

**IN THE SUPREME COURT OF CANADA
(on Appeal from the Court of Appeal for ON)**

B E T W E E N:

WAYNE PENNER

**Appellant
(Appellant/Plaintiff)**

-and-

**REGIONAL MUNICIPALITY OF NIAGARA REGIONAL POLICE SERVICES BOARD,
GARY E. NICHOLLS, NATHAN PARKER,
PAUL KOSCINSKI and ROY FEDERKOW**

**Respondents
(Respondents/Defendants)**

**FACTUM OF THE INTERVENER,
THE CANADIAN POLICE ASSOCIATION**

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**REGIONAL MUNICIPALITY OF NIAGARA REGIONAL POLICE SERVICES
BOARD, GARY E. NICHOLLS, NATHAN PARKER,
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**FACTUM OF THE INTERVENER,
THE CANADIAN POLICE ASSOCIATION**

PART I – OVERVIEW

1. The CPA is an umbrella organization representing municipal, provincial, and federal police associations across Canada. It has 160 member associations, which, in turn, represent approximately 41,000 front line police personnel stationed across Canada at the federal, provincial and municipal levels. The CPA is the only organization of its kind with a national perspective on policing issues that affect front line police officers and their associations.¹

2. The CPA's member associations are the collective bargaining agents for their respective police membership. These associations often provide for legal assistance to their members in disciplinary matters, as well as in civil and other proceedings relating to matters that arise in the execution of their duties as police officers. Legal assistance for members is paid for by the associations themselves through members' dues or, in some circumstances, by agreements

¹ Affidavit of Tom Stamatakis, sworn August 10, 2011 ("Stamatakis Affidavit"), paras. 5-6.

reached between associations and their employers.²

3. Contrary to the Appellant's position, nothing in the Court of Appeal's decision "supplant[ed] the judiciary's traditional role as the ultimate arbiter of disputes between citizens and the state over the use or misuse of police power".³ On the present facts (as would be true of any case), the courts *were* the "ultimate arbiter" by virtue of the supervisory jurisdiction of the superior courts over administrative tribunals.⁴ The Appellant cannot (nor does he even attempt to) demonstrate that the adjudication of police complaints and discipline falls within the core jurisdiction of the superior courts.⁵ Instead, he relies on an ill-conceived policy argument that tribunals which adjudicate public complaints and police discipline ought to be treated differently from every other tribunal in the administrative state. This cannot be correct.

4. Moreover, the Appellant's is a self-defeating policy argument. The complaints and disciplinary processes impugned in this appeal are intended to promote police accountability and thereby increase public confidence in the police. However, perversely, to encourage collateral attacks on final determinations made pursuant to these processes will undermine public confidence in them and, in turn, in the police. Having provided an appeal mechanism within the Ontario statute at issue and, in light of the ultimate supervisory authority of the courts on judicial review, the Ontario legislature cannot have intended that a complainant having failed to establish his case in one forum could take a second bite at the cherry in another.

5. At a minimum, this Court ought to be cautious before making sweeping statements about the doctrine of issue estoppel as it relates to police complaints and disciplinary procedures. As this Court has confirmed, the application of issue estoppel as between decisions of tribunals and court proceedings is to be done on a case-by-case basis.⁶ These processes vary widely across Canada and, although each regime is sufficient to warrant the application of issue estoppel, this Court's ruling may well have unintended consequences on other related administrative tribunals across Canada.

² Stamatakis Affidavit, paras. 8 and 17.

³ Appellant's Factum, para. 1.

⁴ See, e.g., *Crevier v. Attorney General of Quebec*, [1981] 2 SCR 220 at 236-237 ("*Crevier*").

⁵ *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 SCR 725 at paras. 27-41 ("*MacMillan*").

⁶ *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 at para. 63 ("*Danyluk*") and the authorities cited therein.

PART II – POSITION ON THE ISSUES

6. The CPA takes the position that the Ontario Court of Appeal did not err when it exercised its discretion to apply the doctrine of issue estoppel to strike the Appellant’s civil claim. The Court of Appeal was not clearly wrong that the application of issue estoppel would work an injustice in the present case, nor did it exercise its discretion on the basis of incorrect principles (which is the standard applied in these cases).⁷

PART III – ARGUMENT

A. The Police Context Should Not Be Singled Out for Unique Treatment

7. This Appeal concerns the impact of the doctrine of issue estoppel as between public complaints procedures and disciplinary hearings, in the police context, and civil proceedings. In the leading case of *Danyluk v. Ainsworth Technologies Ltd.* (“*Danyluk*”), this Court confirmed that “in general issue estoppel is available to preclude an unsuccessful party from relitigating in the courts what has already been unsuccessfully litigated before an administrative tribunal”⁸ In other words, a final decision of a tribunal respecting a legal issue or a material fact in dispute is not generally open to attack in another forum. The mischiefs intended to be avoided by the rule include the inefficiency of duplicative litigation, the potential for inconsistent results, undue costs to the parties and the spectre of inconclusive proceedings.⁹

8. The Appellant argues that administrative decisions relating to the police should be treated differently than decisions in other contexts because “[t]he adjudication of allegations of police misconduct ... is central to the judiciary’s function as ‘guardian of the Constitution’.”¹⁰ However, quite apart from the fact that the Appellant *does not* raise any constitutional issues other than in the abstract, there is no reason to depart from the general rule simply because the issues involve the police. For this Court to do so would be unprecedented, as the courts *have never* singled out a category of claims or a particular context for special treatment when applying the doctrine of issue estoppel, but have instead adopted a case-by-case analysis.¹¹

9. In fact, this categorical approach is tantamount to a submission that the adjudication of

⁷ See, e.g., *Harper v. Harper*, [1980] 1 SCR 2 at p. 24.

⁸ *Danyluk*, *supra* note 6 at para. 1.

⁹ *Ibid.*, para. 18.

¹⁰ Appellant’s Factum, para. 83.

¹¹ *Danyluk*, *supra* note 6.

tort allegations against police is part of the core of superior court jurisdiction that cannot under any circumstances be removed.¹² This position cannot be maintained. While that core is “difficult to define”,¹³ it cannot include the adjudication of tort allegations involving the police because these are not claims that “are essential to the administration of justice and the maintenance of the rule of law” such as a superior court’s jurisdiction over contempt of court¹⁴ or judicial review.¹⁵

10. The only issues this Court has recognized that form part of the core of superior court jurisdiction are those that are essential to these courts’ supervisory role. Given that the adjudication of many important claims – including constitutional claims¹⁶ – may fall within the adjudicative purview of an administrative tribunal, it is difficult to see how the adjudication of a tort claim involving the police, however important to the individual parties, could be essential in the same fashion as the court’s power to control its own process and enforce its own orders by way of contempt, or its authority to ensure a tribunal has acted within its jurisdiction on judicial review.

11. Indeed, the availability of judicial review militates strongly in favour of applying the doctrine of issue estoppel in the present case. Put another way, to answer the Appellant’s question stated at the outset of his factum, the courts were in fact the “ultimate arbiter” of the dispute “over the use or misuse of police powers”. He simply did not like the result. The Appellant had access to an appeal process, of which he took advantage. He appealed the decision of the hearing officer (the “Hearing Officer”), who found that there was no factual basis for his complaint, to the Ontario Civilian Commission on Police Services (the “Commission”).¹⁷

12. The Commission did not disturb the Hearing Officer’s factual findings, but principally disagreed with one of his legal conclusions and therefore reversed the Hearing Officer’s decision.¹⁸ Two of the Respondent police officers, Nathan Parker and Paul Kosciński, then judicially reviewed the decision to Ontario’s Divisional Court, which agreed with the Hearing

¹² *MacMillan*, *supra* note 5.

¹³ *Ibid.*, para. 33.

¹⁴ *Ibid.*, at paras. 38 and 41.

¹⁵ *Ibid.*, at para. 35.

¹⁶ See, e.g., *Nova Scotia (Workers’ Compensation Board) v. Martin*, 2003 SCC 54 at paras. 3 and 29 (citing *Cooper v. Canada (Human Rights Commission)*, [1996] 3 SCR 854 at para. 70).

¹⁷ *Penner v. Niagara Police Services Board*, 2010 ONCA 616 at paras. 10-15 (“*Penner*”).

¹⁸ *Ibid.*, para. 16 and Commission Decision at p. 10, 13 and 15, Appellant’s Record at Tab 12B.

Officer's conclusion on the legal issue and restored his decision.¹⁹ The Appellant was a party to the judicial review and sought leave to appeal the Divisional Court's cost order, but did not otherwise seek to have its decision reviewed.²⁰ In these circumstances, it is simply not unjust to preclude the Appellant from relitigating his claims in yet another venue.

13. Perhaps more fundamentally, the potential mischiefs of relitigation are just as much to be avoided in the police context as they are, for instance, in the employment context, and perhaps more so.

14. The Court of Appeal in the present case correctly concluded that the administrative processes impugned in this appeal are intended to ensure police accountability and thereby promote public confidence in the police. To encourage collateral attacks on the determinations made pursuant to these processes will undermine public confidence in them and, in turn, in the police. Having provided an appeal mechanism within the Ontario statute at issue and, in light of the ultimate supervisory authority of the courts on judicial review, the Ontario legislature cannot have intended that a complainant having failed to establish his or her case in one forum could take a second bite at the cherry in another.

15. Finally, because of the roles they play in our communities, police officers assume a greater risk than other Canadians that they will become the subject of litigation. The decisions police officers make in the execution of their duties will often impact on members of the public. However, for a police officer, litigation (even successful litigation) may bring with it very serious consequences and, at the very least, serious reputational risk. The cost of defending an officer will normally fall on his or her association or, in some cases, on the public purse. To depart from the general rule and encourage the relitigation of issues in the police context may materially increase the costs borne by both police officers and their associations and, ultimately, the public.²¹

16. It is important to note that the CPA is not proposing a one-way rule. Rather, the CPA's position is that, in the right circumstances, adverse findings made against police officers (for example, in a disciplinary proceeding) may estop the same police officers from re-litigating the

¹⁹ *Penner*, *supra* note 17 at paras. 17-18.

²⁰ *Ibid.*, para. 19.

