

This Act is Current to June 11, 2014

This Act has "Not in Force" sections. See the [Table of Legislative Changes](#).

**POLICE ACT**  
**[RSBC 1996] CHAPTER 367**

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## **Part 1 – Definitions**

### **Definitions**

1 In this Act:

**"auxiliary constable"** means a constable appointed under section 8 (1);

**"board"** means,

(a) in relation to a municipal police department, a municipal police board,

(b) in relation to a designated policing unit, the designated board established for that designated policing unit, and

(c) in relation to a designated law enforcement unit, the designated board established for that designated law enforcement unit;

**"bylaw enforcement officer"** means a bylaw enforcement officer appointed under section 36;

**"chief civilian director"** means a chief civilian director appointed under section 38.03;

**"chief constable"** means the chief constable of a municipal police department;

**"chief officer"** means a chief officer appointed under section 4.2 (2) (c) (iv) (A) or 18.2 (1) (d) (iii) (A);

**"commissioner"** means the commissioner of the provincial police force;

**"committee"** means a local police committee established under section 31;

**"designated board"** means a board established under section 4.1 (7) or 18.1 (7);

**"designated constable"** means a constable appointed under section 4.1 (11);

**"designated law enforcement unit"** means a designated law enforcement unit established under section 18.1 (7);

**"designated policing unit"** means a designated policing unit established under section 4.1 (7);

**"director"** means the director of police services referred to in section 39 (1) [*director of police services*];

**"director's standards"** means standards set by the director under section 40 (1) (a.1), as amended from time to time;

**"enforcement officer"** means an enforcement officer appointed under section 18.1 (11);

**"entity"** means any of the following:

- (a) a municipality;
- (b) a regional district;
- (c) a government corporation;
- (d) any other prescribed entity;

**"government corporation"** means government corporation as defined in the [Financial Administration Act](#);

**"IIO investigator"** means an investigator appointed under section 38.06 (2);

**"independent investigations office"** means the independent investigations office established under section 38.02;

**"municipal constable"** means a constable appointed under section 26;

**"municipal police board"** means a municipal police board established under section 23;

**"municipal police department"** means a municipal police department established under section 26;

**"officer"**, except in Part 7.1 and section 47 (2), means a person appointed under this Act as a provincial constable, special provincial constable, designated constable, municipal constable, special municipal constable, auxiliary constable or enforcement officer, but does not include a person who is a member of the Royal Canadian Mounted Police;

**"police complaint commissioner"** means the police complaint commissioner appointed under section 47 (1) or 49 (1) or (2);

**"provincial constable"** means a constable who is a member of the provincial police force continued under section 5, or who is appointed a constable under section 6;

**"provincial police force"** means the provincial police force continued under section 5;

**"special municipal constable"** means a constable appointed under section 35;

**"special provincial constable"** means a constable appointed under section 9.

## **Police forces in British Columbia**

**1 . 1** The following are police forces in British Columbia:

- (a) the provincial police force;
- (b) a municipal police department;
- (c) if prescribed by the minister as a police force, a designated policing unit;



(d) the independent investigations office.

## **Part 2 — The Minister**

### **Adequate level of policing and law enforcement**

2 The minister must ensure that an adequate and effective level of policing and law enforcement is maintained throughout British Columbia.

### **Responsibilities of Provincial and municipal governments for providing policing and law enforcement services**

3 (1) The government must provide policing and law enforcement services for the following:

- (a) rural areas of the Province;
- (b) municipalities with a population of up to 5 000 persons;
- (c) municipalities with a population of more than 5 000 persons that contract with the minister to engage the provincial police force to act as the municipal police department in their municipalities.

(1.1) Subsection (1) (a) does not apply in relation to the treaty lands of a treaty first nation described in section 66.2 (1.1) (b).

(2) A municipality with a population of more than 5 000 persons must provide policing and law enforcement in accordance with this Act and the regulations by means of one of the following:

- (a) establishing a municipal police department;
- (b) entering into an agreement with the minister under which policing and law enforcement in the municipality will be provided by the provincial police force;
- (c) with the approval of the minister, entering into an agreement with another municipality that has a municipal police department under which policing and law enforcement in the municipality will be provided by the municipal police department of that municipality.

(3) An agreement under subsection (2) (b) or (c) must contain terms that the Lieutenant Governor in Council approves.

### **Minister may provide policing and law enforcement**

**4** (1) Despite section 3, if the minister considers that it is necessary or desirable, the minister may, on terms approved by the Lieutenant Governor in Council, provide or reorganize the policing and law enforcement

(a) in a municipality to which section 3 (2) applies, or

(b) in an area or region of British Columbia.

(2) Costs incurred by the government under subsection (1) (a) are a debt due to and recoverable by the government from the municipality.

### **Designated policing**

**4 . 1** (1) In this section and section 4.2:

**"designated policing"** means policing and law enforcement provided in place of or supplemental to the policing and law enforcement otherwise provided by the provincial police force or a municipal police department;

**"entity"** does not include a municipality with a population of more than 5 000 persons.

(2) Subject to this section and despite section 3, on application by an entity, the minister may establish, on behalf of the entity, a designated policing unit to provide designated policing.

(3) Subject to subsection (4), an application under subsection (2) must include the following:

(a) a description of all policing and law enforcement services to be provided by the designated policing unit on behalf of the entity, including a description of the geographical area within which the services are to be provided;

(b) a description of the qualifications required of the designated constables of the designated policing unit;

(c) a description of the governance of the designated policing unit, including

- (i) the identification or proposed establishment of a board whose function it will be to govern, administer and operate the designated policing unit, and
- (ii) the proposed membership of the board referred to in subparagraph (i);

(d) an explanation as to how the designated policing is to be coordinated with the policing and law enforcement otherwise provided by the provincial police force or municipal police department, as the case may be, in the geographical area within which the designated policing is to be provided;

(e) a written statement endorsing the application, from each of the following persons:

- (i) the chief constable of each municipal police department in the geographical area within which the designated policing is to be provided;
- (ii) the commissioner, if the designated policing is to be provided in a geographical area within which the provincial police force regularly provides policing and law enforcement;

(f) any other information the minister may require.

(4) If the application referred to in subsection (3) is made by an entity that employs special provincial constables, the minister may waive, at the minister's discretion, one or more of the application requirements under subsection (3) (a) to (e).

(5) The minister may approve an entity's application on any terms the minister may require.

(6) If the minister and the entity agree on the terms referred to in subsection (5), the minister must forward the application to the Lieutenant Governor in Council for approval.

(7) If the Lieutenant Governor in Council approves the application, the minister must establish, on behalf of the entity and in accordance with the terms of the application,

(a) a designated policing unit, and

(b) a designated board.

(8) The designated board referred to in subsection (7) may consist of one or more persons appointed under subsection (9).

(9) After consulting with the entity, the minister may appoint those persons the minister considers suitable as members of the board, and the minister must appoint one of the members as chair.

(10) The designated policing unit established under subsection (7) may consist of one or more designated constables appointed under subsection (11).

(11) Subject to the approval of the minister, the designated board may appoint persons considered suitable as designated constables to perform designated policing.

(12) A person appointed under subsection (11) is

(a) appointed for the term specified in the appointment,  
and

(b) subject to the terms of employment determined by the entity.

(13) Subject to the restrictions specified in the appointment and to the regulations, a person appointed under subsection (11) has the powers, duties and immunities of a provincial constable.

(14) Costs incurred by the government in establishing a designated policing unit and its board on behalf of an entity are a debt due to and recoverable by the government.

### **Regulations respecting a designated policing unit**

**4 . 2** (1) In this section, "**local government**" means the council of a municipality, the board of a regional district or the council of a band under the *Indian Act* (Canada).

(2) The minister may make regulations respecting a designated policing unit and its board under section 4.1, including, without limitation, the following:

(a) prescribing the geographical area within which the designated policing unit and its designated constables must operate;

(b) prescribing the practices, procedures and quorum of the board;

(c) prescribing the powers, duties and functions of the board, including,

(i) a duty to

(A) enforce, within the geographical area prescribed by the minister, the bylaws of the local government of the area, the criminal law and the laws of British Columbia,

(B) generally maintain law and order in the area, and

(C) prevent crime,

(ii) a duty to determine in consultation with the minister and the chief officer, if any, the priorities, goals and objectives of the designated policing unit,

(iii) a duty to report to the minister on

(A) the activities of the designated policing unit, and

(B) the implementation of programs and strategies to achieve the priorities, goals and objectives referred to in subparagraph (ii),

(iv) a power to appoint on behalf of the entity, subject to the minister's approval,

(A) a chief officer who has, under the direction of the board, general supervision and command over the designated constables of the designated policing unit,

(B) a deputy chief officer, and

(C) those designated constables the board considers necessary, and

(v) a duty to make rules consistent with this Act, the regulations and the director's standards respecting the following:

(A) the standards, guidelines and policies for the administration of the designated policing unit;

(B) the prevention of neglect and abuse by the designated constables;

(C) the efficient discharge of duties and functions by the designated policing unit and the designated constables;

(d) prescribing the powers, duties and functions of a person appointed under paragraph (c) (iv) (A) or (B);

(e) prescribing the conditions of and the qualifications for appointments under paragraph (c) (iv);

(f) [Repealed 2010-21-181.]

(g) prescribing the restrictions, including geographical restrictions, on the powers, duties and functions of a designated constable of the designated policing unit;

(h) [Repealed 2010-21-181.]

(i) respecting any other matter the minister considers necessary and advisable concerning the designated policing unit and its board.

(3) A chief officer of a designated policing unit must ensure compliance with the director's standards as they relate to the designated policing unit.

### **Provincial police force continued**

5 The provincial police force is continued.

### **Constables and employees**

6 (1) The *Public Service Act* does not apply to the provincial police force, a provincial constable, an auxiliary constable, a special provincial constable, a designated constable or an employee of the provincial police force.

(2) The Lieutenant Governor in Council may appoint to the provincial police force the constables and other employees the Lieutenant

Governor in Council considers necessary to carry out the force's business.

(3) The Lieutenant Governor in Council may appoint a commissioner and a deputy commissioner of the provincial police force.

(4) The commissioner, deputy commissioner, constables and employees of the provincial police force must be appointed for a term and must be paid the remuneration that the Lieutenant Governor in Council determines.

(5) A person must not be appointed commissioner, deputy commissioner or a constable or employee of the provincial police force unless he or she is a Canadian citizen.

### **Duties and functions of commissioner and police force**

7 (1) The commissioner, under the minister's direction,

(a) has general supervision over the provincial police force, and

(b) must

(i) exercise powers and perform duties assigned to the commissioner under and in accordance with this Act and any other enactment, and

(ii) ensure compliance with the director's standards as they relate to the provincial police force.

(2) The provincial police force, under the commissioner's direction, must perform the duties and functions respecting the preservation of peace, the prevention of crime and offences against the law and the administration of justice assigned to it or generally to peace officers by the commissioner, under the director's standards or under this Act or any other enactment.

### **Auxiliary constables**

8 (1) On the recommendation of the commissioner, the minister may appoint persons the minister considers suitable as auxiliary constables.

(2) An auxiliary constable must assist the provincial police force in the performance of its duties.

(3) Subject to the regulations, an auxiliary constable has the powers, duties and immunities of a provincial constable.

