caution him for using obscene language. The police stated that they did not arrest C for using obscene language because at the time they had 'run out of authorised overtime'. This rationale for *not* arresting C was viewed with suspicion. The CJC concluded that there was a *prima facie* case that C had been assaulted and recommended to the

Commissioner of Police that the two detectives at the centre of this complaint be charged with official misconduct. However, the misconduct charges against the two officers were subsequently dismissed by the Misconduct Tribunal for want of evidence.

COMMENT

This case study is an illustration of what could best be described as an overly aggressive pro-active policing style. It also highlights some of the problems that can arise when police officers perform street policing or general duties activities in plain clothes.

While the approach described in the case study (assuming that the events of that evening were as described by the complainant and the taxidriver) may have given the police the advantage of surprise, it was also more likely to be met with resistance from the civilian and to result in unnecessary conflict. A more reasonable approach in the circumstances would have been for the police to identify themselves and provide some explanation for the intervention. It is also true that, had the officers been in uniform, there could have been no dispute about whether C knew that they were police officers or whether they had identified themselves to C.

CASE STUDY 3

The complainant (C) was a person known by the police to be suffering from what was believed to be a mental illness. She had had adverse contact with her local police on a number of occasions. On the day in question, C was walking along the road attempting to hitchhike. A marked police patrol car passed her, going in the opposite direction. As the police car passed, C poked her tongue at the officers. Seeing her gesture, the police car did a 'U-turn' and pulled up alongside her. When asked by the officers why she was hitchhiking, C replied that the police 'made her do it' as 'they are all corrupt'. The police then took her name and address and ordered her to move off the road. C made another rude gesture at the police and then told them to 'piss off', before walking away. The police arrested C on two counts of having used insulting words, and for disobeying a lawful direction.

At the watch-house, a struggle ensued between the police and C. C alleges that the police refused to let her retrieve her Bible from her handbag, and refused to allow her retain her Bible when she was placed inside a cell. As a result of this incident, C was also charged with resisting police. After her release, C made an official complaint to the CJC. In her complaint, she alleged that the police had twisted her arm, causing her pain and bruising, and that the police were both abrupt and rude to her, and that they had called her a 'slut'. C also made numerous, vague allegations about police corruption in her local area, and various conspiracies between police, criminals and prominent citizens.

The investigation was hampered by C's mental condition, which made it particularly difficult for investigators to obtain cogent evidence from her. C's allegations were found to be unsubstantiated.

COMMENT

Although this incident was relatively minor, it provides some insights into the dynamics surrounding police interactions with the mentally ill. It was appropriate for the police to stop and caution C against the dangers of hitchhiking and walking on the road. However, the officers had not turned their car around to warn C against hitchhiking, but because she had poked a rude face at them. Even though the police were aware of C's unusual behaviour, and that it was attributable to a suspected mental illness, they showed no forbearance, and arrested her for swearing and failing to obey a direction. Had they simply ignored her

erratic behaviour, or adopted more appropriate strategies for dealing with her, it is unlikely that this incident would have escalated to a physical altercation in the watch-house and a consequent complaint from C.

CASE STUDY 4

The complainant (C) was a male in his 30s with a reasonably extensive criminal history, mostly — but not exclusively — for minor offences. Most of his previous contact with the police related to 'street offences' such as swearing in a public place, public drunkenness and assaulting police. He also had previous convictions for drink-driving and breaking and entering. On the day in question, C and his girlfriend were in their car at a suburban shopping centre. C alleged that he was about to get out of his car to borrow a video from a nearby video library when two uniformed police officers on patrol saw him. One of the officers recognised C. The officer decided to approach C to ask whether he had paid his fine, knowing that C had recently been before the courts on a drink-driving charge and suspecting that C may have had an outstanding warrant for his arrest for non-payment of fines. The officer asked C whether he had paid his fine. The officer alleged that C replied that he had paid the fine that morning at the registry of the local courthouse. He also alleged that C swore at him, saying words to the effect of *Why do you fucking keep picking on me?*

The officer alleged that he then warned C not to swear and asked him to accompany him back to the police car in order to check to see if there were any warrants outstanding for his arrest. According to the officer, C 'reluctantly agreed', and accompanied him while the check was made. The check revealed that there were no outstanding warrants for C's arrest. The officer claims he then thanked C for his cooperation, before telling C that he was free to go. C is alleged to have turned away and shouted *Thanks for fucking nothing*.

The police officer arrested C for using obscene language. C struggled and resisted being placed in the back of the police car. The officer applied a restraining hold to C's right forearm and wrist to obtain his compliance and loaded C into the police car. The arresting officer got into the back of the police car with C. His partner drove to the nearest police station. C was subsequently charged with using obscene language and obstructing police.

In his complaint to the CJC, C alleged that the police had used unreasonable force in his arrest, resulting in an injury to his wrist that required it to be placed in a plaster-cast. As a result of this injury, C alleged that he was unable to work for a number of weeks, and suffered financially.

This complaint was investigated by the QPS at the direction of the CJC, and was not substantiated because there was evidence from independent witnesses indicating that the police had not behaved unreasonably. Particularly relevant to the decision to reject the complainant's version of events was evidence from his girlfriend, who said that C had 'brought it all on himself by reacting to the police the way he did'.

COMMENT

This case is a good example of police use of pro-active policing techniques in their dealings with 'known offenders' and of the types of complaints made to the CJC about 'police harassment'. The fact that C was a 'known offender' who may have failed to pay traffic fines provided the grounds for the belief on the part of the police that it was reasonable to approach C to question him. While the assumption made about C by the police officer may not have been unreasonable, it is also clear that C had an entirely different interpretation of the situation. C's reaction appears to have been the anger and indignation of a man who believed he had done no wrong but was suspected of it by the police on account of his previous behaviour.

C appears to have regarded the police approach as an unwarranted intrusion upon his liberty that constituted harassment.

Rather than approach C and detain him while they undertook a warrant check, the police officers could have performed the check discretely while keeping C under observation. This option would have avoided making contact with C and unnecessarily detaining him. In those circumstances, the officers could have satisfied themselves that C was not the subject of an arrest warrant and avoided the conflict and complaint which resulted from their contact with him.

CONCLUSION

While it is difficult to identify a valid purpose served by the actions of the officers in these case studies, the consequences of this type of police action can be substantial. These incidents can damage the image of the police service in the eyes of the public.

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