²¹ *Stamatakis Affidavit*, paras. 8 and 17.

same issues in a civil proceeding, just as (in this case) a finding made by the Hearing Officer that there was no evidence respecting the material facts underlying a complaint may bar the complainant from maintaining a civil suit based primarily on those same material facts. In other words, the Hearing Officer's decision could have been different on a different set of facts to the benefit of the Appellant. The point is not that one side should have an advantage over another. Rather, the point is simply that public confidence in police accountability will be undermined if these processes are routinely open to collateral attack in another forum, regardless of which party is undertaking the attack.

B. The Procedures at Issue Differ Across Canada

17. In any event, the CPA urges this Court to be cautious when deciding this appeal not to over-generalize about the different procedures across the country that legislatures have designed to respond to public complaints and police discipline. As this Court held in *Danyluk*, each case will turn on its particular circumstances.²² This should also be true in the police context. It is important for this Court to bear in mind that its decision may have unintended consequences on similar processes enacted in other provinces that are not before this Court.

18. On the one hand, as an example of an important difference, this Court should note that the very complaints process at issue in the Appeal has been replaced in Ontario. The Legislature recently established the Office of the Independent Police Review Director (the "OIPRD")²³, which opened on October 19, 2009. The OIPRD's mandate is to provide an objective, impartial office to accept, to process and to oversee the investigation of public complaints against Ontario's police and, in some cases, to investigate a public complaint itself²⁴. The OIPRD is an arm's-length agency of the Ontario Ministry of the Attorney General, staffed entirely by civilians.²⁵ Although the OIPRD is, accountable ultimately to the Attorney General, OIPRD's day-to-day decisions are independent, and so it is separate from the government, the police and the community. In other words, to the extent the Appellant's concerns respecting independence in the public complaints process in Ontario have any merit these concerns have largely been rendered moot by the new legislative scheme.

²² *Danyluk*, *supra* note 6 para. 63 and the authorities cited therein.

²³ *Police Services Act*, RSO 1990, c P-15 s. 26.1

²⁴ *Police Services Act*, RSO 1990, c P-15 s. 26.2

²⁵ *Police Services Act*, RSO 1990, c P-15 s. 26.1(5)

19. On the other hand, an important similarity across Canada is that the standard of proof in police disciplinary hearings is always on a balance of probabilities or, in other words, the same standard that applies in civil proceedings such as the tort claim struck in the present case. The Appellant points to s. 63(10) of Ontario's *Police Services Act* (the "*Act*"), which states that police misconduct must be proven on "clear and convincing evidence", and submits that this imports "a higher burden of proof than the balance of probabilities."²⁶ This is incorrect. Section 63(10) of the *Act* simply confirms that the standard of proof in the police discipline context is the balance of probabilities and not the criminal standard of beyond a reasonable doubt as there are only two standards of proof known to law in Canada.²⁷

20. As this Court recently held in *F.H. v. MacDougall* ("*MacDougall*"), "there is only one civil standard of proof at common law and that is proof on a balance of probabilities".²⁸ Although the present case concerns a statutory provision, this Court's criticisms in *MacDougall* of an intermediate standard would equally apply to the "clear and convincing evidence" standard contemplated by the *Act* were this language to do anything other than simply confirm that the civil standard applies. While Rothstein J. for this Court offered various rationales in support of the Court's conclusion that an intermediate standard is unworkable, one is particularly salient to the "clear and convincing evidence standard" at issue in the Appeal; namely, this Court's holding that:

[E]vidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.²⁹

To hold that an intermediate standard of proof applies in the police disciplinary context would suggest that evidence in other, less serious cases warrants less scrutiny. This is a conclusion this Court expressly rejected in *MacDougall*.³⁰

²⁶ Appellant's Factum, para. 48.

²⁷ *F.H. v. MacDougall*, 2008 SCC 53 at paras. 40-41.

²⁸ *Ibid.*

²⁹ *Ibid.*, para. 46.

³⁰ *Ibid.*, para. 45.

21. Other relevant differences and similarities in these processes across Canada include:

- a. The Investigation: In most provinces, the police chief of the involved police force or his or her designate will investigate the complaint and determine whether or not it is vexatious or has some basis warranting a disciplinary hearing.³¹ However, this is not always the case. In Quebec, for instance, investigators must come from outside the force of the police officer being investigated³². If it is a chief who is under investigation, it is always an external investigator,³³
- b. An Independent Investigatory Oversight Body: In every province, there is a body that oversees or can reopen complaints that is independent from the police.³⁴ For example, in Ontario, this function is now performed by the OIPRD. In every province, all resolutions of complaints must be reported to the oversight body for approval, and the oversight body has the option of overturning the initial decision and sending the complaint on for further investigation or evaluation;³⁵
- c. Alternative Dispute Resolution: Two jurisdictions (British Columbia and Saskatchewan) have mediation procedures.³⁶ In Quebec, the statute provides for conciliation before the hearing.³⁷ The legislation in New Brunswick requires a settlement conference, and only if that fails will there be a hearing.³⁸ Other provinces do not have formal dispute resolution processes, though they may be undertaken informally;³⁹
- d. The Role of the Complainant: If the issue is not solved to the complainant's

³¹ *Police Services Act*, RSO 1990, c P-15 s. 61; *Police Act*, RSBC 1996, c. 367 s. 90; *Police Act*, RSA 2000, c P-17 s. 43.1 s. 43; *Police Act*, SS, 1990 c P-15.01 s. 45(1); *Law Enforcement Review Act*, CCSM cL75 12(8); *Police Act*, SNB 1977, c. P-9.2 s. 27.3; *Police Act*, SNS 2004, c 31 s. 71; *Police Act*, RSPEI 1988, c P-11.1 s. 26; *Royal Newfoundland Constabulary Act*, 1992, c R-17 s. 24.

³² *Police Act*, RSQ, c. P-13.1 s. 171.

³³ *Police Services Act*, RSO 1990, c P-15 s. 61(8); *Police Act*, RSBC 1996, c. 367 s. 91; *Police Act*, RSA 2000, c P-17 s. 43.1 s. 43; *Police Act*, SS 1990, c P-15.01 s. 49(1); *Law Enforcement Review Act*, CCSM cL75 12(7); *Police Act*, SNB 1977, c. P-9.2 s. 27.3; *Police Act*, SNS 2004, c 31 s. 73; *Royal Newfoundland Constabulary Act*, 1992, c R-17 s. 21.

³⁴ *Police Services Act*, RSO 1990, c P-15 s. 26.1; *Police Act*, RSBC 1996, c. 367 s. 133; *Police Act*, RSA 2000, c P-17 s. 43.1 s. 17(1); *Police Act*, SS, 1990 c P-15.01 s. 39(1); *Law Enforcement Review Act*, CCSM cL75 ss. 15-17; *Police Act*, RSQ, c. P-13.1 s. 128; *Police Act*, SNB 1977, c. P-9.2 s. 18(1); *Police Act*, SNS 2004, c 31 ss. 11-12; *Police Act*, RSPEI 1988, c P-11.1 s. 28; *Royal Newfoundland Constabulary Act*, 1992, c R-17 s. 18.

³⁵ *Police Services Act*, RSO 1990, c P-15 s. 63(4); *Police Act*, RSBC 1996, c. 367 s. 133(6); *Police Act*, RSA 2000, c P-17 s. 43.1 s. 17(1); *Police Act*, SS, 1990, c P-15.01 s. 39(1); *Law Enforcement Review Act*, CCSM cL75 ss. 15-17; *Police Act*, RSQ, c. P-13.1 ss. 177-178; *Police Act*, SNB 1977, c. P-9.2 s. 18(1); NS ss. 11-12; RSPEI 1988, c P-11.1 s. 28; *Royal Newfoundland Constabulary Act*, 1992, c R-17 s. 18.

³⁶ *Police Act*, RSBC 1996, c. 367 s. 158; *Police Act*, SS, 1990 c P-15.01 s. 43.1(1).

³⁷ *Police Act*, RSQ, c. P-13.1 ss. 147-165.

³⁸ *Police Act*, SNB 1977, c. P-9.2 s. 28.4(1).

³⁹ See, for example *Police Act*, RSA 2000, c P-17 s. 43.1.

satisfaction, or to the satisfaction of the oversight body, then the process may move to a hearing. The complainant in the majority of the provinces plays an active role in the hearing. Most provinces allow for representation of the complainant, and presentation of the complainant's case.⁴⁰ Notable exceptions are: Saskatchewan, where the complainant cannot call or cross-examine witnesses;⁴¹ Quebec, where the complainant is not a party to the hearing;⁴² and New Brunswick, where the complainant can attend and make representations, but is not formally a party.⁴³ Otherwise, the complainant is as involved in the process as any other party;

- e. Evidence at the Hearing: This is a less uniform area. Generally, all witnesses are required to give their evidence under oath.⁴⁴ However, the standards for admissibility may vary. In the RCMP context, the *Canada Evidence Act* governs these issues.⁴⁵ In Ontario, the *Statutory Powers Procedures Act* applies,⁴⁶ which has a different evidentiary standard. In Manitoba, the governing legislation expressly provides that the respondent officer is not compellable as a witness,⁴⁷ whereas in British Columbia an adverse inference may be drawn if the respondent officer fails to testify;⁴⁸
- f. The Structure of the Hearing Panel: Hearing panels may be structured in one of three ways depending on the jurisdiction: (1) the legislation may provide for an arm's length adjudicator;⁴⁹ (2) it may provide for an adjudicator appointed by the investigator of the complaint;⁵⁰ or (3) it may provide for the chief or his or her designate to adjudicate the disciplinary proceedings;⁵¹ and

⁴⁰ *Police Services Act*, RSO 1990, c P-15 s. 83(3); *Police Act*, RSA 2000, c P-17 s. 43.1 s. 47(1); *Law Enforcement Review Act*, CCSM cL75 s. 23(2), s. 24(6); *Police Act*, SNS 2004, c 31 s. 77; *Police Act* RSPEI 1988, c P-11.1 s. 32(5); *Royal Newfoundland Constabulary Act*, 1992, c R-17 s. 30.

⁴¹ *Police Act*, SS, 1990 c P-15.01 s. 48(3).

⁴² *Police Act*, RSQ, c. P-13.1 s. 219.

⁴³ *Police Act*, SNB 1977, c. P-9.2 s. 28.9(2), s. 31.8(2) and s. 32.5.

⁴⁴ *Police Services Act*, RSO 1990, c P-15 s. 83(1); *Police Act*, RSBC 1996, c. 367 s. 124(6); *Police Act*, RSA 2000, c P-17 s. 43.1 s. 47(1); *Police Act* SS, 1990, c P-15.01 s. 56(12); *Law Enforcement Review Act*, CCSM cL75 s. 25(5).