### **Special provincial constables**

**9** (1) The minister may appoint persons the minister considers suitable as special provincial constables.

(2) A special provincial constable appointed under subsection (1) is appointed for the term the minister specifies in the appointment.

(3) Subject to the restrictions specified in the appointment and the regulations, a special provincial constable has the powers, duties and immunities of a provincial constable.

### **Jurisdiction of police constables**

**10** (1) Subject to the restrictions specified in the appointment and the regulations, a provincial constable, an auxiliary constable, a designated constable or a special provincial constable has

(a) all of the powers, duties and immunities of a peace officer and constable at common law or under any Act, and

(b) jurisdiction throughout British Columbia while carrying out those duties and exercising those powers.

(2) If a provincial constable, auxiliary constable, designated constable or special provincial constable exercises jurisdiction under subsection (1) in a municipality having a municipal police department, he or she must, if possible, notify the municipal police department in advance, but in any case must promptly after exercising jurisdiction notify the municipal police department of the municipality.

### **Repealed**

**10.1** [Repealed 2010-21-183.]

### **Ministerial liability**

**11** (1) The minister, on behalf of the government, is jointly and severally liable for torts committed by

(a) provincial constables, auxiliary constables, special provincial constables, IIO investigators and enforcement



officers appointed on behalf of a ministry, if the tort is committed in the performance of their duties, and

(b) municipal constables and special municipal constables in the performance of their duties when acting in other than the municipality where they normally perform their duties.

(2) Even though a person referred to in subsection (1) (a) or (b) is not found liable for a tort allegedly committed by the person in the performance of his or her duties, the minister may pay an amount the minister considers necessary to

(a) settle a claim against the person for a tort allegedly committed by the person in the performance of his or her duties, or

(b) reimburse the person for reasonable costs incurred by the person in defending a claim against the person for a tort allegedly committed in the performance of his or her duties.

(3) The Minister of Finance must pay out of the consolidated revenue fund, on the requisition of the minister, money required for the purposes of subsection (2).

### **Assistance for costs of criminal proceedings**

**12** If

(a) an auxiliary constable, or

(b) a municipal constable or a special municipal constable acting in other than the municipality in which he or she normally performs his or her duties

has been charged with an offence against an enactment of British Columbia, Canada, a municipality or a regional district in connection with the performance of his or her duties, the minister may, to the extent that the minister considers appropriate in the circumstances, pay the costs incurred and not recovered by the auxiliary constable, municipal constable or special municipal constable in the proceedings following or otherwise connected with the charge.

### **Aid to dependants of auxiliary constables**

**13** Despite any other Act, the minister may grant pecuniary aid to the spouses or children of auxiliary constables killed or injured in the performance of their duties.

### **Part 3 — Agreements to Use R.C.M.P.**

#### **Royal Canadian Mounted Police as provincial police force**

**14** (1) Subject to the approval of the Lieutenant Governor in Council, the minister, on behalf of the government, may enter into, execute and carry out agreements with Canada, or with a department, agency or person on its behalf, authorizing the Royal Canadian Mounted Police to carry out powers and duties of the provincial police force specified in the agreement.

(2) If an agreement is entered into under subsection (1),

(a) the Royal Canadian Mounted Police is, subject to the agreement, deemed to be a provincial police force,

(b) every member of the Royal Canadian Mounted Police is, subject to the agreement, deemed to be a provincial constable,

(c) the provisions of this Act respecting the powers and duties of the provincial police force and provincial constables apply, subject to the agreement, and with the necessary changes and insofar as applicable, to the Royal Canadian Mounted Police and its members, and

(d) the officer commanding the division of the Royal Canadian Mounted Police referred to in the agreement and the second in command of the division are deemed to be the commissioner and deputy commissioner, respectively, appointed under this Act.

(3) If a power or duty given under the regulations or under any Act to the provincial police force or a provincial constable is expressly excluded from the powers and duties given by agreement under subsection (1) to the Royal Canadian Mounted Police or its members, the Lieutenant Governor in Council may make the regulations the Lieutenant Governor in Council considers necessary to authorize or

require a member of the public service of British Columbia to carry out the power or duty.

## **Part 4 – Policing And Law Enforcement**

### **Responsibilities and Liability**

#### **Duties of a municipality**

- 15** (1) Subject to this section, a municipality with a population of more than 5 000 persons must bear the expenses necessary to generally maintain law and order in the municipality and must provide, in accordance with this Act, the regulations and the director's standards,
- (a) policing and law enforcement in the municipality with a police force or police department of sufficient numbers
    - (i) to adequately enforce municipal bylaws, the criminal law and the laws of British Columbia, and
    - (ii) to maintain law and order in the municipality,
  - (b) adequate accommodation, equipment and supplies for
    - (i) the operations of and use by the police force or police department required under paragraph (a), and
    - (ii) the detention of persons required to be held in police custody other than on behalf of the government, and
  - (c) the care and custody of persons held in a place of detention required under paragraph (b) (ii).
- (2) If, due to special circumstances or abnormal conditions in a municipality, the minister believes it is unreasonable to require a municipality to provide policing or law enforcement under subsection (1), the minister may provide policing or law enforcement in the municipality, subject to the terms the Lieutenant Governor in Council approves.

#### **Municipal policing and law enforcement by R.C.M.P.**

**16** If, under an agreement made under section 3 (2) (b), members of the Royal Canadian Mounted Police provide policing and law enforcement in a municipality, the municipality must

(a) pay to the government, or

(b) on the direction of the minister, pay directly to Canada

a sum equal to that payable by the government to Canada respecting the use of those members of the Royal Canadian Mounted Police used to provide policing and law enforcement in the municipality.

### **Failure of municipality to police**

**17** (1) If the director considers that a municipality to which section 15 (1) applies is not complying with that section, the director must send to it and to its board, if any, a notice that

(a) identifies the non-compliance,

(b) directs the municipality to correct the failure to comply,  
and

(c) specifies the manner in which and the time within which the failure is to be corrected.

(2) On being notified by the director that a notice sent under subsection (1) has not been complied with, the minister may, on terms the minister considers appropriate,

(a) appoint persons as constables to police the municipality,

(b) use the provincial police force to police the municipality,  
or

(c) take other steps the minister considers necessary.

(3) The municipality must pay all costs of policing and law enforcement incurred under subsection (2).

(4) Costs incurred by the government under subsection (2) are a debt due to and recoverable by the government from the municipality.

### **Failure of entities to comply**

**17.1** (1) If the director considers that a designated policing unit, its board or its designated constables, or a designated law enforcement unit, its

board or its enforcement officers, are not complying with this Act, the regulations or the director's standards, the director must send a notice to the board that

- (a) identifies the non-compliance,
- (b) identifies the entity on behalf of which the designated policing unit or designated law enforcement unit was established,
- (c) directs the entity to correct the failure to comply, and
- (d) specifies the manner in which and the time within which the failure is to be corrected.

(2) On being notified by the director that a notice sent under subsection (1) has not been complied with, the minister may, on terms the minister considers appropriate, do one or more of the following:

- (a) appoint one or more officers as necessary to provide the policing or law enforcement in place of the designated policing unit's designated constables or the designated law enforcement unit's enforcement officers, as the case may be;
- (b) use the provincial police force to provide the necessary policing or law enforcement in place of the designated policing unit's designated constables or the designated law enforcement unit's enforcement officers, as the case may be;
- (c) take other steps the minister considers necessary.

(3) The entity referred to in subsection (1) must pay all costs of policing and law enforcement incurred under subsection (2).

(4) Costs incurred by the government under subsection (2) are a debt due to and recoverable by the government from the entity referred to in subsection (1).

### **Amalgamation of municipal police departments**

**18** (1) Subject to the minister's approval, the councils of 2 or more municipalities may enter into an agreement providing for the amalgamation of their municipal police boards and municipal police departments.

(2) Subject to the minister's approval, the councils of 2 or more municipalities who have entered into an agreement with the minister under section 3 (2) (b) may enter into an agreement providing for the amalgamation of their police departments.

(3) An agreement under subsection (1) must contain terms respecting

(a) a municipal police department and policing and law enforcement by a municipal police department,

(b) the establishment of a joint board and membership on the joint board, and

(c) division of expenditures by the municipal councils.

(4) An agreement under subsection (2) must contain terms respecting

(a) the provision of policing and law enforcement in the municipalities by the provincial police force, and

(b) division of expenditures by the municipal councils.

### **Enforcement officers for enactments**

**18.1** (1) In this section and section 18.2, "**designated law enforcement**" means supplemental law enforcement provided to enforce all or any part of one or more enactments of British Columbia or Canada.

(2) Subject to this section, on application by an entity, the minister may establish, on behalf of the entity, a designated law enforcement unit to provide designated law enforcement.

(3) Subject to subsection (4), an application under subsection (2) must include the following:

(a) a description of all law enforcement services to be provided by the designated law enforcement unit, including a list of each enactment of British Columbia or Canada and each part of an enactment of British Columbia or Canada that is to be enforced by enforcement officers of the designated law enforcement unit, and a description of the geographical area within which the law enforcement services are to be provided;

(b) a description of the qualifications required of the enforcement officers of the designated law enforcement unit;

(c) a description of the governance of the designated law enforcement unit, including

(i) the identification or proposed establishment of a board whose function it will be to govern, administer and operate the designated law enforcement unit, and

(ii) the proposed membership of the board referred to in subparagraph (i);

(d) an explanation as to how the services referred to in paragraph (a) are to be coordinated with the policing and law enforcement otherwise provided in the geographical area within which the enforcement officers are to exercise their jurisdiction;

(e) a written statement endorsing the application, from each of the following persons:

(i) the chief constable of each municipal police department in the geographical area within which the designated law enforcement is to be provided;

(ii) the commissioner, if the designated law enforcement is to be provided in a geographical area within which the provincial police force regularly provides policing and law enforcement;

(f) any other information the minister may require.

(4) If the application referred to in subsection (3) is made by an entity that employs special provincial constables, the minister may waive, at the minister's discretion, one or more of the application requirements under subsection (3) (a) to (e).

(5) The minister may approve an entity's application on any terms the minister may require.

(6) If the minister and the entity agree on the terms referred to in subsection (5), the minister must forward the application to the Lieutenant Governor in Council for approval.

(7) If the Lieutenant Governor in Council approves the application, the minister must establish, on behalf of the entity and in accordance with the terms of the application,

(a) a designated law enforcement unit, and

(b) a designated board.

(8) The designated board referred to in subsection (7) may consist of one or more persons appointed under subsection (9).

(9) After consulting with the entity, the minister may appoint those persons the minister considers suitable as members of the board, and the minister must appoint one of the members as chair.

(10) The designated law enforcement unit established under subsection (7) may consist of one or more enforcement officers appointed under subsection (11).

(11) Subject to the approval of the minister, the designated board may appoint one or more of the entity's employees as enforcement officers to enforce those enactments, or parts of enactments, of British Columbia or Canada that the minister prescribes as the enactments to be enforced by the designated law enforcement unit.

(12) A person appointed under subsection (11) is

(a) appointed for the term specified in the appointment,  
and

(b) subject to the terms of employment determined by the entity.

(13) Subject to the restrictions specified in the appointment and to the regulations, a person appointed under subsection (11) is authorized to exercise the powers and perform the duties, and has the immunities, of a constable or peace officer exclusively for the purpose of enforcing those enactments, or parts of enactments, of British Columbia or Canada that the minister prescribes as the enactments to be enforced by the designated law enforcement unit.

(14) If a person appointed under subsection (11) exercises jurisdiction under subsection (13) in a municipality having a municipal police department, he or she must, if possible, notify the municipal police department in advance, but in any case must promptly after exercising jurisdiction notify the municipal police department of the municipality.



(15) Costs incurred by the government in establishing a designated law enforcement unit and its board on behalf of an entity are a debt due to and recoverable by the government.

### **Regulations respecting a designated law enforcement unit**

**18.2** (1) The minister may make regulations respecting a designated law enforcement unit and its board under section 18.1, including, without limitation, the following:

(a) prescribing each enactment, and each part of an enactment, of British Columbia or Canada that is to be enforced by the designated law enforcement unit;

(b) prescribing the geographical area within which the designated law enforcement unit and its enforcement officers must operate;

(c) prescribing the practices, procedures and quorum of the board;

(d) prescribing the powers, duties and functions of the board, including,

(i) a duty to determine in consultation with the minister and the chief officer, if any, the priorities, goals and objectives of the designated law enforcement unit,

(ii) a duty to report to the minister on

(A) the activities of the designated law enforcement unit, and

(B) the implementation of programs and strategies to achieve the priorities, goals and objectives referred to in subparagraph (i),

(iii) a power to appoint on behalf of the entity, subject to the minister's approval,

(A) a chief officer who has, under the direction of the board, general supervision and command over the enforcement officers of the designated law enforcement unit,

(B) a deputy chief officer, and

- (C) those enforcement officers the board considers necessary, and
- (iv) a duty to make rules consistent with this Act, the regulations and the director's standards respecting the following:
  - (A) the standards, guidelines and policies for the administration of the designated law enforcement unit;
  - (B) the prevention of neglect and abuse by the enforcement officers;
  - (C) the efficient discharge of duties and functions by the designated law enforcement unit and the enforcement officers;
- (e) prescribing the powers, duties and functions of a person appointed under paragraph (d) (iii) (A) or (B);
- (f) prescribing the conditions of and the qualifications for appointments under paragraph (d) (iii);
- (g) [Repealed 2010-21-186.]
- (h) prescribing the restrictions, including geographical restrictions, on the powers, duties and functions of an enforcement officer of the designated law enforcement unit;
- (i) [Repealed 2010-21-186.]
- (j) respecting any other matter the minister considers necessary and advisable concerning the designated law enforcement unit and its board.

(2) A chief officer of a designated law enforcement unit must ensure compliance with the director's standards as they relate to the designated law enforcement unit.

### **Aid to spouses and children**

**19** (1) Despite any other Act, a municipal council or board of a regional district may, in its discretion, grant pecuniary aid to the spouses or children of municipal constables, special municipal constables, auxiliary constables, designated constables, enforcement officers or bylaw

enforcement officers killed or injured in the performance of their duties.

(2) Despite any other Act, a government corporation or prescribed entity, on behalf of which a designated policing unit or designated law enforcement unit is established, may, in its discretion, grant pecuniary aid to the spouses or children of any of its designated constables or enforcement officers killed or injured in the performance of their duties.

### **Liability for torts**

**20** (1) Subject to an agreement under section 18 (1) or 23 (2),

(a) a municipality is jointly and severally liable for a tort that is committed by any of its municipal constables, special municipal constables, designated constables, enforcement officers, bylaw enforcement officers or employees of its municipal police board, if any, if the tort is committed in the performance of that person's duties, and

(b) a regional district, government corporation or other prescribed entity is jointly and severally liable for a tort that is committed by any of its designated constables or enforcement officers, if the tort is committed in the performance of that person's duties.

(2) If it is alleged or established that any municipal constable, special municipal constable, designated constable, enforcement officer, bylaw enforcement officer or employee referred to in subsection (1) has committed a tort in the performance of his or her duties, the respective board and any members of that board are not liable for the claim.

(3) Despite subsection (2), if it is alleged or established that any municipal constable, special municipal constable, designated constable, enforcement officer, bylaw enforcement officer or employee referred to in subsection (1) has committed a tort in the performance of his or her duties, the respective municipality, regional district, government corporation or other prescribed entity on behalf of which that person is employed may, in the discretion of the following, pay an amount that it considers necessary to settle the claim or a judgment

against that person and may reimburse him or her for reasonable costs incurred in opposing the claim:

- (a) in the case of a municipality, the council of the municipality;
- (b) in the case of a regional district, the board of the regional district;
- (c) in the case of a government corporation or other prescribed entity, that entity itself.

### **Personal liability**

**21** (1) In this section, "**police officer**" means either of the following:

- (a) a person holding an appointment as a constable under this Act;
- (b) an IIO investigator.

(2) No action for damages lies against a police officer or any other person appointed under this Act for anything said or done or omitted to be said or done by him or her in the performance or intended performance of his or her duty or in the exercise of his or her power or for any alleged neglect or default in the performance or intended performance of his or her duty or exercise of his or her power.

(3) Subsection (2) does not provide a defence if

- (a) the police officer or other person appointed under this Act has, in relation to the conduct that is the subject matter of action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct, or
- (b) the cause of action is libel or slander.

(4) Subsection (2) does not absolve any of the following, if they would have been liable had this section not been in force, from vicarious liability arising out of a tort committed by the police officer or other person referred to in that subsection:

- (a) a municipality, in the case of a tort committed by any of its municipal constables, special municipal constables, designated constables, enforcement officers, bylaw

enforcement officers or an employee of its municipal police board, if any;

(b) a regional district, government corporation or prescribed entity, in the case of a tort committed by any of its designated constables or enforcement officers;

(c) the minister, in a case to which section 11 applies.

### **Municipal assistance for costs of proceedings**

**22** (1) Despite section 287.2 of the *Local Government Act*, if a municipality's municipal constable, special municipal constable, designated constable, enforcement officer or bylaw enforcement officer, or if an employee of a municipal police board, has been charged with an offence against an enactment of British Columbia or Canada, or against a municipal or regional district bylaw, in connection with the performance of his or her duties, the council of the municipality may,

(a) on the recommendation of its municipal police board, if the person is an employee of the municipal police board, or

(b) on its own initiative, in any other case,

to the extent that it considers appropriate in the circumstances, pay the costs incurred and not recovered by him or her in the proceedings following or otherwise connected with the charge.

(2) Despite section 287.2 of the *Local Government Act*, if a regional district's designated constable or enforcement officer has been charged with an offence against an enactment of British Columbia or Canada, or against a municipal or regional district bylaw, in connection with the performance of his or her duties, the board of the regional district may, to the extent that it considers appropriate in the circumstances, pay the costs incurred and not recovered by him or her in the proceedings following or otherwise connected with the charge.

## **Part 5 — Municipal Police Boards**

### **Municipal police board**

- 23** (1) Subject to the minister's approval, the council of a municipality required to provide policing and law enforcement under section 15 may provide policing and law enforcement by means of a municipal police department governed by a municipal police board consisting of
- (a) the mayor of the council,
  - (b) one person appointed by the council, and
  - (c) not more than 7 persons appointed, after consultation with the director, by the Lieutenant Governor in Council.
- (2) Subject to the approval of the minister, the councils of 2 or more municipalities may enter into an agreement to establish a joint municipal police board under subsection (1).
- (3) An agreement under subsection (2) must contain terms respecting the establishment of the municipal police board, membership on the municipal police board and division of expenditures.

#### **Membership of municipal police board**

- 24** (1) A person who is a councillor or is ineligible to be elected as a councillor must not be appointed to a municipal police board.
- (2) A person appointed to a municipal police board under section 23
- (a) holds office for a term, not longer than 4 years, that the Lieutenant Governor in Council determines, and
  - (b) may be reappointed, subject to subsection (3).
- (3) A person is not eligible to hold office as an appointed member of a municipal police board for a period greater than 6 consecutive years.

#### **Chair of municipal police board**

- 25** (1) The mayor of a council referred to in section 23 is the chair of the municipal police board.
- (2) If the mayor is absent or unable to act, the municipal police board members present at a meeting of the municipal police board must elect from among themselves a chair to preside at the meeting.
- (3) In case of a tie vote at a meeting of a municipal police board, the chair may cast the deciding vote.

## **Board to establish municipal police department**

**26** (1) A municipal police board must establish a municipal police department and appoint a chief constable and other constables and employees the municipal police board considers necessary to provide policing and law enforcement in the municipality.

(1.1) If a municipality has entered into an agreement referred to in section 66.2 (1.1) (b) with a treaty first nation, for the duration of the agreement, the reference in subsection (1) of this section to "municipality" must be read as including the treaty lands of the treaty first nation.

(2) The duties and functions of a municipal police department are, under the direction of the municipal police board, to

(a) enforce, in the municipality, municipal bylaws, the criminal law and the laws of British Columbia,

(b) generally maintain law and order in the municipality, and

(c) prevent crime.

(3) Subject to a collective agreement as defined in the [Labour Relations Code](#), the chief constable and every constable and employee of a municipal police department must be

(a) employees of the municipal police board,

(b) provided with the accommodation, equipment and supplies the municipal police board considers necessary for his or her duties and functions, and

(c) paid the remuneration the municipal police board determines.

(4) In consultation with the chief constable, the municipal police board must determine the priorities, goals and objectives of the municipal police department.

(5) The chief constable must report to the municipal police board each year on the implementation of programs and strategies to achieve the priorities, goals and objectives.

## **Estimates and expenditures**

**27** (1) On or before November 30 in each year, a municipal police board must prepare and submit to the council for its approval a provisional budget for the following year to provide policing and law enforcement in the municipality.

(1.1) If a municipality has entered into an agreement referred to in section 66.2 (1.1) (b) with a treaty first nation, for the duration of the agreement, the reference in subsection (1) of this section to "municipality" must be read as including the treaty lands of the treaty first nation.

(2) Any changes to the provisional budget under subsection (1) must be submitted to council on or before March 1 of the year to which the provisional budget relates.

(3) If a council does not approve an item in the budget, the director, on application by the council or the municipal police board, must

(a) determine whether the item or amount should be included in the budget, and

(b) report the director's findings to the municipal police board, the council and the minister.

(4) Subject to subsection (3), a council must include in its budget the costs in the provisional budget prepared by the municipal police board.

(5) On certification by the municipal police board members that an expenditure is within the budget prepared by the municipal police board, the council must pay the amount of the expenditure.

(6) Unless the council otherwise approves, a municipal police board must not make an expenditure, or enter an agreement to make an expenditure, that is not specified in the board's budget and approved by the council.

## **Rules**

**28** (1) A municipal police board must make rules consistent with this Act, the regulations and the director's standards respecting the following:

(a) the standards, guidelines and policies for the administration of the municipal police department;



(b) the prevention of neglect and abuse by its municipal constables;

(c) the efficient discharge of duties and functions by the municipal police department and the municipal constables.

(2) A rule under subsection (1) is enforceable against any person only after it is filed with the director.

### **Studies by municipal police board**

**29** (1) A municipal police board may study, investigate and prepare a report on matters concerning policing, law enforcement and crime prevention in its municipality.