⁴⁵ *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 s. 47.3.

⁴⁶ *Police Services Act*, RSO 1990, c P-15 s. 22(3).

⁴⁷ *Law Enforcement Review Act*, CCSM cL75 s. 24(10).

⁴⁸ *Police Act*, RSBC 1996, c. 367 s. 124(9)(c).

⁴⁹ *Royal Newfoundland Constabulary Act*, 1992, c R-17 s. 29(1).

⁵⁰ *Police Act*, RSPEI 1988, c P-11.1 s. 32(1).

⁵¹ *Police Act*, RSBC 1996, c. 367 s. 134(1).

- g. Appeals: Rights of appeal are another area in which there is significant variation across the country. Some jurisdictions have no appeal mechanism, and state so in the legislation,⁵² in which case a person affected by the decision must seek judicial review. Others provide for an internal appeal route,⁵³ whereas still others contemplate direct appeals to a superior⁵⁴ or appellate court.⁵⁵

22. In conclusion, this Court ought to be cautious before making sweeping statements about the doctrine of issue estoppel as it relates to public complaints and police disciplinary procedures. As this Court has confirmed, the application of issue estoppel as between decisions of tribunals and court proceedings is to be done on a case-by-case basis. These processes vary widely across Canada and, although each is sufficient for the purposes of applying the doctrine of issue estoppel, this Court should have regard for the fact that its ruling may well have unintended consequences on other administrative tribunals across Canada operating in the police context.

PART IV – COSTS

23. The CPA does not seek costs, and asks that no costs be awarded against it.

PART V – DISPOSITION OF THE ISSUES AND ORAL ARGUMENT

24. The CPA's seeks a determination of the appeal that is consistent with the importance placed in our justice system on both finality and police accountability, neither of which are served by encouraging the re-litigation of issues that have already been finally determined. The CPA asks leave to present 15 minutes of oral argument at the hearing of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

December 2, 2011


 Ian Roland/Michael Fenrick

⁵² *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 s. 42(4), s. 45.16(7).

⁵³ *Police Act*, SS, 1990 c P-15.01 s. 53(9).

⁵⁴ *Police Act*, RSQ, c. P-13.1 s. 89; *Royal Newfoundland Constabulary Act*, 1992, c R-17 s. 36(1).

⁵⁵ *Police Act*, RSA 2000, c P-17 s. 18.

PART VI – TABLE OF AUTHORITIES

Jurisprudence	Paragraph Number
<i>Cooper v. Canada (Human Rights Commission)</i> , [1996] 3 SCR 854	10
<i>Crevier v. Attorney General of Quebec</i> , [1981] 2 SCR 220	3
<i>Danyluk v. Ainsworth Technologies Inc.</i> , 2001 SCC 44	5, 7, 8, 17
<i>F.H. v. McDougall</i> , 2008 SCC 53	20
<i>Harper v. Harper</i> , [1980] 1 SCR 2	6
<i>MacMillan Bloedel Ltd. v. Simpson</i> , [1995] 4 SCR 725	3, 9
<i>Nova Scotia (Workers' Compensation Board) v. Martin</i> , 2003 SCC 54	10
<i>Penner v. Niagara Police Services Board</i> , 2010 ONCA 616	11, 12

PART VII – STATUTES

Police Services Act, RSO 1990, c P-15

Powers and duties of Commission

Statutory Powers Procedure Act applicable to hearings

22. (3) The *Statutory Powers Procedure Act* does not apply to the Commission, except to a hearing conducted by the Commission under subsection 23 (1), 25 (4), (4.1) or (5), 39 (5), 47 (5), 69 (8), 77 (7), 87 (2), (3) or (4) or 116 (1). 1997, c. 8, s. 16 (4); 2007, c. 5, s. 6 (3).

PART II.1

INDEPENDENT POLICE REVIEW DIRECTOR

Establishment of Independent Police Review Director

Appointment of Independent Police Review Director

26.1 (1) There shall be an Independent Police Review Director, who shall be appointed by the Lieutenant Governor in Council, on the recommendation of the Attorney General. 2007, c. 5, s. 8.

Restriction

(2) A person who is a police officer or former police officer shall not be appointed as Independent Police Review Director. 2007, c. 5, s. 8.

Remuneration

(3) The Independent Police Review Director shall be paid such remuneration and allowance for expenses as may be fixed by the Lieutenant Governor in Council. 2007, c. 5, s. 8.

Employees

(4) Such employees as the Independent Police Review Director considers necessary to carry out his or her duties may be appointed under Part III of the *Public Service of Ontario Act, 2006*. 2006, c. 35, Sched. C, s. 131 (3); 2007, c. 5, s. 8.

Restriction

(5) A person who is a police officer shall not be appointed as an employee in the office of the Independent Police Review Director. 2007, c. 5, s. 8.

Delegation

(6) The Independent Police Review Director may in writing delegate any of his or her powers, duties or functions under this Act to an employee in his or her office, subject to such conditions as the Independent Police Review Director may set out in the delegation. 2007, c. 5, s. 8.

Regional offices

(7) The Independent Police Review Director may establish regional offices, and anything that is given to the Independent Police Review Director under this Act may be given at one of the regional offices. 2007, c. 5, s. 8.

Annual report

(8) After the end of each year, the Independent Police Review Director shall file with the Attorney General an annual report on the affairs of the office of the Independent Police Review Director, and shall make the report available to the public. 2007, c. 5, s. 8.

Confidentiality

(9) The Independent Police Review Director, any employee in the office of the Independent Police Review Director, any investigator appointed under subsection 26.5 (1) and any person exercising powers or performing duties at the direction of the Independent Police Review Director shall preserve secrecy in respect of all information obtained in the course of his or her duties under this Act and shall not communicate any such information to any person except,

- (a) as may be required in connection with the administration of this Act and the regulations;
- (b) to his or her counsel;
- (c) as may be required for law enforcement purposes; or
- (d) with the consent of the person, if any, to whom the information relates. 2007, c. 5, s. 8.

Testimony

(10) The Independent Police Review Director, an employee in the office of the Independent Police Review Director, an investigator appointed under subsection 26.5 (1) or a person exercising powers or performing duties at the direction of the Independent Police Review Director shall not be required to give testimony in a civil proceeding with regard to information obtained in the course of his or her duties, except at a hearing held under Part V. 2007, c. 5, s. 8.

Inadmissibility of documents

(11) A document prepared in the course of his or her duties under this Act by the Independent Police Review Director, an employee in the office of the Independent Police Review Director, an investigator appointed under subsection 26.5 (1) or a person exercising powers or performing

duties at the direction of the Independent Police Review Director is not admissible in a civil proceeding, except at a hearing held under Part V. 2007, c. 5, s. 8.

Immunity

(12) No action or other proceeding for damages lies or shall be instituted against the Independent Police Review Director, an employee in the office of the Independent Police Review Director, an investigator appointed under subsection 26.5 (1) or a person exercising powers or performing duties at the direction of the Independent Police Review Director, for any act done in good faith in the execution or intended execution of any power or the performance or intended performance of any duty under this Act or for any alleged neglect or default in the execution or performance in good faith of that power or duty. 2007, c. 5, s. 8.

Functions of the Independent Police Review Director

26.2 The functions of the Independent Police Review Director are,

- (a) to manage complaints made to him or her by members of the public in accordance with Part V and the regulations; and
- (b) to exercise such powers and perform such duties of the Independent Police Review Director as may be prescribed under paragraph 4.1 of subsection 135 (1). 2007, c. 5, s. 8.

Chief to designate liaison

26.3 Every chief of police shall designate a senior officer, as defined in section 114, within his or her police force to serve as a liaison with the Independent Police Review Director. 2007, c. 5, s. 8.

Complaints referred, retained

61. (1) This section applies to every complaint made to the Independent Police Review Director by a member of the public under this Part, unless the Independent Police Review Director has decided not to deal with the complaint in accordance with section 60. 2007, c. 5, s. 10.

Complaints about municipal force policies

(2) A complaint about the policies of or services provided by a municipal police force shall be referred by the Independent Police Review Director to the municipal chief of police and dealt with under section 63. 2007, c. 5, s. 10.

Complaints about local O.P.P. policies

(3) A complaint about the local policies, established under clause 10 (9) (c), of an Ontario Provincial Police detachment that is providing police services pursuant to an agreement entered

into under section 10 shall be referred by the Independent Police Review Director to the detachment commander and dealt with under section 64. 2007, c. 5, s. 10.

Complaints about provincial O.P.P. policies, services

(4) A complaint about the provincial policies of the Ontario Provincial Police or about services provided by the Ontario Provincial Police, other than those services provided pursuant to an agreement under section 10, shall be referred by the Independent Police Review Director to the Commissioner and dealt with under section 65. 2007, c. 5, s. 10.

Complaints about officer other than chief

(5) A complaint about the conduct of a police officer, other than a chief of police, deputy chief of police or a police officer appointed under the *Interprovincial Policing Act, 2009*, shall be,

(a) referred by the Independent Police Review Director to the chief of police of the police force to which the complaint relates and dealt with under section 66;

(b) referred by the Independent Police Review Director to the chief of police of a police force other than the police force to which the complaint relates and dealt with under section 67; or

(c) retained by the Independent Police Review Director and dealt with under section 68. 2009, c. 30, s. 54.

Same, officer appointed under the *Interprovincial Policing Act, 2009*

(5.1) A complaint about the conduct of a police officer appointed under the *Interprovincial Policing Act, 2009* shall be,

(a) referred by the Independent Police Review Director to any chief of police and dealt with under section 68.1; or

(b) retained by the Independent Police Review Director and dealt with under section 68.2. 2009, c. 30, s. 54.

Same

(6) In exercising his or her discretion under subsection (5) or (5.1), the Independent Police Review Director shall consider the nature of the complaint and the public interest. 2009, c. 30, s. 54.

Same

(7) The Independent Police Review Director may, in referring a complaint to a chief of police under subsection (5) or (5.1), direct the chief of police to deal with the complaint as the Independent Police Review Director specifies. 2009, c. 30, s. 54.

Complaints about municipal chief, municipal deputy chief

(8) A complaint about the conduct of a municipal chief of police or a municipal deputy chief of police shall be referred by the Independent Police Review Director to the board and dealt with under section 69. 2007, c. 5, s. 10.