(2) A municipal police board must submit its report of a study under subsection (1),

(a) on request, to the director,

(b) if the report suggests a breach of discipline by any of its municipal constables, special municipal constables or bylaw enforcement officers, to the chief constable, and

(c) if the report suggests criminal liability of any of its municipal constables, special municipal constables or bylaw enforcement officers, to the minister.

### **Keeping of provincial prisoners**

**30** Out of money appropriated for the purpose, the minister may make payments to municipalities with a population of more than 5 000 persons in order to reimburse the municipalities to the extent the minister considers appropriate in each case, for the expenses incurred under section 15 (1) (c) of this Act or section 481 of the *Vancouver Charter* for the care and custody of persons who are detained in a place of detention on behalf of the government.

## **Part 6 — Police Committees**

### **Local police committees**

**31** (1) After consulting the councils of municipalities located entirely or partly in the area of British Columbia in which the committee is to have

jurisdiction, the Lieutenant Governor in Council may establish a local police committee consisting of not less than 3 members appointed by the Lieutenant Governor in Council.

(2) A member of a committee must be appointed for a term, of not longer than 3 years, that the Lieutenant Governor in Council determines.

(3) A person may be reappointed as a member of a committee but must not hold office for a period of more than 5 successive years.

(4) A member of a committee must not be a judge of a court.

### **Chair and quorum**

**32** (1) The Lieutenant Governor in Council may designate one member of a committee as the chair.

(2) In the absence or inability of the chair to act, the other committee members must elect a chair.

(3) A simple majority of the committee constitutes a quorum.

(4) In case of a tie vote, the chair has a second or casting vote.

### **Duties of committees**

**33** A committee has the following duties:

(a) to promote a good relationship among

(i) the residents of the area of British Columbia in which the committee has jurisdiction,

(ii) the provincial police force, and

(iii) any designated policing units or designated law enforcement units that may be operating in that area;

(b) to bring to the attention of the minister, the provincial police force, the designated policing units and the designated law enforcement units, any matters concerning the adequacy of policing and law enforcement in the area of British Columbia in which the committee has jurisdiction, and to make recommendations on those matters to the

minister, the provincial police force, the designated policing units and the designated law enforcement units;

(c) to perform other duties that the minister may specify.

## **Part 7 – Municipal Police Department**

### **Duties and functions of chief constable and municipal police**

**34** (1) The chief constable of a municipal police department has, under the direction of the municipal police board, general supervision and command over the municipal police department and must

(a) exercise powers and perform duties assigned to the chief constable under and in accordance with this Act and any other enactment, and

(b) ensure compliance with the director's standards as they relate to the municipal police department.

(2) The municipal police department, under the chief constable's direction, must perform the duties and functions respecting the preservation of peace, the prevention of crime and offences against the law and the administration of justice assigned to it or generally to peace officers by the chief constable, under the director's standards or under this Act or any other enactment.

### **Special municipal constables**

**35** (1) After consultation with the chief constable, a municipal police board may appoint persons considered suitable as special municipal constables.

(2) A special municipal constable must assist the municipal police department in the performance of its duties.

(3) Subject to a collective agreement as defined in the [Labour Relations Code](#), a special municipal constable may be paid the remuneration and is appointed for the term the municipal police board determines.

(4) Subject to the restrictions the municipal police board specifies in the appointment, a special municipal constable has, while carrying out

the duties of his or her appointment, the powers, duties and immunities of a municipal constable.

### **Bylaw enforcement officers**

**36** (1) Bylaw enforcement officers may be appointed,

(a) by a municipal police board, or

(b) if there is no municipal police board in a municipality, by the municipal council.

(2) A bylaw enforcement officer must be paid the remuneration and is appointed for the term that the municipal police board or municipal council determines.

(3) A bylaw enforcement officer must, under the direction of the chief constable or officer in charge of the detachment of police operating in the municipality, perform the functions and duties, and has the powers, privileges and responsibilities respecting the enforcement of municipal bylaws, that the municipal police board or municipal council specifies in the appointment.

### **Repealed**

**37** [Repealed 1997-37-35.]

### **Jurisdiction of municipal constables**

**38** (1) A municipal constable or a special municipal constable has

(a) all of the powers, duties and immunities of a peace officer and constable at common law or under any Act, and

(b) jurisdiction throughout British Columbia while carrying out those duties and exercising those powers.

(2) If the minister believes an emergency exists outside the municipality in which a municipal constable or special municipal constable is employed, the minister may direct one or more municipal constables or special municipal constables to the part of British Columbia in which the emergency exists.

(3) If the minister makes a direction under subsection (2), the Minister of Finance must pay, from the consolidated revenue fund, the salary and other expenses of the municipal constable or special municipal

constable during the period he or she is performing duties in the part of British Columbia where the emergency exists.

(4) If a municipal constable or special municipal constable performs duties outside the municipality, he or she must, if possible, notify the provincial police force or municipal police department of the area in which he or she performs the duties in advance, but in any case must promptly after performing the duties notify the provincial police force or municipal police department.

## **Part 7.1 — Independent Investigations Office**

### **Definitions**

**38.01** In this Part:

**"chief of the police service"** means as follows:

- (a) in relation to the provincial police force, the commissioner;
- (b) in relation to a municipal police department, a chief constable;
- (c) in relation to a police force described in section 1.1 (c), a chief officer;

**"civilian monitor"** means a person appointed by the chief civilian director under section 38.08 (1) to review and assess an investigation by the independent investigations office under this Part;

**"officer"** includes a person who is a member of the Royal Canadian Mounted Police;

**"police service"** means the Royal Canadian Mounted Police or a police force in British Columbia other than the independent investigations office;

**"serious harm"** has the same meaning as in Part 11.

### **Independent investigations office established**

**38.02** (1) An independent investigations office is established in the Ministry of Justice, the purpose of which is to conduct

- (a) the investigation of an incident under section 38.09 (3)[*immediate reporting of critical incidents*],
- (b) the investigation of a matter under section 38.10 (2)[*immediate reporting of critical investigations*],
- (c) an investigation that may be directed to the independent investigations office under section 44[*special investigations*], and
- (d) the investigation of a matter under section 177.1[*duty of police complaint commissioner to notify IIO*] on receiving notice from the police complaint commissioner under that section.

(2) The independent investigations office consists of a chief civilian director, who is in charge of the independent investigations office, and IIO investigators selected by the chief civilian director.

### **Appointment of chief civilian director**

**38.03** (1) The Lieutenant Governor in Council may appoint a person as chief civilian director.

(2) A person who is a current or former member of a police force or the Royal Canadian Mounted Police may not be appointed as chief civilian director.

(3) The chief civilian director holds office,

(a) on being appointed to a first term, for 5 years, and

(b) if appointed for a 2nd term, for a period of up to 5 years as specified in the reappointment.

(4) A person must not be appointed under subsection (1) for a 3rd or subsequent term.

### **Responsibilities of chief civilian director**

**38.04** (1) The chief civilian director is responsible for the following:

(a) the management, administration and operation of the independent investigations office;

(b) overseeing investigations conducted by the independent investigations office under this Part.

(2) The chief civilian director must

(a) exercise powers and perform duties assigned to the chief civilian director under and in accordance with this Act and any other enactment, and

(b) ensure compliance with the director's standards as they relate to the independent investigations office.

### **Remuneration, expenses and application of *Public Sector Pension Plans Act***

**38.05** (1) The chief civilian director is entitled

(a) to be paid a salary specified by the Lieutenant Governor in Council in the chief civilian director's appointment or reappointment, and

(b) to be reimbursed for reasonable travelling and out-of-pocket expenses personally incurred in exercising the powers and performing the duties of the chief civilian director under this Act.

(2) The public service plan as defined in section 1 (1) of the *Public Sector Pension Plans Act* applies to the chief civilian director.

### **Independent investigations office staff and investigators**

**38.06** (1) The chief civilian director may appoint, in accordance with the *Public Service Act* and the regulations, if any, made under section 74 (2) (t.1)[*power to make regulations*] of this Act, the employees the chief civilian director considers necessary to enable or assist the chief civilian director in exercising powers or performing duties of the chief civilian director under this Act.

(2) Subject to subsections (2.1) and (3), the chief civilian director may appoint persons with investigative experience to serve as investigators with the independent investigations office.

(2.1) An appointment under subsection (2) must be made in accordance with

(a) the *Public Service Act*, and

(b) the regulations, if any, made under section 74 (2) (t.2)[*power to make regulations*] of this Act.

- (3) The chief civilian director may not appoint a person under subsection (2) if the person
- (a) is currently a member of a police or law enforcement agency outside of British Columbia,
  - (b) is currently a member of the Royal Canadian Mounted Police, or
  - (c) was a member of a police force in British Columbia at any time during the 5-year period immediately preceding the appointment.
- (4) For the purposes of the application of the *Public Service Act* to subsections (1) and (2) of this section, the chief civilian director is a deputy minister.
- (5) The chief civilian director may retain consultants, experts, specialists and other persons the chief civilian director considers necessary to enable or assist the chief civilian director in exercising powers or performing duties of the chief civilian director under this Act.
- (6) The chief civilian director may establish the remuneration and other terms and conditions of a person retained under subsection (5).
- (7) The *Public Service Act* does not apply in respect of a person retained under subsection (5).

### **Jurisdiction of chief civilian director and IIO investigators**

- 38.07** (1) The chief civilian director and each IIO investigator have
- (a) all of the powers, duties and immunities of a peace officer and constable at common law or under any Act, and
  - (b) jurisdiction throughout British Columbia while carrying out those duties and exercising those powers.
- (2) An IIO investigator is under the exclusive command and direction of the chief civilian director while serving with the independent investigations office.

### **Civilian monitors**



**38.08** (1) The chief civilian director may appoint a person who is not a current or former member of a police force in British Columbia or the Royal Canadian Mounted Police to review and assess the integrity of a specific investigation in accordance with this section and the terms of reference, if any, established by the chief civilian director in the appointment.

(2) Before beginning to exercise powers and perform duties, a civilian monitor appointed under subsection (1) must take an oath before the chief civilian director

(a) to faithfully and impartially review and assess the integrity of the independent investigations office investigation in accordance with this section and the terms of reference, if any, established by the chief civilian director in the appointment, and

(b) not to divulge any information obtained as civilian monitor, except in accordance with this section.

(3) For the purposes of subsection (2), the chief civilian director is a commissioner for taking affidavits in British Columbia.

(4) A civilian monitor is not entitled to participate in, attend or conduct an independent investigations office investigation under this Part, but the civilian monitor

(a) is entitled access at reasonable times to any record of the independent investigations office that is directly related to the investigation in respect of which the civilian monitor is appointed and the duty of the civilian monitor described in subsection (2) (a) in respect of that investigation, and

(b) may request an interview with or statement from a staff member of the independent investigations office or an IIO investigator in order to assist the civilian monitor in the performance of that duty.

(5) A person to whom a request is made under subsection (4) (b) must comply with that request.

(6) Staff members of the independent investigations office and IIO investigators

(a) have a duty to cooperate with a civilian monitor in the exercise of powers or performance of duties under this Act, and

(b) must comply with regulations, if any, made under section 74 (2) (t.3).

(7) Within 30 days after the conclusion of the investigation in respect of which the civilian monitor is appointed, the civilian monitor must provide a written report to the chief civilian director respecting the civilian monitor's assessment of the integrity of the investigation.

(8) If a civilian monitor considers it necessary or advisable at any time before the conclusion of the investigation in respect of which the civilian monitor is appointed, the civilian monitor may provide an interim report to the chief civilian director respecting the civilian monitor's assessment of the integrity of the investigation.

### **Immediate reporting of critical incidents and steps to be**

### **taken for takeover by independent investigations office**

**38.09** (1) When an officer is at the scene of an incident where it appears that

(a) a person may have died or suffered serious harm as a result of the actions of an officer, whether on or off duty, or

(b) an officer, whether on or off duty, may have contravened a prescribed provision of the *Criminal Code* or a prescribed provision of another federal or provincial enactment,

the officer must immediately notify the independent investigations office in accordance with the guidelines established by the chief civilian director.

(2) Until IIO investigators arrive at the scene of the incident, the officers at the scene must take any lawful measures that appear to the officers to be necessary or expedient for the purposes of obtaining and preserving evidence relating to the matter.

(3) On arriving at the scene of the incident, one or more IIO investigators must take over and conduct the investigation of the incident under this Part.

## **Immediate reporting of critical investigations and takeover by independent investigations office**

**38.10** (1) When a police service is conducting an investigation into the conduct of an officer under Part 11 [*Misconduct, Complaints, Investigations, Discipline and Proceedings*] and there is evidence that the officer may have, whether on or off duty,

- (a) caused the death of a person,
- (b) caused a person serious harm, or
- (c) contravened a prescribed provision of the *Criminal Code* or a prescribed provision of another federal or provincial enactment,

the chief of the police service must immediately notify the independent investigations office in accordance with the guidelines of the chief civilian director.

(2) When the independent investigations office receives notice under this section, one or more of its members must initiate and conduct an investigation into the matter under this Part.

## **Officers to cooperate with independent investigations office**

**38.101** An officer must cooperate fully with

- (a) the chief civilian director in the chief civilian director's exercise of powers or performance of duties under this Act, and
- (b) an IIO investigator in the IIO investigator's exercise of powers or performance of duties under this Act.

## **Use of statements made by officers**

**38.102** (1) A statement provided or an answer given by an officer during an investigation under this Part is inadmissible in evidence in court in a civil proceeding for remedies against the officer in relation to the matter under investigation.

(2) Subsection (1) applies also in respect of evidence of the existence of a statement provided or answer given by an officer during an investigation under this Part.

## **Report to Crown counsel**

**38 . 11** If after an investigation by the independent investigations office is concluded the chief civilian director considers that an officer may have committed an offence under any enactment, including an enactment of Canada or another province, the chief civilian director must report the matter to Crown counsel.

## **Investigation records and annual reports**

**38 . 12** The chief civilian director must

(a) establish and maintain a record of each investigation conducted by the independent investigations office under this Part, including all records related to each of those investigations,

(b) compile statistical information in respect of records referred to in paragraph (a), including, without limitation,

(i) information respecting the number and frequency of investigations or of different types or classes of investigations, and the outcome or resolution of them, and

(ii) any trends in relation to information compiled under subparagraph (i), and

(c) submit to the Attorney General an annual report of the information described in paragraph (b) and the operations of the independent investigations office.

## **Chief civilian director may provide information to public**

**38 . 121** (1) In this section, "**personal information**" has the same meaning as in Schedule 1 of the *Freedom of Information and Protection of Privacy Act*.

(2) If the chief civilian director considers it in the public interest to do so, the chief civilian director may make the following information available to the public by posting the information on a publicly accessible website maintained by or on behalf of the chief civilian director:

- (a) a summary of a matter in respect of which the independent investigations office has been notified or ordered to conduct an investigation;
- (b) a description of the resources that the independent investigations office has assigned to an investigation;
- (c) a statement indicating whether the independent investigations office, after concluding an investigation, has reported the matter to Crown counsel;
- (d) a summary of the results of an investigation, if the matter has not been reported to Crown counsel.

(3) In providing information under subsection (2), the chief civilian director must not disclose personal information about an officer, a victim, a witness or another person who may have been involved in the matter, except as provided in subsection (4).

(4) The chief civilian director may disclose personal information about a person described in subsection (3) only if

- (a) the person consents to the disclosure, or
- (b) in the opinion of the chief civilian director, the public interest in disclosure outweighs the privacy interests of the person.

(5) Before disclosing information in accordance with subsection (4), the chief civilian director must, if practicable,

- (a) in the case of information to be disclosed under subsection (4) (a), notify the person to whom the information relates, and
- (b) in the case of information to be disclosed under subsection (4) (b),
  - (i) notify the person to whom the information relates, and
  - (ii) notify, and consider any comments provided by, the commissioner appointed under the *Freedom of Information and Protection of Privacy Act*.

## **Special committee to review administration**

### **of independent investigations office**

**38 . 13** (1) In this section, "**special committee**" means a special committee of the Legislative Assembly that the Legislative Assembly appoints for the purposes of this section.

(2) Before January 1, 2015, the special committee must conduct a review of the following and submit a report under subsection (6):

(a) the administration and general operations of the independent investigations office;

(b) the chief civilian director's progress towards a goal of having an independent investigations office that is staffed entirely with employees and IIO investigators who have never served as officers or members of a police or law enforcement agency.

(3) As part of the review process contemplated by subsection (2), the special committee may

(a) request the chief civilian director to provide copies of any relevant records, information or reports respecting a matter of administration or general operations of the independent investigations office,

(b) review and consider the copies of records, information and reports referred to in paragraph (a) that the chief civilian director provides, and

(c) solicit and consider written and oral submissions from any interested person or organization.

(4) Subject to subsection (5), the chief civilian director must comply with a request of the special committee under subsection (3) (a).

(5) Before providing copies of the records, information and reports referred to in subsection (3) (a), the chief civilian director may sever 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*.

(6) Within one year after the date that the special committee is appointed, the special committee must submit a report respecting the results of the review under subsection (2) to the Legislative Assembly.

(7) A report submitted under subsection (6) may include any recommendations that the special committee considers necessary or appropriate.

## **Part 8 – Director of Police Services**

### **Director of Police Services**

**39** (1) The minister must designate as the director of police services a person employed in the ministry and, on behalf of the minister and subject to the direction of the minister, the director is responsible for superintending policing and law enforcement functions in British Columbia.

(2) Subject to the *Public Service Act*, the director may

(a) employ or retain the persons the director considers necessary to carry out the business of the director's office, and

(b) designate the title, office and responsibilities of persons employed or retained under paragraph (a).

(3) Despite the *Public Service Act* but subject to the minister's approval, the director may engage and retain any person the director considers necessary as a consultant, expert or specialist.

### **Functions of the director**

**40** (1) Without limiting section 39 (1), the director has the following functions:

(a) to inspect and report on the quality and standard of policing and law enforcement services delivery;

(a.1) to establish standards respecting the following:

(i) the training of persons to become officers or IIO investigators;

- (ii) the training and retraining of officers, IIO investigators or the chief civilian director;
- (iii) the use of force;
- (iv) places of detention and equipment and supplies to be used in relation to policing and law enforcement;
- (v) cooperation between the independent investigations office and the provincial police force, municipal police departments, designated policing units and designated law enforcement units in relation to investigations by the independent investigations office;
- (vi) cooperation and coordination among the provincial police force, municipal police departments and designated policing units in relation to investigations that are complex or involve serious crimes, including, without limitation, investigations of murder, attempted murder, sexual assault, kidnapping, armed robbery or money laundering;
- (vii) the collection, disclosure and analysis of information relating to administration, management or programs of, or related to, policing and law enforcement;

(a.2) to evaluate compliance with the following:

- (i) the director's standards;
- (ii) section 68.1 [*requirement to use information management system*];

(b) to maintain a system of statistical records required to carry out inspections, evaluations and research studies;

(c) to consult with and provide information and advice to the minister, chief civilian director, chief constables, chief officers, boards and committees, on matters related to policing and law enforcement;

(d) to make recommendations to the minister about appointments to a board;



- (e) to make recommendations to the minister on
  - (i) the minimum standards for the selection and training of officers or IIO investigators or classes of officers,
  - (ii) the use of force by officers or IIO investigators or classes of officers, including, without limitation, their training and retraining in the use of force, and
  - (iii) any other matter related to policing and law enforcement;
- (f) to establish and carry out, or approve and supervise, programs to promote cooperative and productive relationships between officers or IIO investigators and the public;
- (g) to assist in the coordination of policing and law enforcement provided by the independent investigations office, provincial police force, municipal police departments, designated policing units and designated law enforcement units;
- (h) to report to the minister on the activities of police forces, police departments, designated policing units and designated law enforcement units in their provision of policing and law enforcement services;
- (i) to perform other functions and duties assigned to the director under this Act or under the [Security Services Act](#).

(1.1) The director may

- (a) establish different standards under subsection (1) (a.1) for different classes of officers and different police forces, designated policing units, designated law enforcement units or other law enforcement agencies, and
- (b) vary or cancel those standards.

(1.2) A director's standard

- (a) is binding on an entity, a designated board, a municipal police board, the chief civilian director, a chief officer, a chief constable or the commissioner, as the case may be, only after

- (i) the standard is approved by the minister,
- (ii) the standard is made available to the public under subsection (1.3), and
- (iii) the entity, designated board, municipal police board, chief civilian director, chief officer, chief constable or commissioner receives written notice of the standard, but

(b) is not effective to the extent it conflicts with this Act or the regulations.

(1.3) The director must make the director's standards available to members of the public by both of the following means:

- (a) posting the standard on a publicly accessible website maintained by or on behalf of the director;
- (b) having the standard available for public inspection in the office of the director during regular office hours.

(2) If a report is completed under subsection (1) (a), the director

- (a) must submit a copy of the report to the minister, and
- (b) may distribute a copy of the report to those persons the director considers appropriate.

(3) The director may inspect the records, operations and systems of administration of any policing or law enforcement operation but only if the director gives written notice of the inspection

- (a) to the minister, and
- (b) to the chair of the board or to a person designated by the minister as the person in charge of the operation.

(4) If requested by the minister, the director must inspect the records, operations and systems of administration of any policing or law enforcement operation, on notice to the chair of the board or to a person designated by the minister as the person in charge of the operation.

## **Special committee to review implementation of 2009 report recommendations**

**40.1** (1) In this section:

**"conducted energy weapon"** means a weapon or device commonly referred to as a Taser;

**"special committee"** means a special committee of the Legislative Assembly that the Legislative Assembly appoints for the purposes of this section.

(2) Before December 31, 2012, the special committee must conduct a review of the following matters and submit a report under subsection (6):

(a) the implementation of the recommendations contained in the 2009 report "Restoring Public Confidence: Restricting the Use of Conducted Energy Weapons" by Thomas R. Braidwood, Q.C., respecting

(i) the use of conducted energy weapons by officers in the performance of their duties and the exercise of their powers, and

(ii) the training of officers in the use of conducted energy weapons;

(b) the scientific research into the medical risks to persons against whom conducted energy weapons are deployed.

(3) As part of the review process contemplated by subsection (2), the special committee may

(a) request the director to provide copies of any relevant records, information or reports,

(b) review and consider the copies of records, information and reports referred to in paragraph (a) that the director provides, and

(c) solicit and consider written and oral submissions from any interested person or organization.