Complaints about municipal force policies

63. (1) The chief of police shall review every complaint that is referred to him or her by the Independent Police Review Director under subsection 61 (2) and shall take any action, or no action, in response to the complaint as he or she considers appropriate. 2007, c. 5, s. 10.

Disposition

(2) The chief of police shall, within 60 days of the referral of the complaint to him or her, notify the complainant in writing of his or her disposition of the complaint, with reasons, and of the complainant's right to request that the board review the complaint if the complainant is not satisfied with the disposition. 2007, c. 5, s. 10.

Extension of time

(3) The chief of police may extend the 60-day period set out in subsection (2) by notifying the complainant in writing of the extension before the expiry of the period being extended. 2007, c. 5, s. 10.

Written report

(4) The chief of police shall, upon his or her disposition of the complaint, submit a written report to the board and to the Independent Police Review Director respecting the disposition, with reasons. 2007, c. 5, s. 10.

Request for review by board

(5) A complainant may, within 30 days after receiving the notice under subsection (2), request that the board review the complaint by serving a written request to that effect on the board. 2007, c. 5, s. 10.

Review by board

(6) Upon receiving a written request for a review of a complaint previously dealt with by the chief of police, the board shall,

(a) advise the chief of police of the request;

(b) subject to subsection (7), review the complaint and take any action, or no action, in response to the complaint, as it considers appropriate; and

(c) notify the complainant, the chief of police and the Independent Police Review Director in writing of its disposition of the complaint, with reasons. 2007, c. 5, s. 10.

Review by committee of board

(7) A board that is composed of more than three members may appoint a committee of not fewer than three members of the board, two of whom constitute a quorum for the purpose of this subsection, to review a complaint and to make recommendations to the board after the review and the board shall consider the recommendations and shall take any action, or no action, in response to the complaint as the board considers appropriate. 2007, c. 5, s. 10.

Public meeting

(8) In conducting a review under this section, the board or the committee of the board may hold a public meeting respecting the complaint. 2007, c. 5, s. 10.

83. (1) A hearing held under subsection 66 (3), 68 (5), 69 (8), 76 (9) or 77 (7) shall be conducted in accordance with the *Statutory Powers Procedure Act*. 2007, c. 5, s. 10.

Application of this section

(2) Subsections (3), (4), (5), (6), (11), (12), (13), (14), (15) and (16) apply to any hearing held under this Part. 2007, c. 5, s. 10.

Parties

(3) The parties to the hearing are the prosecutor, the police officer who is the subject of the hearing and, if the complaint was made by a member of the public, the complainant. 2007, c. 5, s. 10.

Notice and right to representation

(4) The parties to the hearing shall be given reasonable notice of the hearing, and each party may be represented by a person authorized under the *Law Society Act* to represent the party. 2007, c. 5, s. 13 (6).

Examination of evidence

(5) Before the hearing, the police officer and the complainant, if any, shall each be given an opportunity to examine any physical or documentary evidence that will be produced or any report whose contents will be given in evidence. 2007, c. 5, s. 10.

Police Act, RSQ, c. P-13.1

89. The decision of the council may be appealed before three judges of the Court of Québec, who shall rule on the matter in the last instance.

The appeal is filed at the office of the Court of Québec in the judicial district where the appellant is domiciled, within 30 days of the date of service of the decision; it must be accompanied with a notice of at least 10 days of the date of its filing and be served on the Minister.

The rules of the Code of Civil Procedure (chapter C-25) relating to the production of evidence, hearing and judgment apply, with the necessary modifications, to an appeal brought under this division. The judges hearing and deciding the appeal are vested with the powers and immunity of commissioners appointed pursuant to the Act respecting public inquiry commissions (chapter C-37), except the power to order imprisonment. They may make any order they consider appropriate to safeguard the rights of the parties. They may confirm, quash or amend the decision referred to them.

If the appeal is granted, the court may order the municipality to pay the appellant a sum of money as compensation for costs. The court may also, if the resolution concerned the dismissal of the appellant, order the municipality to pay all or part of the salary the appellant was not paid during the suspension and to reinstate, for the period of the suspension, the other benefits and allowances to which the appellant was entitled before the suspension.

2000, c. 12, s. 89.

DIVISION II POLICE ETHICS COMMISSIONER

128. The Police Ethics Commissioner shall receive and examine any complaint lodged against a police officer by any person pursuant to section 143 or 143.1 or subdivision 4, as applicable.

In addition, the Police Ethics Commissioner shall exercise the functions provided for in subdivision 4 of Division III with respect to applications for a remission for a transgression of the Code of ethics filed by a police officer, and shall file applications for revocation of previously granted remissions.

He shall also exercise any other function assigned to him by the Minister.

2000, c. 12, s. 128; 2006, c. 33, s. 4; 2009, c. 59, s. 3.

147. Every complaint shall be submitted to conciliation. However, a complainant may object to conciliation by stating the reasons why he believes conciliation is inappropriate in his case. He shall give a written statement of the reasons to the Commissioner within 30 days after the lodging of the complaint.

The Commissioner may reject the complaint, giving reasons, if in his opinion, the reasons stated by the complainant do not validly justify his refusal of conciliation. The Commissioner shall inform the complainant of his right to obtain a review of the decision if he submits new facts or elements to the Commissioner within 15 days. The Commissioner shall render his decision within 10 days and the decision is final.

The complainant may at any time before the final decision accept conciliation by withdrawing his objection.

2000, c. 12, s. 147.

148. Every complaint relating to an event that in the opinion of the Commissioner involves the public interest, in particular, events in which death or serious bodily harm has occurred, situations potentially injurious to the public's confidence in police officers, criminal offences, repeat offences or other serious matters, shall be dealt with under his authority. Complaints which are clearly frivolous or vexatious and complaints in respect of which the Commissioner is satisfied that the complainant has valid reasons for objecting to conciliation shall also be dealt with under the Commissioner's authority.

2000, c. 12, s. 148.

149. Within 40 days of receipt of a complaint or of identification of the police officer concerned, the Commissioner shall, after making a preliminary analysis of the complaint,

(1) decide whether the complaint is to be dealt with under his authority or whether he must reject the complaint;

(2) refer the complaint to the appropriate police force for the purposes of a criminal investigation if it appears to him that a criminal offence may have been committed;

(3) where applicable, designate the conciliator and transmit the file to him;

(4) inform the complainant, the police officer, the director of the police force concerned and, in the case of a complaint about the conduct of a Québec police officer in another province or a territory of Canada, the competent authority with which the complaint has been lodged in that province or territory, of his decision to refer the complaint to conciliation, to deal with it under his authority or to reject it;

(5) notify the police officer concerned in writing of the substance of the complaint and of the facts enabling the event that gave rise to the complaint to be identified.

2000, c. 12, s. 149; 2009, c. 59, s. 5.

150. The right to lodge a complaint regarding police ethics is prescribed one year after the date of the event or knowledge of the event that gave rise to the complaint.

2000, c. 12, s. 150.

151. Any police officer who resigns, is dismissed or retires remains subject to the jurisdiction of the Commissioner with respect to any act he committed while he was a police officer.

2000, c. 12, s. 151.

152. Every person holding an office, position or employment in a place where a person is deprived of his freedom and every police officer shall, when a person gives him a writing intended for the Commissioner, transmit the writing forthwith to the commissioner without reading it.

Similarly, where he receives a writing from the Commissioner intended for a person deprived of his freedom, he shall give it to that person.

2000, c. 12, s. 152.

153. The Commissioner shall keep a record of all complaints he receives, in the form and manner he determines. He shall acknowledge receipt in writing of every recorded complaint.

2000, c. 12, s. 153.

154. The Commissioner shall designate conciliators for complaints regarding police ethics; the conciliators must not be, nor have been, police officers.

2000, c. 12, s. 154.

155. The costs connected with conciliation shall be borne by the employer of the police officer concerned by the complaint in accordance with the rates established by the Minister.

2000, c. 12, s. 155.

156. The object of the conciliation procedure is to resolve the complaint lodged against one or more police officers through a settlement accepted by both parties.

2000, c. 12, s. 156.

157. During the conciliation proceedings, the complainant and the police officer may be accompanied by a person of their choice.

The presence of the police officer, who may not be in uniform, and of the complainant is mandatory. The conciliation proceedings take place in the presence of both parties; however, the conciliator may meet separately with each party in order to arrive at a settlement.

2000, c. 12, s. 157.

158. As soon as the conciliator concludes that conciliation will not lead to a settlement, he shall report to the Commissioner, and the file shall be returned to the Commissioner to be dealt with under his authority.

2000, c. 12, s. 158.

159. The conciliation proceedings must be completed within 45 days from the date on which the Commissioner refers the complaint to conciliation. The Commissioner may authorize and fix the terms and conditions of any extension.

2000, c. 12, s. 159.

160. The Commissioner may terminate the conciliation proceedings if in his opinion it is in the public interest to do so. In such a case, the complaint shall be returned to the Commissioner to be dealt with under his authority.

2000, c. 12, s. 160.

161. Despite an unsuccessful attempt at conciliation, if the Commissioner is of the opinion that settlement of the complaint is possible and if the police officer and the complainant consent, the Commissioner may return the complaint to conciliation.

2000, c. 12, s. 161.

162. Every settlement resulting from conciliation shall be recorded in writing, approved by the Commissioner, and signed by the complainant and the police officer concerned, and the complaint shall be deemed to have been withdrawn.

2000, c. 12, s. 162.

163. In case of a settlement, no reference to the complaint or to the settlement shall be made in the personal record of the police officer concerned.

2000, c. 12, s. 163.

164. No answer or statement made, in the course of the conciliation, by the complainant or the police officer whose conduct is the subject-matter of the complaint shall be used or admissible as evidence in any criminal, civil or administrative proceedings other than a hearing before the Comité de déontologie policière into an allegation that with intent to mislead the police officer gave the answer or statement knowing it to be false.

2000, c. 12, s. 164.

165. Failing a settlement, the Commissioner may decide to hold an investigation. The holding of an investigation shall not prevent the conciliation procedure from being resumed if the parties consent.

2000, c. 12, s. 165.

171. Within 15 days of his decision to hold an investigation, the Commissioner shall designate a person to act as the investigator.

An investigator may not be assigned to a file involving the police force to which he belongs or has belonged.

2000, c. 12, s. 171.