(4) Subject to subsection (5), the director must comply with a request of the special committee under subsection (3) (a).

(5) Before providing copies of the records, information and reports referred to in subsection (3) (a), the director may sever 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*.

(6) Within one year after the date that the special committee is appointed, the special committee must submit a report respecting the results of the review under subsection (2) to the Legislative Assembly.

(7) A report submitted under subsection (6) may include any recommendations that the special committee considers necessary or appropriate.

### **Rules of practice and procedure of the director**

**41** (1) The director must make rules, not inconsistent with this Act and the regulations, respecting the director's practice and procedure and the exercise of the director's powers under this Act, and may establish forms required to be used for those purposes.

(2) A rule under subsection (1) is binding on a person only after the rule is approved by the minister.

### **Studies by director**

**42** (1) The director must, on request of the minister, and the director may, on the director's own initiative or on request of a council or board, study, investigate and prepare a report on matters concerning policing, law enforcement and crime prevention in British Columbia or in a designated area of British Columbia.

(2) The costs of a study requested by the minister under subsection (1) must be paid by the Minister of Finance from the consolidated revenue fund.

(3) The director must submit a report prepared under subsection (1) to the minister.

### **Inquiries**

**43** On request of the minister, the director must inquire into and report to the minister on matters

- (a) regarding crime and its investigation and control, and
- (b) of policing and law enforcement.

## Special investigations

**44** (1) Despite this Act,

(a) the minister, or

(b) the director, on the director's own initiative or on request of the police complaint commissioner or a board,

may at any time order an investigation into an alleged act, or an alleged omission of an act, committed by a person appointed under this Act or a member of the Royal Canadian Mounted Police.

(2) An investigation under subsection (1) must be performed by the police force or the person and in the manner specified in the minister's order or director's order, as the case may be.

(3) The costs of an investigation ordered by the minister or the director under subsection (1) must be paid by the Minister of Finance from the consolidated revenue fund.

## Delegation

**45** (1) The director may authorize one or more of the director's employees to exercise the powers and perform the duties and functions of the director under sections 40 and 42 to 44.

(2) The director may not delegate to an employee the director's power to establish, vary or cancel the director's standards under section 40

(1) (a.1) and (1.1).

# Part 9 — Office of the Police Complaint Commissioner

## Division 1 — Interpretation

### Definitions and interpretation

**46** (1) The definitions in Divisions 1 and 2 of Part 11 [*Misconduct, Complaints, Investigations, Discipline and Proceedings*] apply for the purposes of this Part.

(2) In sections 47 to 49, "**committee**" means the special committee of the Legislative Assembly that the Legislative Assembly specifies for the purposes of those sections.

## **Division 2 — Police Complaint Commissioner**

### **Appointment of police complaint commissioner**

- 47** (1) The Legislative Assembly, by resolution, may appoint as the police complaint commissioner a person to exercise the powers and perform the duties assigned to the police complaint commissioner under this Act.
- (2) The police complaint commissioner and any acting police complaint commissioner appointed under this Act are officers of the Legislature.
- (3) Subject to section 48, the police complaint commissioner holds office,
- (a) on being appointed to a first term, for 5 years, and
  - (b) if appointed for a 2nd term, for a period of up to 5 years as specified in the reappointment resolution.
- (4) The Legislative Assembly may not appoint a person under subsection (1) who has not previously been appointed police complaint commissioner, unless the committee unanimously recommends the appointment of the person.
- (5) The Legislative Assembly may not appoint a police complaint commissioner for a 2nd term under subsection (1) unless
- (a) the police complaint commissioner notifies the committee at least 6 months before the end of the first term that she or he wishes to be considered for reappointment, and
  - (b) the committee unanimously recommends the reappointment within 60 days of being notified by the police complaint commissioner under paragraph (a) of this subsection.
- (6) A person must not be appointed under subsection (1) for a 3rd or subsequent term.

### **Resignation, suspension or removal of police complaint commissioner**

- 48** (1) The police complaint commissioner may resign from office at any time by giving written notice

- (a) to the Speaker of the Legislative Assembly, or
- (b) if the Speaker is absent from British Columbia or there is no Speaker, to the Clerk of the Legislative Assembly.

(2) By a resolution passed by 2/3 or more of the members present in the Legislative Assembly, the police complaint commissioner, for cause or incapacity, may be suspended from office, with or without salary, or removed from office.

(3) If the Legislative Assembly is not sitting and is not scheduled to sit within 5 days, the committee, by unanimous resolution, may suspend the police complaint commissioner for cause or incapacity, with or without salary, for a period that must be set by the committee to end not later than on the expiry of a further 20 sitting days of the Legislative Assembly.

### **Appointment of acting police complaint commissioner**

**49** (1) If the police complaint commissioner is suspended under section 48 or the office is vacant, the Legislative Assembly, by resolution and on the recommendation of the committee, may appoint an acting police complaint commissioner to exercise the powers and perform the duties of the police complaint commissioner under this Act until the suspension ends or an appointment is made under section 47 (1).

(2) If the police complaint commissioner is suspended under section 48 or the office is vacant, and if the Legislative Assembly is not sitting and is not scheduled to sit within 5 days, the committee, by resolution, may appoint an acting police complaint commissioner to exercise the powers and perform the duties of the police complaint commissioner under this Act,

- (a) if the police complaint commissioner is suspended under section 48 (2), until the suspension ends,

- (b) if the police complaint commissioner is suspended under section 48 (3), for the period set by the committee under that provision, or

- (c) if the office of the police complaint commissioner is vacant, until an appointment is made under section 47 (1).

### **Oath of office**

**49 . 1** Before beginning to exercise powers and perform duties under this Act, the police complaint commissioner and any acting police complaint commissioner must take an oath before the Clerk of the Legislative Assembly

(a) to faithfully and impartially exercise those powers and perform those duties, and

(b) not to divulge any information received under this Act, except as permitted under this Act.

## **Repealed**

**50** [Repealed 2009-28-4.]

## **Remuneration, expenses and application of *Public Sector Pension Plans Act***

**50 . 1** (1) The police complaint commissioner is entitled

(a) to be paid, out of the consolidated revenue fund, a salary equal to the salary paid to the chief judge of the Provincial Court of British Columbia, and

(b) to be reimbursed for reasonable travelling and out-of-pocket expenses personally incurred in exercising the powers and performing the duties of the police complaint commissioner under this Act.

(2) The public service plan as defined in section 1 (1) of the *Public Sector Pension Plans Act* applies to the police complaint commissioner.

## **Staff and other designated individuals**

**51** (1) The police complaint commissioner may appoint, in accordance with the *Public Service Act* and regulations, if any, made under section 184

(2) (b)[*regulations under Parts 9 and 11*] of this Act, one or more deputy police complaint commissioners and other employees necessary for exercising the powers and performing the duties of the police complaint commissioner under this Act.

(2) For the purposes of the application of the *Public Service Act* to subsection (1) of this section, the police complaint commissioner is a deputy minister.



(3) The police complaint commissioner may retain consultants, mediators, experts, specialists and other persons that the police complaint commissioner considers necessary to enable or assist the police complaint commissioner in exercising powers or performing duties of the police complaint commissioner under this Act.

(4) The police complaint commissioner may establish the remuneration and other terms and conditions of a person, other than a mediator, retained under subsection (3).

(5) The police complaint commissioner may designate

(a) an individual for the purposes of receiving, recording and registering complaints, forwarding them to the police complaint commissioner and assisting complainants under sections 78 (2) [*how complaints are made*] and 80 [*if complaint made to member or designated individual under section 78 (2) (b)*], or

(b) an individual for the purposes of receiving and recording service or policy complaints, forwarding them to the police complaint commissioner and assisting persons under sections 168 (2) (b) [*making a service or policy complaint*] and 169 [*if complaint made to member, designated individual or chair under section 168 (2) (b)*].

(6) A designation under subsection (5) (a) or (b) may include terms and conditions the police complaint commissioner considers appropriate.

(7) The *Public Service Act* does not apply in respect of the following:

(a) a person retained under subsection (3);

(b) an individual designated under subsection (5) (a) or (b), except to the extent that the *Public Service Act* may already apply to any such individual before the designation.

## **Confidentiality**

**51 . 01** (1) Before beginning to exercise powers and perform duties under this Act, a deputy police complaint commissioner and an employee appointed under section 51 (1) must take an oath before the police complaint commissioner

(a) to faithfully and impartially exercise the powers and perform the duties delegated by the police complaint commissioner to the deputy police complaint commissioner or the other employee, and

(b) not to divulge any information received in the exercise of those powers or performance of those duties, except as permitted under this Act.

(2) A person retained under section 51 (3) must take an oath before the police complaint commissioner not to divulge any information received in assisting the police complaint commissioner in the exercise of her or his powers or performance of her or his duties under this Act.

(3) Before beginning to perform duties under section 80 [*if complaint made to member or designated individual under section 78 (2) (b)*] or 169 [*if complaint made to member, designated individual or chair under section 168 (2) (b)*], an individual designated under section 51 (5) (a) or (b) must take an oath before the police complaint commissioner

(a) to faithfully and impartially perform those duties, and

(b) not to divulge any information received in the performance of those duties, except as permitted under this Act.

(4) For the purposes of subsections (1) to (3), the police complaint commissioner is a commissioner for taking affidavits in British Columbia.

(5) The police complaint commissioner, any person employed, retained or designated by the police complaint commissioner, and every investigating officer must, except as specifically authorized under this Act, maintain confidentiality in respect of all matters that come to her or his knowledge in the exercise of powers or performance of duties under this Act.

### **Non-delegable powers and duties of police complaint commissioner**

**51 . 02** The police complaint commissioner may not delegate to any person employed, retained or designated by the police complaint commissioner any of the following powers and duties:

(a) the duty of the police complaint commissioner to report to the Speaker of the Legislative Assembly under section 51.1[*annual report*];

(b) the powers of the police complaint commissioner under section 84 (2) or (4) [*discontinuance and consolidation of complaints made by third-party complainants*];

(c) the power of the police complaint commissioner under section 92 (1) or (3) [*external investigations when in public interest*];

(d) the power of the police complaint commissioner under section 93[*independent power to order investigation, whether or not complaint made*];

(e) the power of the police complaint commissioner under section 97 (1) (d)[*police complaint commissioner's powers relating to investigation*];

(f) the power of the police complaint commissioner to appoint a retired judge under section 117 (1)[*appointment of new discipline authority if conclusion of no misconduct is incorrect*];

(g) the duty of the police complaint commissioner to appoint a retired judge as a discipline authority under section 135 (2) (b)[*power to designate another discipline authority if in public interest*];

(h) the duties of the police complaint commissioner under section 138[*determining whether to arrange public hearing or review on the record*];

(i) the duties of the police complaint commissioner under section 142 (1) and (2) [*appointment of adjudicator for public hearing or review on the record*];

(j) the duties of the police complaint commissioner under section 177 (2) (a) and (b) [*guidelines*], (c) [*forms*] and (f) [*reports*];

(k) the powers of the police complaint commissioner under section 177 (4).

## **Personal liability protection and non-compellability in civil proceedings**

**51 . 03** (1) In this section, "**protected individual**" means an individual who is or was any of the following:

- (a) the police complaint commissioner;
- (b) a deputy police complaint commissioner or an employee appointed under section 51 (1);
- (c) a person retained by the police complaint commissioner under section 51 (3);
- (d) an individual designated by the police complaint commissioner under section 51 (5).