177. The Commissioner may, on receiving the investigation report, order a supplementary investigation to be conducted within the time and in the manner he determines.

If a complaint about a Québec police officer has been lodged with the competent authority of another province or a territory of Canada and the competent authority has produced a report about the officer's conduct in that province or territory, the Commissioner may ask the competent authority to conduct a supplementary investigation.

2000, c. 12, s. 177; 2009, c. 59, s. 9.

178. Upon completion of the investigation, the Commissioner shall examine the investigation report. He may

(1) dismiss the complaint, if he is of the opinion that it has no foundation in law or is frivolous or vexatious, or that the evidence is insufficient;

(2) cite the police officer to appear before the Comité de déontologie policière if he is of the opinion that the evidence warrants such action;

(3) refer the case to the Director of Criminal and Penal Prosecutions.

The Commissioner may for cause revise any decision made pursuant to subparagraph 1 of the first paragraph.

2000, c. 12, s. 178; 2005, c. 34, s. 85.

219. The Commissioner and the cited police officer are parties to the case.

2000, c. 12, s. 219.

Police Act, RSBC 1996, c. 367

If complaint not resolved informally, investigation must be initiated

90 (1) Subject to sections 89 [*reporting of death, serious harm and reportable injury, and mandatory external investigation in cases of death and serious harm*], 91 [*external investigation of chief constables*] and 92 [*external investigations when in public interest*], if an admissible complaint against a member or former member of a municipal police department is not resolved under Division 4 [*Resolution of Complaints by Mediation or Other Informal Means*], a chief constable of that municipal police department must promptly

(a) initiate an investigation into the matter or notify the police complaint commissioner of the reasons for any delay in initiating an investigation,

(b) appoint a constable of the municipal police department as investigating officer in the investigation, and

(c) notify the police complaint commissioner of the appointment under paragraph (b).

(2) The chief constable may appoint under subsection (1) (b) only a constable who meets both of the following criteria:

(a) the constable has no connection with the complaint;

(b) the constable's rank is equivalent to or higher than the rank of the member or former member whose conduct is the subject of the complaint.

If complaint against chief constable not resolved informally, external investigation must be initiated

91 (1) Despite section 90 (1) [*if complaint not resolved informally, investigation must be initiated*], if an admissible complaint against a chief constable or former chief constable of a municipal police department is not resolved under Division 4 [*Resolution of Complaints by Mediation or Other Informal Means*], then the police complaint commissioner must direct that an investigation into the matter be conducted by either of the following as investigating officer:

(a) a constable of an external police force who is appointed for the purpose of this section by a chief constable, a chief officer or the commissioner, as the case may be, of the external police force;

(b) a special provincial constable appointed for the purpose of this section by the minister.

(2) In making an appointment under subsection (1) (b), the minister must consider the recommendations, if any, of the police complaint commissioner.

(3) A chief constable, a chief officer or the commissioner referred to in subsection (1) (a)

- (a) may appoint only a constable who meets both of the following criteria:
 - (i) the constable has no connection with the complaint;
 - (ii) the constable's rank is equivalent to or higher than the rank of the chief constable or former chief constable whose conduct is the subject of the complaint,
- (b) must notify the police complaint commissioner of the appointment, and
- (c) must notify the police complaint commissioner of the reasons for any delay in initiating the investigation.

124 (1) This section applies when a discipline authority is required to convene a discipline proceeding under section 112 (3) [*discipline authority to review final investigation report and give early notice of next steps*] or 116 (3) [*discipline authority to review supplementary report and give notice of next steps*] in respect of the conduct of a member or former member.

(2) Each allegation of misconduct against the member or former member concerned, other than those that may have been resolved at a prehearing conference, must be read to the member or former member at the discipline proceeding, and the member or former member must be asked to admit or deny each of those allegations.

(3) Only the following records may be considered at a discipline proceeding:

- (a) the final investigation report and the evidence and records referenced in it;
- (b) any supplementary report, investigation report under section 132 [*adjournment of discipline proceeding for further investigation*] or other separate reports prepared in respect of the investigation, and the evidence and records referenced in them;
- (c) any other relevant written records, including, without limitation, a complainant's submissions and transcripts made under section 113 [*complainant's right to make submissions*].

(4) The discipline authority may sever from reports and records referred to in subsection (3) any portions that must or may be excepted from disclosure by the head of a public body under Division 2 of Part 2 of the *Freedom of Information and Protection of Privacy Act*.

(5) Only the following may be called to give evidence at a discipline proceeding:

- (a) the investigating officer who prepared the final investigation report, the supplementary report or the investigation report under section 132 [*adjournment of discipline proceeding for further investigation*];
- (b) those witnesses on whom a notice to appear is served under section 121 (1) (b) or (2) [*if member's or former member's request to question witnesses is accepted*].

(6) The testimony of witnesses, including the member or former member concerned, must be taken on oath administered by the discipline authority.

(7) A witness in a discipline proceeding, including the member or former member concerned,

(a) has the same immunities as a witness who appears before the court, and

(b) is considered to have objected to answering any question that may

(i) incriminate the witness in a criminal proceeding, or

(ii) establish the witness's liability in a civil proceeding.

(8) The discipline representative, if any, and the member or former member, or her or his agent or legal counsel, if any, may examine or cross-examine

(a) the investigating officer who prepared the final investigation report, a supplementary report, an investigation report under section 132 [*adjournment of discipline proceeding for further investigation*] or any other record in respect of the investigation, and

(b) any witness on whom a notice to appear is served under section 121 (1) (b) or (2) [*if member's or former member's request to question witnesses is accepted*].

(9) The member or former member concerned is not compellable at a discipline proceeding under this section, but

(a) the member or former member may give evidence if she or he chooses to do so,

(b) the member or former member, or her or his agent or legal counsel, if any, may make submissions concerning

(i) the complaint, if any,

(ii) the adequacy of the investigation, and

(iii) the disciplinary or corrective measures that would be appropriate, and

(c) an adverse inference may be drawn from the member's or former member's failure to testify.

(10) Despite section 123 (9) [*matters related to discipline proceeding*] and at any time on request of a witness who is not a member, the discipline authority must allow the witness to be accompanied by one other person when the witness is giving evidence at the discipline proceeding.

(11) A discipline proceeding must be transcribed or electronically recorded, and the transcription or recording must be considered to be correct and to constitute part of the record of the proceeding.

(12) The validity of a discipline proceeding is not affected if, by a mechanical or human failure or other accident, the transcription or recording of the proceeding is destroyed, interrupted or incomplete.

Chief constable may delegate discipline authority functions to deputy chief constable or senior officer

134 (1) A chief constable of a municipal police department may delegate any of her or his powers or duties as discipline authority in a member's or former member's case under this Part to

- (a) a deputy chief constable or senior officer of the municipal police department, or
- (b) a chief constable, deputy chief constable or senior officer of another municipal police department.

(2) A delegation under this section must be in writing and, as soon as practicable after the delegation is made, the chief constable making the delegation must notify the police complaint commissioner of that delegation and, subject to section 88 *[duty to preserve evidence relating to complaint or report]*, the member or former member concerned.

Review of discipline proceedings

133 (1) Within 10 business days after the date of the disposition record referred to in section 128 (1) *[disciplinary disposition record]*, the discipline authority must

- (a) subject to subsection (2), give the complainant, if any, and the member or former member concerned a report setting out
 - (i) the findings and reasons referred to in section 125 (1) (b) *[conclusion of discipline proceeding]*,
 - (ii) the disciplinary or corrective measures proposed by the discipline authority under section 128 (1) (a) *[disciplinary disposition record]* and any policy changes being considered by the discipline authority in respect of the complaint, if any,
 - (iii) the reasons for the proposed disciplinary or corrective measures or policy changes,
 - (iv) any noted aggravating and mitigating factors in the case, and
 - (v) the recourse available to the complainant under this section, and

(b) provide the police complaint commissioner with a copy of the report given under paragraph (a) to the complainant, if any, and the member or former member concerned.

(2) The discipline authority may sever from the report given to the complainant, if any, under subsection (1) (a) any portions of that report that must or may be excepted from disclosure by the head of a public body under Division 2 of Part 2 of the *Freedom of Information and Protection of Privacy Act*.

(3) Within 10 business days after receiving the report referred to in subsection (1), the complainant may apply to the police complaint commissioner for disclosure of all or part of the information that was severed from the report.

(4) The police complaint commissioner may disclose information requested under subsection (3) only if the police complaint commissioner considers that

(a) disclosure is necessary for the applicant to pursue rights granted by this Act, and

(b) disclosure is appropriate having regard to Part 2 of the *Freedom of Information and Protection of Privacy Act*.

(5) If aggrieved by any of the matters in the report described in subsection (1) (a) (i) to (iv), the complainant or member or former member concerned may file with the police complaint commissioner a written request for a public hearing or review on the record in accordance with section 136 (1) [*time limit for requesting public hearing or review on the record*].

(6) Unless a public hearing or review on the record is arranged by the police complaint commissioner, the findings referred to in subsection (1) (a) (i) and the determination as to appropriate disciplinary or corrective measures recorded in the disposition record in respect of the matter are final and conclusive and not open to question or review by a court on any ground.

Resolution by mediation

158 (1) If, at any time before an investigating officer's final investigation report respecting an investigation into a complaint concerning the conduct of a member or former member is filed with the discipline authority, the complaint appears to the discipline authority to be such that, under the guidelines, the matter is suitable for resolution by mediation, the discipline authority may request the police complaint commissioner to approve of an attempt at mediation under this Division.