(2) Subject to subsection (3), no legal proceeding for damages lies or may be commenced or maintained against a protected individual because of anything done or omitted

- (a) in the exercise or intended exercise of a power under this Act, or
- (b) in the performance or intended performance of a duty under this Act.

(3) Subsection (2) does not apply to a protected individual in relation to anything done or omitted in bad faith.

(4) A protected individual and anyone acting for or under the direction of the protected individual must not give, or be compelled to give, evidence in court or in any other proceedings in respect of any records or information obtained in the exercise of powers or performance of duties under this Act.

(5) Despite subsection (4), a protected individual or anyone acting for or under the direction of the protected individual may give, or be compelled to give, evidence in any of the following:

- (a) a prosecution for perjury in respect of sworn testimony;
- (b) a prosecution for an offence under this Act;
- (c) an application for judicial review of a decision made under this Act.

(6) Subsections (4) and (5) apply also in respect of evidence of the existence of an investigation under Part 11, a mediation or other

means of informal resolution under Part 11 or any proceeding conducted under Part 11.

### **Annual report**

**51 . 1** (1) The police complaint commissioner must report annually to the Speaker of the Legislative Assembly on the work of the police complaint commissioner's office.

(2) The Speaker must promptly lay each annual report before the Legislative Assembly if it is in session and, if the Legislative Assembly is not in session when the report is submitted, within 15 days after the beginning of the next session.

### **Audit of complaints and investigations under Part 11**

**51 . 2** (1) In this section, "**special committee**" means a special committee of the Legislative Assembly that the Legislative Assembly appoints for the purposes of this section.

(2) Before January 1, 2013, the special committee must conduct an audit respecting the outcome or resolution of randomly selected complaints and investigations under Part 11, and must submit a report respecting the results of the audit to the Legislative Assembly within one year after the date of the appointment of the special committee.

(3) As part of the audit process contemplated by subsection (2), the special committee may

(a) request the police complaint commissioner to provide copies of any records, information or reports referred to in section 177 (2) (d) to (f) [*general responsibility and functions of police complaint commissioner*],

(b) review and consider the copies of records, information and reports referred to in paragraph (a) that the police complaint commissioner provides, and

(c) solicit and consider written and oral submissions from any interested person or organization.

(4) Subject to subsection (5), the police complaint commissioner must comply with a request of the special committee under subsection (3) (a).

(5) Before providing copies of the records, information and reports referred to in subsection (3) (a), the police complaint commissioner may sever 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*.

(6) At least once every 6 years after the report under subsection (2) is submitted to the Legislative Assembly, the special committee must act as described in subsections (2) and (3).

(7) A report submitted under subsection (2) or (6) may include any recommendations that the special committee considers necessary or appropriate.

### **Division 3**

#### **Repealed**

52, 52.1–52.2 [Repealed 2009-28-7.]

### **Division 4**

#### **Repealed**

53–62 [Repealed 2009-28-7.]

### **Division 5**

#### **Repealed**

63–63.1 [Repealed 2009-28-7.]

### **Division 6**

#### **Repealed**

64 [Repealed 2009-28-7.]

### **Division 7**

#### **Repealed**

64.1–66.1 [Repealed 2009-28-7.]

## **Part 9.1 — Recovering Small Community Policing Costs**

## Definitions for Part

66.2 (1) In this Part:

**"contributing area"**, in relation to a taxation year, means

- (a) a municipality that is not providing policing and law enforcement under section 3 (2) on April 1 of the taxation year,
- (a.1) treaty lands,
- (b) an electoral area, or
- (c) the area of the Province outside a regional district;

**"finance minister"** means the minister charged with the administration of the *Financial Administration Act*;

**"owner"** means,

- (a) with respect to real property in a municipality, an owner as defined in the *Community Charter*, and
- (b) with respect to real property in the treaty lands of a taxing treaty first nation or another rural area, an owner as defined in the *Assessment Act*;

**"police taxes"**,

- (a) in relation to contributing areas other than the treaty lands of a taxing treaty first nation, means taxes levied under this Part, and
- (b) in relation to a contributing area that is the treaty lands of a taxing treaty first nation, means amounts requisitioned from it under this Part by notice under section 66.4 (1);

**"revenue minister"** means the minister charged with the administration of the *Taxation (Rural Area) Act*;

**"solicitor general"** means the minister charged with the administration of Part 2 of this Act;

**"taxing treaty first nation"** has the same meaning as in the *Treaty First Nation Taxation Act*.

(1.1) Despite paragraph (a.1) of the definition of "contributing area", the treaty lands of a treaty first nation are not a contributing area if the treaty first nation provides funding for policing and law enforcement services within the treaty lands under an agreement under this section

(a) with the minister respecting funding for policing and law enforcement services provided within its treaty lands by the provincial police force, or

(b) approved by the minister, with a municipality that has a municipal police department, respecting funding for policing and law enforcement services provided within its treaty lands by that municipal police department.

(1.2) An agreement under subsection (1.1) must contain terms that the Lieutenant Governor in Council approves.

(2) So far as the terms defined can be applied, the definitions established by or applicable under

(a) the Schedule to the *Community Charter*, and

(b) section 5 of the *Local Government Act*

apply for the purposes of this Part.

### **Provincial levy for small community policing costs**

**66.21** (1) The Province may

(a) levy a tax in the contributing areas that are not treaty lands of a taxing treaty first nation, and

(b) requisition amounts in the case of the treaty lands of a taxing treaty first nation

to raise revenue for the cost of providing policing and law enforcement services in all contributing areas.

(2) For the purposes of subsection (1), the solicitor general must estimate for a taxation year the total cost to the Province of providing policing and law enforcement services to all contributing areas, taking into account the following factors based on the most recent information available to the solicitor general:



(a) the number of general duty and investigative unit members of the provincial police force assigned for the year to provincial police force detachments that provide policing and law enforcement services to the contributing areas;

(b) the average annual cost of a general duty or investigative unit member of the provincial police force to municipalities with populations between 5 000 and 15 000 that provide policing and law enforcement under section 3 (2).

(3) The Lieutenant Governor in Council may make regulations prescribing parts of contributing areas, or categories of parts of contributing areas, for which the solicitor general must exclude from the estimate under subsection (2) the cost of members described in subsection (2) (a) who provide policing and law enforcement services in those parts or categories of parts.

(4) On or before October 31 of each year, the solicitor general must give notice to the British Columbia Assessment Authority identifying, for the purposes of completing the assessment roll, the contributing areas for the next taxation year.

(5) On or before April 1 of each taxation year, the solicitor general must provide to the finance minister the estimate under subsection (2) for the taxation year.

### **Apportioning police taxes**

**66.3** (1) The finance minister must determine the total amount to be raised by police taxes from the contributing areas for a taxation year.

(2) The amount under subsection (1) must not exceed 50% of the amount the solicitor general estimates under section 66.21 (2) for the taxation year.

(3) On or before May 4 of each year, the Lieutenant Governor in Council must

(a) apportion the amount determined under subsection (1) among the contributing areas,

(b) determine the rates to be applied to the net taxable value of land and improvements in each contributing area

that is not treaty lands of a taxing treaty first nation in order to recover from each of those contributing areas the amount apportioned to it under paragraph (a), and

(c) determine the rates that, if applied to the net taxable value of land and improvements in the treaty lands of a taxing treaty first nation, would generate the amount apportioned to it under paragraph (a).

(4) The apportionment under subsection (3) (a) may take into account, to the extent the Lieutenant Governor in Council considers advisable,

(a) the converted value of land and improvements in each contributing area, and

(b) the population of each contributing area.

(5) The rates determined under subsection (3) (b) may be different for different contributing areas.

(6) On the request of a regional district on or before October 31 of the calendar year before a taxation year, the Lieutenant Governor in Council may

(a) reapportion among the contributing areas of the regional district the total amount apportioned to those areas under subsection (3) (a) for the taxation year,

(b) determine the rates to be applied to the net taxable value of land and improvements in each contributing area in the regional district that is not treaty lands of a taxing treaty first nation in order to recover from each of those contributing areas the amount apportioned to it under paragraph (a), and

(c) determine the rates that, if applied to the net taxable value of land and improvements in the treaty lands of a taxing treaty first nation, would generate the amount apportioned to it under paragraph (a).

(7) A request under subsection (6) may relate only to contributing areas that are members of the regional district.

### **Variable tax rate system**

**66.31** (1) In this section, "**variable tax rate system**" means a system under which individual tax rates are determined and imposed for each property class.

(2) The Lieutenant Governor in Council must adopt a variable tax rate system for the purpose of determining tax rates under section 66.3 (3) (b) or (6) (b).

(3) The Lieutenant Governor in Council may make regulations establishing relationships among tax rates for the variable tax rate system.

### **Requisitioning police taxes**

**66.4** (1) On or before May 10 of each year, the revenue minister must send to the collector of each municipality, and each taxing treaty first nation, that is a contributing area, a notice setting out

(a) the net taxable value of land and improvements in the municipality or treaty lands,

(b) the amount of police taxes apportioned to the municipality or taxing treaty first nation under section 66.3 (3) (a) or (6) (a), as applicable, and

(c) the rates determined for the municipality or treaty lands under section 66.3 (3) (b) or (6) (b), as applicable.

(2) On or before May 10 of each year, the revenue minister must send to the Surveyor of Taxes a notice setting out

(a) the net taxable value of land and improvements in

(i) treaty lands, except treaty lands of taxing treaty first nations,

(ii) each electoral area in the Province, and

(iii) the area of the Province outside a regional district,

(b) the amount of police taxes apportioned under section 66.3 (3) (a) or (6) (a), as applicable, to

(i) treaty lands, except the treaty lands of taxing treaty first nations,

(ii) each electoral area in the Province, and

- (iii) the area of the Province outside a regional district, and
- (c) the rates determined under section 66.3 (3) (b) or (6) (b), as applicable, for
  - (i) treaty lands, except the treaty lands of taxing treaty first nations,
  - (ii) each electoral area in the Province, and
  - (iii) the area of the Province outside a regional district.

## **Adjustments**

**66.41** (1) If the net taxable values of land and improvements are amended or changed for a taxation year under section 10, 12, 42, 63 or 65 (10) of the *Assessment Act*, or a supplementary assessment roll is prepared under that Act in respect of which section 228 (5) [*taxation of Crown land used by others*] of the *Community Charter* applies, amounts to be raised by police taxes in each contributing area may be adjusted in the current or a subsequent taxation year in the manner directed by the revenue minister.

(2) Property on a supplementary assessment roll prepared under the *Assessment Act* must be taxed at the same rate as property assessed for police tax purposes in the same contributing area for the taxation year to which the supplementary assessment roll relates.

## **Liability for police taxes**

**66.5** An owner of land or improvements in a contributing area that is not treaty lands of a taxing treaty first nation must pay police taxes imposed under this Part.

## **Collection of police taxes in municipalities**

**66.51** (1) A municipality collecting police taxes for a taxation year must pay to the finance minister

- (a) installments during the calendar year, as prescribed by the Lieutenant Governor in Council, and

(b) on the 5th business day after the calendar year end, all outstanding police taxes, whether or not they have been collected.