(2) Subject to subsection (3), if the police complaint commissioner approves of an attempt at mediation in respect of the complaint,

(a) the police complaint commissioner must

- (i) notify the complainant, the member or former member whose conduct is the subject of the complaint and the discipline authority,
 - (ii) direct the complainant to attend, at a time and place determined by the mediator, a pre-mediation conference and each required mediation session, unless mediation is cancelled by the police complaint commissioner under this Division,
 - (iii) direct the investigating officer to suspend the investigation and the filing of any reports until further direction by the police complaint commissioner,
 - (iv) notify the complainant of the matters set out in sections 159 (1) [*complainant assistance*] and 164, and of the suspension, under subparagraph (iii) of this paragraph, of the investigation and report filing, and
 - (v) provide the complainant with a copy of the police complaint commissioner's list, established under section 177 (2) (k), of support groups and neutral dispute resolution service providers and agencies, and
- (b) the discipline authority must
- (i) order the member or former member to attend, at a time and place determined by the mediator, a pre-mediation conference and each required mediation session, and
 - (ii) proceed with attempting mediation in accordance with the guidelines.
- (3) The member or former member concerned must comply with an order under subsection (2) (b) (i).
- (4) A complainant directed to attend a pre-mediation conference under subsection (2) (a) (ii) may apply to the police complaint commissioner before the pre-mediation conference under section 160, or to the mediator at that pre-mediation conference, to be excused from participation in the mediation process under this Division.
- (5) If satisfied that the complainant has a good reason for not participating in the mediation process, the police complaint commissioner must cancel the mediation, lift the suspension of the investigation and report filing, if any, and notify the discipline authority, the investigating officer, the member or former member concerned, the mediator and the complainant.
- (6) If mediation is cancelled under subsection (5), the complaint must continue to be dealt with under and in accordance with Division 3.

Police Act, SS, 1990 c P-15.01

Duties and powers of Police Complaints Commission (PCC)

39(1) If the PCC receives a public complaint pursuant to subsection 38(4), the PCC shall:

- (a) log the receipt of the complaint;
- (b) inform the person making the complaint of:
 - (i) the procedures that will be followed; and
 - (ii) the rights of the complainant pursuant to this Act;
- (c) if the complaint is with respect to a police service or a member, provide copies of the complaint to the board, the department, the member who is the subject of the complaint and the chief; and
- (d) if the complaint is with respect to a chief, provide copies of the complaint to the department, the chief and the board.

(1.1) The PCC shall:

- (a) establish and maintain a record of all public complaints received by police services and their dispositions;
- (b) inform, advise and assist complainants;
- (c) advise and assist the chiefs and boards, the hearing officer and the commission with respect to the handling of public complaints;
- (d) monitor the handling of public complaints and ensure that public complaints are handled in a manner consistent with the public interest;
- (e) inspect annually, or at those times directed by the minister, the records, operations and systems of administration for the handling of public complaints by police services.

Mediation

43.1(1) Notwithstanding any other provision in this Part or the regulations, the PCC may, at any point before the completion of a hearing, refer the matter that is the subject of the hearing to mediation if:

- (a) the PCC has the consent of the complainant and the member or chief who is the subject of the hearing; and
- (b) the PCC and the chief or board, as the case may be, are of the opinion that it is in the public interest to do so.

Investigations re member

45(1) If a public complaint is a complaint concerning the actions of a member, the PCC, in consultation with the chief, shall cause an investigation into the complaint to be conducted in accordance with this section as soon as is practicable following the receipt of the complaint.

(2) This section applies to all public complaints concerning the actions of a member, including complaints alleging actions by a member that may constitute an offence pursuant to an Act or an Act of the Parliament of Canada.

(3) The PCC shall direct that an investigation into the complaint be conducted:

- (a) by the PCC;

- (b) by the police service whose member is the subject of the complaint;
- (c) by the police service whose member is the subject of the complaint with the assistance of an observer appointed by the PCC to monitor the investigation and report to the PCC; or
- (d) by a police service other than the police service whose member is the subject of the complaint.

Complaint respecting contravention of regulations

48(3) Subject to subsection (4), where a hearing is conducted for the purposes of clause (1)(b), the complainant has the right to:

- (a) attend the hearing; and
- (b) be represented by legal counsel at the complainant's own expense;

but is not entitled to call or cross-examine witnesses.

(4) Where the hearing officer is satisfied that it is not in the public interest that a complainant attend all or any part of the hearing, the hearing officer may exclude the complainant from all or that part of the hearing.

Investigations re chief

49(1) If a public complaint is a complaint concerning the actions of a chief, the PCC, in consultation with the board, shall cause an investigation into the complaint to be conducted in accordance with this section as soon as is practicable following the receipt of the complaint.

(2) This section applies to all public complaints concerning the actions of a chief, including complaints alleging actions by a chief that may constitute an offence pursuant to an Act or an Act of the Parliament of Canada.

53 (9) An order of a hearing officer pursuant to this section may be appealed to the commission by a member or chief who is the subject of the order, or by the chief or board that applied to the hearing officer for a review pursuant to section (3), for a review of:

- (a) the order; or
- (b) any terms or conditions of the order.

56(1) Where a hearing is proceeded with pursuant to section 48, 52, 54.1 or 55.1, the rules prescribed in this section apply to the hearing.

(2) All hearings pursuant to this Part are to be conducted by a hearing officer designated by the minister from the hearing officers appointed pursuant to section 17.

(3) All hearings governed by this Part shall begin within 60 days after the designation of the hearing officer by the minister and shall be completed within a reasonable time and without undue delay, but may be adjourned from time to time.

(4) At least 10 days before the commencement of a hearing governed by this Part, the hearing officer shall cause a notice in writing of the time, place and purpose of the hearing to be served on:

- (a) the person who is the subject of the hearing;
- (b) where a public complaint is involved, the complainant and the PCC; and

- (c) any other person that the hearing officer considers appropriate.
- (5) The rules of evidence for all hearings conducted pursuant to this Part are the same as in civil cases in Her Majesty's Court of Queen's Bench for Saskatchewan.
- (6) No evidence given by a chief, member or civilian member during a hearing governed by this Part is to be used or received against him or her in any civil proceedings or in any proceedings pursuant to any other Act if it tends to incriminate him or her, subject him or her to punishment or establish his or her liability.
- (7) A member or chief with respect to whom a public complaint is made or who is the subject of internal discipline proceedings is entitled to:
 - (a) appear before the hearing officer; and
 - (b) be represented by legal counsel or an agent.
- (8) Subject to the regulations, a witness or interpreter, other than one employed by a police service, attending a hearing governed by this Part is entitled to those fees and expenses that would be payable to a witness or interpreter pursuant to The Queen's Bench Fees Regulations.
- (9) A hearing pursuant to this Part is open to the public, representatives of the local police association and the complainant.
- (9.1) Notwithstanding subsection (9), the hearing officer may exclude the public, representatives of the local police association or the complainant from any part of the hearing where the hearing officer is of the opinion that the evidence:
 - (a) may prejudice an investigation or the security of police operations;
 - (b) will unduly violate the privacy of a person other than the member whose conduct is the subject of the hearing; or
 - (c) relates solely to employment performance and not to conduct and:
 - (i) does not have any impact on a member of the public or on public confidence in the police service or policing generally; and
 - (ii) it is not contrary to the public interest to do so.
- (9.2) The hearing officer may:
 - (a) make an order banning the publication of any name or address of an individual involved in a hearing;
 - (b) if the conditions set out in clause (9.1)(c) are met, make an order banning:
 - (i) the publication of any oral evidence given or documentary evidence submitted at the hearing; or
 - (ii) the publication of the decision; or
 - (c) do any combination of the things mentioned in clauses (a) and (b).
- (9.3) The hearing officer may make an order directing the party prosecuting the hearing to reimburse a complainant for reasonable expenses, other than legal costs, that the complainant incurs in attending the hearing.
- (10) All oral evidence received at a hearing conducted pursuant to this Part, is to be taken down in writing or recorded by electronic means.
- (11) All the evidence taken down in writing or recorded by electronic means and all documentary evidence and things received in evidence at a hearing conducted pursuant to this Part forms the record of the hearing.
- (12) All evidence heard before a hearing officer shall be taken under oath or

affirmation.

(13) At any hearing governed by this Part, the burden of proof lies with the person prosecuting the offence.

Police Act, SNB 1977, c. P-9.2

18(1) There shall be a New Brunswick Police Commission appointed by the Lieutenant-Governor in Council composed of a chair, a vice-chair and such other members as the Lieutenant-Governor in Council sees fit to appoint, each to be appointed for a term not to exceed ten years.

27.3(1) If the Commission characterizes a complaint as a complaint concerning the conduct of a police officer or reviews the decision of a chief of police or civic authority on characterization and determines that the complaint concerns the conduct of a police officer, the Commission shall immediately refer the conduct complaint to the appropriate chief of police to process the complaint.

27.3(2) Notwithstanding subsection (1), the Commission shall refer a conduct complaint to a civic authority to process the complaint if the complaint concerns the conduct of a deputy chief of police.

28.4(1) Upon review of the investigation report, the chief of police shall
 (a) take no further action where the chief of police determines that there is insufficient evidence that the police officer committed a breach of the code, or
 (b) proceed to a settlement conference where the chief of police determines that there is sufficient evidence that the police officer committed a breach of the code.
 28.4(2) If the chief of police decides to take no further action under paragraph (1)(a), the chief of police shall give the police officer, complainant and Commission notice in writing of his or her decision and shall give the complainant notice in writing that he or she may request the Commission to review the decision.

28.9(2) The complainant may attend and make representations at a settlement conference.
 2005, c.21, s.15.

31.8(2) The complainant may attend and make representations at a settlement conference.
 2005, c.21, s.15.

32.5 The parties to an arbitration hearing are, as the case may be,
 (a) the police officer and the chief of police, or
 (b) the chief of police and the civic authority.

Police Act, RSA 2000, c P-17 s. 43.1

17(1) The Board

- (a) may, on its own motion, conduct inquiries respecting complaints,
- (a.1) shall conduct reviews of decisions of a commission referred to the Board under section 43(12)(b)(i),
- (b) shall conduct appeals referred to the Board under section 48 in accordance with section 19.2,
- (c) shall at the request of the Minister conduct inquiries in respect of any matter respecting policing or police services, and
- (d) shall conduct appeals under section 21 of the *Peace Officer Act*.

(2) If the Board is of the opinion that the actions of a police officer who is the subject of an appeal or an inquiry may constitute an offence under an Act of the Parliament of Canada or the Legislature of Alberta, the Board shall refer the matter to the Minister of Justice and Attorney General.

(3) Notwithstanding that the actions of the police officer have been referred to the Minister of Justice and Attorney General under subsection (2), if the Board is of the opinion that those actions also constitute a contravention of the regulations governing the discipline or the performance of duty of police officers, the matter, as it relates to that contravention, may be proceeded with by the Board unless the Minister of Justice and Attorney General directs otherwise.

RSA 2000 cP-17 s17;2005 c31 s9;2006 cP-3.5 s38;
2010 c21 s4

18 The decision of the Board in respect of a matter appealed to it under section 48 may,

- (a) within 30 days from the day that the Board gives its decision, and
- (b) with the leave of a single judge of the Court of Appeal,

be appealed to the Court of Appeal on a question of law.

RSA 2000 cP-17 s18;2008 c23 s2

Bringing of complaints

43(1) All complaints with respect to a police service or a police officer, other than the chief of police, shall be referred to the chief.

(2) All complaints with respect to the chief of police must be referred to the chair of the commission.

(3) Repealed 2010 c21 s12.

(4) On receipt of a complaint under subsection (1), the chief of police shall determine whether the complaint or a portion of the complaint is a complaint as to

- (a) the policies of or the services provided by the police service, or
- (b) the actions of a police officer.

(5) A complaint or that portion of the complaint that is a complaint

(a) as to the policies of or services provided by the police service shall be disposed of in accordance with section 44, and

(b) as to the actions of a police officer shall be disposed of in accordance with sections 45 to 48.

(6) Where the chief of police initiates a complaint with respect to a police officer, the chief shall deal with it in the same manner as if it were made by another person and referred to the chief under subsection (1).

(7) If, at any time before or during an investigation into a complaint under subsection (1), it appears to the chief of police that the complaint is clearly frivolous, vexatious or made in bad faith, the chief may recommend in writing to the commission that the complaint be dismissed.

(8) On consideration of the recommendation of the chief of police under subsection (7), and after reviewing the written complaint and making any inquiries the commission considers necessary, the commission may dismiss the complaint or direct the chief to deal with the complaint in accordance with this Part.

(9) If, at any time before or during an investigation into a complaint under subsection (2) or section 46(1), it appears to the commission that the complaint is clearly frivolous, vexatious or made in bad faith, the commission may dismiss the complaint.

(9.1) If a complainant under subsection (2) or section 46(1) refuses or fails to participate in an investigation, the commission may dismiss the complaint.

(10) Where a complaint is referred to the commission under section 44(1) and it appears to the commission at any time that the complaint is clearly frivolous, vexatious or made in bad faith, the commission may dismiss the complaint.

(10.1) If a complainant under section 44(1) refuses or fails to participate in an investigation, the commission may dismiss the complaint.

(11) The chief of police, with respect to a complaint referred under subsection (1), or the commission, with respect to a complaint referred under subsection (2) or section 46(1), shall dismiss any complaint that is made more than one year after

(a) the conduct complained of occurred, or

(b) the complainant first knew or ought to have known that the conduct complained of had occurred,

whichever occurs later.

(12) If the commission decides under subsection (8), (9), (9.1), (10) or (10.1) to dismiss a complaint, the commission shall notify the complainant and the police officer who is the subject of the complaint, if any, in writing of

(a) the decision and the reasons for the decision, and

(b) the right of the complainant, within 30 days of receiving the notice, to request

(i) the Board, with regard to a complaint or portion of a complaint as to the actions of a police officer or a chief of police, or

(ii) the commission, with regard to a complaint or portion of a complaint as to the policies of or services provided by a police service,

to review the decision.

(13) If the chief of police or the commission dismisses a complaint under subsection (11), the commission shall notify the complainant and the police officer who is the subject of the complaint, if any, of the decision in writing.

(14) A request by a complainant under subsection (12)(b) for review of a decision of the commission must be in writing and set out the complainant's reasons for requesting the review.

Informal resolution of complaint

43.1(0.1) The chief of police or the chair of the commission shall, where appropriate, offer an alternative dispute resolution process to the complainant and the police officer who is the subject of the complaint prior to commencing a formal investigation of the complaint.

(1) At any time before or during an investigation into a complaint with respect to the actions of a police officer other than the chief of police, if the complainant and the police officer who is the subject of the complaint consent, the chief may attempt to resolve the complaint informally.

(2) At any time before or during an investigation into a complaint with respect to the actions of a chief of police, if the complainant and the chief consent, the chair of the commission may attempt to resolve the complaint informally.

2005 c31 s19; 2010 c21 s13

47(1) Where a hearing is proceeded with under section 45(3) or 46(4), the following applies:

(a) a notice in writing of the time, place and purpose of the hearing shall be served on the person who is the subject of the hearing at least 10 days before the commencement of the hearing;

(b) a notice in writing of the time, place and purpose of the hearing shall be served at least 10 days before the commencement of the hearing on any other person, in addition to the person referred to in clause (a), as the person conducting the hearing directs;

(c) the person conducting the hearing has, with respect to the holding of a hearing, the same power as is vested in the Court of Queen's Bench for the trial of civil actions

(i) to summon and enforce the attendance of witnesses,

(ii) to compel witnesses to give evidence on oath or otherwise, and

(iii) to compel witnesses to produce documents, records and things;

(d) if a person fails to attend, to answer questions or to produce an item as required under clause (c), the person conducting the hearing may apply to the Court of Queen's Bench for an order committing that person for contempt in the same manner as if that person were in breach of an order or judgment of that Court;

(d.1) if a complainant fails to attend, to answer questions or to produce an item as required under clause (c) or refuses to participate or to follow processes or conducts himself or herself in an inappropriate manner, the person conducting the hearing may dismiss the matter;

(d.2) if a witness fails to attend or to answer questions or refuses to participate or to follow processes or conducts himself or herself in an inappropriate manner, the person conducting the hearing may dismiss the witness and continue with the hearing;

(e) the person conducting the hearing may receive any evidence presented that the person considers relevant to the matter being heard and is not bound by the rules of law respecting evidence applicable to judicial proceedings;

(f) repealed 2005 c43 s9;

(g) all oral evidence received shall be taken down in writing or recorded by electronic means;

(h) all the evidence taken down in writing or recorded by electronic means and all documentary evidence and things received in evidence at a hearing form the record of the proceeding;

(i) the person conducting the hearing may from time to time adjourn the hearing;

(j) the person in respect of whom the complaint is made is entitled

(i) to appear before the person conducting the hearing,

(ii) to make representations to the person conducting the hearing, and

(iii) to be represented by a lawyer or an agent;

(k) a witness, other than one employed for a police service, attending a hearing is entitled to the same fees and allowances as a witness summoned to attend at the Provincial Court unless otherwise provided for by a regulation made under this Act.

(2) Notwithstanding that the actions of a police officer have been referred to the Minister of Justice and Attorney General under section 45(2)(a) or 46(3)(a), if the person who referred the matter to the Minister of Justice and Attorney General is of the opinion that those actions also constitute a contravention of the regulations governing the discipline or the performance of duty of police officers, the matter as it relates to that contravention shall be proceeded with under section 45(3) or 46(4), as the case may be, unless the Minister of Justice and Attorney General otherwise directs.

(3) Notwithstanding section 45(3) or 46(4), where a matter that is referred to the Minister of Justice and Attorney General under section 45(2)(a) or 46(3)(a) is also to be proceeded with under section 45(3) or 46(4), the hearing of the matter under section 45(3) or 46(4) may be deferred until the proceedings respecting the offence are concluded.

(4) On considering a matter that is the subject of a complaint,

(a) the chief of police or the chief's designate, in the case of a complaint under section 45, or

(b) the commission, in the case of a complaint under section 46,

may dismiss the matter or, subject to the regulations, take any action against the person in respect of whom the complaint is made that

(c) the chief of police or the chief's designate, in the case of a complaint under section 45, or

(d) the commission, in the case of a complaint under section 46, considers proper in the circumstances.

(5) On making a decision after considering the matter in respect of which a complaint is made,

(a) the chief of police, in the case of a complaint under section 45, or

(b) the commission, in the case of a complaint under section 46,

shall in writing advise the person against whom the complaint is made and the complainant

(c) of the findings of the hearing and any action taken or to be taken under subsection (4), or

(d) where a hearing is not held, of the disposition of the complaint and the grounds on which the disposition was made,

and of the right of appeal provided for under this Act.

Royal Canadian Mounted Police Act, RSC 1985, c R-10 s. 47.3

Final level — Deputy Commissioner

42(4) The Deputy Commissioner designated by the Commissioner for the purposes of this section constitutes the final level in the appeal process with respect to appeals taken by members, other than officers, from informal disciplinary actions referred to in paragraphs 41(1)(e) and (f) and the Deputy Commissioner's decision on any such appeal is final and binding and, except for judicial review under the *Federal Courts Act*, is not subject to appeal to or review by any court.

Commissioner's decision final

45.16(7) A decision of the Commissioner on an appeal under section 45.14 is final and binding and, except for judicial review under the *Federal Courts Act*, is not subject to appeal to or review by any court.

47.3 Section 16 of the *Canada Evidence Act* applies in respect of any proceedings before a board as though

- (a) the proceeding were a legal proceeding; and
- (b) the board were a judge, justice or other presiding officer.
 - R.S., 1985, c. 8 (2nd Supp.), s. 18.

Law Enforcement Review Act, CCSM cL75 s. 24(1)

No investigation by department involved in complaint

12(7) Except as otherwise provided in this section, the Commissioner shall not employ for purposes of investigation any person who is, or at the time of the occurrence complained of was, a member of the police department involved in the complaint.

Internal investigation

12(8) At the written request of the complainant, the Commissioner may refer the complaint to the respondent's Chief of Police for internal investigation.

Informal resolution of complaint

15(1) Where the investigation has been completed, the Commissioner shall consult with the complainant, the respondent and the respondent's Chief of Police for the purpose of resolving the complaint informally.

Agreement between complainant and respondent

15(2) Where the complainant and the respondent concur, but the respondent's Chief of Police does not concur, with a proposal to resolve the complaint informally, the Commissioner may nevertheless resolve the complaint informally in accordance with the proposal.

No record of informal resolution

15(3) Where the complaint is resolved informally, no penalty shall be imposed against the respondent and no record of either the complaint or the informal resolution thereof shall be entered on the service record of the respondent.

Admission of disciplinary default

16(1) Where the respondent admits having committed a disciplinary default, the Commissioner shall recommend one or more of the penalties set out in section 30.

Appropriate penalty determined

16(2) Before recommending one or more of the penalties set out in section 30, the Commissioner shall consult with the respondent's Chief of Police and shall examine the service record of the respondent.

Matters relevant to appropriate penalty

16(3) The purpose of the Commissioner's consultation with the respondent's Chief of Police shall be to determine the opinion of the Chief of Police with respect to

(a) the severity of the alleged disciplinary default; and

(b) the contents of the respondent's service record;

and the Commissioner's recommendation concerning an appropriate penalty shall be based solely upon these two factors.

Imposition of penalty

16(4) If the respondent concurs with the recommendation of the Commissioner, the respondent's Chief of Police shall impose the penalty; but where the respondent is a Chief of Police, the employer of the Chief of Police shall impose the penalty.

Referral to provincial judge

16(5) If the respondent does not concur with the recommendation of the Commissioner, the Commissioner shall refer the complaint to a provincial judge for a hearing on the question of the penalty to be imposed against the respondent.

Statement of facts and recommended penalty

16(6) Where the Commissioner refers a complaint to a provincial judge under subsection (5), the Commissioner shall prepare and forward to the provincial judge a written statement of

(a) the facts which constitute the subject matter of the complaint; and

(b) the penalty or penalties recommended by the Commissioner under subsection (1);

and the Commissioner shall provide the respondent with a copy of the statement.

S.M. 1992, c. 45, s. 6.

Referral for hearing

17(1) The Commissioner shall refer a complaint to a provincial judge for a hearing on the merits of the complaint when

(a) a provincial judge has under section 13 ordered the Commissioner to refer the complaint for a hearing; or

(b) disposition of the complaint within the terms of section 15 or 16 is not possible.

23(2) The complainant and the respondent are parties to a hearing, but the provincial judge hearing the matter may add such other parties, and may receive submissions from such other persons, as he or she considers appropriate.

S.M. 1992, c. 45, s. 10.

Evidence

24(5) A provincial judge may receive and accept such evidence and information on oath, affirmation, affidavit, or otherwise as the provincial judge in his or her discretion considers appropriate, whether admissible in evidence in a court of law or not; and the evidence and information shall be recorded.

Right to participate

24(6) At every hearing, the parties may be present, may call witnesses, may cross-examine witnesses in respect of viva voce or affidavit evidence, and may be represented by counsel.

Respondent not compellable

24(10) The respondent is not compellable as a witness at a hearing before a provincial judge.

Royal Newfoundland Constabulary Act, 1992, c R-17

18. (1) The Lieutenant-Governor in Council shall appoint a Royal Newfoundland Constabulary Public Complaints Commission consisting of a commissioner.

(2) The commissioner shall supervise and direct the officers, investigators and other employees and the work of the commission.

(3) The commissioner shall

(a) serve for 5 years during good behaviour; and

(b) continue in office until he or she is reappointed or replaced.

(4) The commissioner shall

(a) act as a registrar of complaints received and ensure that complaints are dealt with in accordance with this Act; and

(b) perform the duties and functions prescribed for him or her by this Act.

(5) Where the commissioner is unable to act as commissioner the Lieutenant-Governor in Council may temporarily appoint a person to carry out the duties of the commissioner under this Act, and where the position of commissioner is vacated, the Lieutenant-Governor in Council shall appoint a person to fill that vacancy and that person shall be appointed to hold office for the remainder of the term of office of the commissioner being replaced.

21. Where a complaint has been made against the chief, that complaint shall be immediately taken up by the commissioner as if that complaint were an appeal under subsection 25(3).

24. (1) Where, under section 22, a complaint is filed with the commissioner or is received at a constabulary office, that complaint shall be referred to the chief, or where the chief is not available, the deputy chief.

(2) Where a complaint is received at a constabulary office, the chief or deputy chief shall notify the commissioner of that complaint.

(3) Upon receipt of a complaint under subsection (1), the chief, or the deputy chief shall investigate the complaint and that investigation shall be completed as soon as is practicable but no later than 3 months from the date the complaint is filed or received.

(4) The chief or the deputy chief may appoint a police officer to investigate complaints referred to him or her under subsection (1).

(5) Notwithstanding subsection (3), the chief or deputy chief may, where he or she believes it to be in the public interest to do so, transmit the complaint to the commissioner and that complaint shall be considered by the commissioner under section 26 as if it were an appeal under section 25.

29. (1) The Lieutenant-Governor in Council shall, on the recommendation of the minister, appoint a panel of persons to act as adjudicators.

(2) A panel appointed under subsection (1) shall consist of 12 persons, each of whom shall be a lawyer and 1 of them shall be appointed as the chief adjudicator.

(3) A member of the panel shall

(a) serve for 3 years during good behaviour; and

(b) continue in office until reappointed or replaced.

(4) The Lieutenant-Governor in Council shall determine the rate of remuneration and allowances for travelling and other expenses of the members of the panel.

30. (1) The parties to a proceeding before an adjudicator are

(a) the commissioner, who shall have the carriage of the matter;

(b) the complainant;

(c) the police officer who is the subject of the complaint;

(d) the chief, in the case of an appeal by the police officer who is the subject of the complaint; and

(e) a person who satisfies the adjudicator that he or she has a substantial interest in the complaint.

(2) The adjudicator shall notify the parties, in writing, of the time and place of the hearing and the notices shall contain a copy of the complaint.

Appeal to Trial Division

36. (1) The complainant or the police officer who is the subject of the complaint may appeal an order or decision of the commissioner under paragraph 22.1(a), subsection 22(9), 28(1), 28(1.1) or of the adjudicator under section 33 by way of application to the Trial Division.

(2) An appeal shall not be made without leave of a judge of the Trial Division.

Police Act, RSPEI 1988, c P-11.1

26. After a complaint is made to a chief officer of a police department about the conduct of a police officer of the police department, the chief shall, subject to subsections 25(1), (2) and (4), promptly

- (a) designate another police officer of the police department to conduct an investigation of the complaint; or
- (b) ask the chief officer of another police service to designate a member of that police service to conduct an investigation of the complaint. 2006,c.16,s.26.

28. (1) Where a complainant is notified under subsection 25(3) that his or her complaint has been dismissed by the chief officer under subsection 25(1) or (2), the complainant may, within 30 days after the day the notice is served on the complainant, request the Police Commissioner to review the decision.

(2) Where a complainant is notified under subsection 27(9) that his or her complaint has been dismissed by the chief officer under subsection 27(2) or clause 27(3)(b), the complainant may, within 30 days after the day the notice is served on the complainant, request the Police Commissioner to review the decision and the complaint.

(3) Where a party to a complaint is notified under subsection 27(9) that the chief officer has under subsection 27(8)

- (a) determined that the respondent has breached the Code; and
- (b) imposed a disciplinary penalty on the respondent in respect of the breach,

and the party is aggrieved by either decision or by both decisions, the party may, within 30 days after the day the notice is served on the party, request the Police Commissioner to review the decision or decisions and the complaint

32. (1) Where an investigator under subsection 29(3) refers a request and complaint to the Police Commissioner for a hearing, the Police Commissioner shall, as soon as possible after the referral, conduct a hearing in respect of the request and complaint.

(5) At a hearing conducted by the Police Commissioner

- (a) the complainant;
- (b) the respondent;
- (c) the chief officer of the police department, or the chief officer's delegate;

(d) any person who can demonstrate a personal interest in the proceedings; and

(e) the Minister,

are entitled to

(f) appear and be heard;

(g) be represented by counsel or another agent, including a union representative;

(h) be allowed to examine any physical or documentary evidence that will be produced or given in evidence; and

(i) call witnesses and examine or cross-examine all witnesses.

Police Act, SNS 2004, c. 31

11 (1) The Governor in Council shall appoint a person to be the Nova Scotia Police Complaints Commissioner.

(2) The Complaints Commissioner holds office for a term not exceeding three years and may be re-appointed.

(3) The Complaints Commissioner shall be paid such salary or remuneration and be entitled to the necessary expenses as determined by the Governor in Council. *2004, c. 31, s. 11.*

Duties of Commissioner

12 (1) The Complaints Commissioner shall

(a) investigate and attempt to resolve complaints referred to the Complaints Commissioner under this Act; and

(b) perform the duties assigned to the Complaints Commissioner by this Act, the regulations, the Minister or the Governor in Council.

(2) The Complaints Commissioner is a member of the Review Board.

(3) For greater certainty, the Complaints Commissioner shall not sit as a member of a panel of the Review Board conducting a hearing into a complaint that has been dealt with by the Complaints Commissioner under this Act. *2004, c. 31, s. 12.*

71 (1) A complaint respecting the police department generally or the conduct of or the performance of a duty of a member of a municipal police department other than the chief officer shall be referred to the chief officer of that police department in accordance with the regulations.

(2) Upon receiving a complaint, the chief officer shall attempt to resolve the matter in an informal manner.

(3) The chief officer may delegate the chief officer's authority to a member of the municipal police department or may ask a member of another police department to investigate the complaint and report on the findings.

(4) The chief officer shall report all complaints to the Complaints Commissioner at the time and in the manner prescribed by regulation. *2004, c. 31, s. 71.*

Report to Review Board or referral to Complaints Commissioner

72 (1) Where a complaint is satisfactorily resolved by the chief officer, a copy of the complaint and a notice of the manner of the final disposition shall be forwarded to the Review Board and the Review Board may publish statistics showing the nature and resolution of such complaints.

(2) Where a complaint is not satisfactorily resolved by the chief officer and where the person making the complaint or the member of a municipal police force has requested a review of that decision by the Review Board, the complaint shall be referred to the Complaints Commissioner in accordance with the regulations. *2004, c. 31, s. 72.*

Complaint about chief officer

73 (1) A complaint respecting the conduct or performance of duty of a member of a municipal police department who is the chief officer shall be referred to the board.

(2) The board shall investigate the complaint and attempt to resolve the complaint.

(3) The board may designate a person to investigate the complaint and report to the board.

(4) A person conducting an investigation pursuant to this Section is a special constable and has all the powers and immunities of a peace officer during the investigation and any hearing related to the matter under investigation.

(5) Where the complaint is not satisfactorily resolved by the board and where the person making the complaint or the chief officer has requested a review of that decision by the Review Board, the complaint shall be referred to the Complaints Commissioner in accordance with the regulations.

(6) The board shall report all complaints concerning a chief officer to the Complaints Commissioner at the time and in the manner prescribed by the regulations. *2004, c. 31, s. 73.*

77 At a hearing of the Review Board,

- (a) where the review is the result of or involves a complainant, the complainant;
- (b) a member of a municipal police department who is the subject of complaint or disciplinary proceedings;
- (c) the chief officer or the chief officer's delegate;
- (d) the board;
- (e) any person who can demonstrate a personal interest in the proceedings; and
- (f) the Minister,

are entitled to be parties to the proceedings. *2004, c. 31, s. 77.*