(2) A regulation under subsection (1) (a) may prescribe the installment amounts and the manner in which and the times at which installments are to be paid by a municipality, and the amounts, manner and times may be different for different municipalities collecting police taxes.

(3) Despite subsection (1) (b), a municipality may pay to the finance minister, on the 5th business day after a calendar year end and on the last day of each succeeding month until all police taxes imposed for the previous taxation year have been collected, the amount of police taxes it collects by each of those dates.

(4) If a municipality elects to comply with subsection (3), it must also pay to the finance minister all penalties and interest it collects in respect of police taxes.

### **If municipality unable to collect police taxes**

**66.6** (1) In this section, "**affected land**" means land or improvements to which section 26 of the *Assessment Act* applies.

(2) If a municipality satisfies the revenue minister that the municipality is unable to collect police taxes in respect of a taxation year on affected land, the revenue minister may write off the amount not collected, whether or not the municipality has forwarded that amount under section 66.51 (1).

(3) If an amount is written off under subsection (2), a corresponding adjustment must be made, in the manner directed by the revenue minister, in the amount of police taxes to be paid by the municipality in respect of that or a subsequent taxation year.

(4) The write off of an amount under subsection (2) does not

(a) relieve the holder or occupier of the affected land from liability for police taxes, or

(b) prejudice the right of the government to collect from that holder or occupier the amount written off.

## **Grants in place of taxes**

- 66 . 61** (1) A municipality that receives a notice under section 66.4 (1)[*requisitioning police taxes*] must apply each year to the following for a grant in place of police taxes for the taxation year:
- (a) an owner identified by the British Columbia Assessment Authority as
    - (i) exempt from paying police taxes, and
    - (ii) authorized to pay a grant in place of taxes;
  - (b) an owner who is exempt from paying police taxes and has paid a grant in place of taxes to the municipality for the previous taxation year.
- (2) On or before February 1 of each year, a municipality must pay to the finance minister the amount that has been received by the municipality in the preceding calendar year as a grant in place of police taxes.
- (3) If a municipality does not apply as required under subsection (1) and in the opinion of the Surveyor of Taxes the municipality would have received a grant had the municipality applied for it, the Surveyor of Taxes may disallow all or part of the administration fee that the municipality would otherwise be entitled to retain under section 66.9[*administration fee*].

## **Payment of police taxes by taxing treaty first nation**

- 66 . 62** The amount specified in a notice received by a taxing treaty first nation under section 66.4 (1) as the amount of police taxes apportioned to the taxing treaty first nation is a debt due from the taxing treaty first nation to the government and must be paid to the finance minister on or before August 1 of the year in which the notice is sent.

## **Application of other Acts to police taxes**

- 66 . 7** (1) Subject to this Part and the *Assessment Act*, Part 7 of the *Community Charter* applies to the assessment, levy, collection and recovery of police taxes in a municipality, including to the addition of penalties and interest to police taxes that are taxes in arrear or delinquent taxes, as if the police taxes were property value taxes imposed under Part 7 of the *Community Charter*.

(2) All police taxes collected by a municipality must be accounted for as police taxes.

(3) Subject to this Part and the *Assessment Act*, the *Taxation (Rural Area) Act* applies to the assessment, levy, collection and recovery of police taxes in treaty lands, except treaty lands of a taxing treaty first nation, an electoral area or the area of the Province outside a regional district, including to the addition of penalties and interest to delinquent police taxes, as if the police taxes were taxes imposed under the *Taxation (Rural Area) Act*.

(4) All police taxes collected by the Surveyor of Taxes must be

(a) accounted for as police taxes, and

(b) paid into the consolidated revenue fund.

### **Interest on unpaid taxes**

**66.71** (1) In this section, "**unpaid taxes**" means police taxes and penalties and interest that

(a) a municipality is required to pay to the finance minister under section 66.51 or a taxing treaty first nation is required to pay to the finance minister under section 66.62, and

(b) have not been paid as required under section 66.51 or 66.62, as applicable.

(2) A municipality or taxing treaty first nation must pay interest on its unpaid taxes to the finance minister.

(3) Interest, at the rate prescribed by the Lieutenant Governor in Council, is payable under subsection (2) from the date on which the amount was due to the finance minister under this Act until the date the amount is received by the finance minister.

(4) The revenue minister may give notice to a municipality or taxing treaty first nation of the

(a) amount of the municipality's or taxing treaty first nation's unpaid taxes,

(b) interest that is payable under this section on the unpaid taxes,

(c) date by which payment of the unpaid taxes and the interest is required, and

(d) power of the Surveyor of Taxes under subsection (5) if that payment is not made as required.

(5) If a municipality or taxing treaty first nation to which a notice is sent under subsection (4) does not pay the unpaid taxes and the interest referred to in the notice by the date required, the Surveyor of Taxes may disallow all or part of the administration fee that the municipality or taxing treaty first nation would otherwise be entitled to retain under section 66.9.

## **Inspection**

**66.8** (1) For the purpose of ensuring compliance with this Part and the regulations related to this Part, the Surveyor of Taxes or a person authorized in writing by the Surveyor of Taxes may

(a) at any reasonable time enter the premises where one or more records of a municipality are kept,

(b) request production of records or things that may be relevant to the inspection, and

(c) inspect records or things relevant to the inspection.

(2) Subsection (1) (a) does not authorize entry to a room actually used as a dwelling without the consent of the occupier.

(3) A person conducting an inspection under this section is entitled to free access to all the records of every description of the municipality referred to in subsection (1) (a) that touch on any of the matters in respect of which an inspection may be conducted under this section.

## **General provisions on collection of police taxes**

**66.81** (1) A municipality that receives a notice under section 66.4 (1) and the Surveyor of Taxes must act as the agent for the Province for the collection of police taxes.

(2) The collector of each municipality that receives a notice under section 66.4 (1) and the Surveyor of Taxes must prepare and mail to each person named on the real property tax roll or assessment roll as an assessed owner in the municipality, electoral area or area outside a



regional district, as applicable, a notice setting out the police taxes payable for a taxation year.

(3) A notice under subsection (2) forms part of the taxation notices under the *Community Charter* or the *Taxation (Rural Area) Act*, as applicable, and separate notices must not be prepared and given solely in respect of police taxes.

(4) The notice under subsection (2) must set out the total amount of police taxes imposed on each property.

(5) Despite subsections (2), (3) and (4), with the written agreement of a taxpayer, the Surveyor of Taxes may

(a) send a notice under subsection (2) to the taxpayer other than by mail, and

(b) provide the information required to be contained in a taxation notice by means of electronic information storage or electronic data transmission.

(5.1) Despite subsection (2), the collector of each municipality may provide a notice to a taxpayer other than by mail, in accordance with any applicable legislation.

(6) Subject to section 66.9, a municipality must not, directly or indirectly, charge a fee to a taxpayer or the government to cover the cost of

(a) assessment and collection of police taxes, or

(b) losses that have occurred through the failure to collect taxes.

### **Minister may authorize administration fee**

**66.9** The revenue minister may, by order, authorize the amount of an administration fee that may be retained by a municipality from police taxes collected by the municipality.

## **Part 10 — General**

### **Evidentiary effect of documents and records**

**67** In any proceeding, an order, rule, report, record or certificate signed by the police complaint commissioner, a discipline authority, as defined in section 76, or by the director or by a member of the board or committee that made the order, rule, report, record or certificate, is evidence of

(a) the facts stated in the order, rule, report, record or certificate, and

(b) the authority of the police complaint commissioner, discipline authority, director or member who signed the order, rule, report, record or certificate, without proof of that person's appointment, authority or signature.

### **Requests for temporary assistance**

**68** (1) The provincial police force, a municipal police department or a designated policing unit must, on receiving a request for temporary assistance made by another police force, police department or designated policing unit, assign to the requesting police force, police department or designated policing unit the officers and equipment practicable to assign for the purpose.

(2) A police force, police department or designated policing unit that requests and receives assistance under subsection (1) is responsible for all costs of that assistance.

### **Requirement to use information management system**

**68 . 1** (1) In this section:

**"designated service provider"** means a corporation that

(a) is providing an information management system to a law enforcement service, and

(b) is designated by order of the Lieutenant Governor in Council for the purposes of subsection (7);

**"information management system"** means a system of software and hardware components and related technology that

(a) interact and operate to integrate reception, creation, collection, recording, filing, analysis, reporting,

transmission, storing, sending, reproduction and dissemination of information and data within and between policing and law enforcement jurisdictions, and

(b) is approved by the minister under subsection (2);

**"law enforcement service"** means the following:

(a) the provincial police force;

(b) a municipal police department;

(c) any designated policing unit or designated law enforcement unit that is also designated by the minister as a law enforcement service for the purposes of this section;

**"protected person"** means

(a) a designated service provider,

(b) a current or former member of a designated service provider, and

(c) a current or former director or employee of a designated service provider.

(2) The minister may approve one or more information management systems for the purposes of this section.

(3) Subject to and in accordance with any regulation that may be made under section 74 (2) (v) or (x), a law enforcement service must implement, use, maintain, repair and upgrade an information management system approved by the minister.

(4) For the purposes of this section, the minister may set or adopt standards to be followed by law enforcement services

(a) respecting the manner, form, exchange and transfer of information and data in an information management system, and

(b) for the maintenance of security and information and data integrity of an information management system.

(5) A law enforcement service must comply with all standards set or adopted under subsection (4).

(6) Subject to the regulations, all costs incurred in the implementation, use, maintenance, repair and upgrading of a prescribed information management system by a law enforcement service or incurred in complying with the standards set or adopted under subsection (4) are

(a) the responsibility of

(i) the municipality, in the case of a municipal police department, and

(ii) the entity on behalf of which a designated policing unit or designated law enforcement unit is established under section 4.1 or 18.1, in the case of a designated policing unit or designated law enforcement unit, and

(b) a debt due to and recoverable by the government or one or more persons specified by the minister who provide software, hardware or any other service in relation to an information management system under this section.

(7) No action lies and no proceedings may be brought against a protected person, and a protected person is not liable for any loss or damages suffered by any person, in respect of anything done or omitted to be done by the protected person in relation to the provision or operation of an information management system provided by a designated service provider.

(8) As an exception, the immunity from legal action otherwise provided to a protected person by subsection (7) does not apply if the protected person has been guilty of malice or wilful misconduct in relation to the subject matter of the action.

(9) If an information management system is provided by a designated service provider that is a public body under the *Freedom of Information and Protection of Privacy Act*,

(a) the information and data in the information management system remain, for the purposes of that Act, in the custody and under the control of the law enforcement service from which the information and data originate, and

(b) despite that Act, a person does not have a right of access under that Act to the information and data as being

information and data in the custody or under the control of the designated service provider.

### **Meetings and hearings open to public**

**69** (1) Subject to subsection (2), every meeting and hearing of a board or a committee must be open to the public.

(2) If it believes that any of the following matters will arise in a meeting or hearing held by it, a board or committee may order that the portion of the meeting during which the matter will arise be held in private:

(a) a matter concerning public security, the disclosure of which could reasonably be expected to seriously impair effective policing or law enforcement;

(b) a matter concerning a person's financial or personal affairs, if the person's interest in the matter outweighs the public's interest in the matter;

(c) a matter concerning labour contract discussions, labour management relations, layoffs or another personnel matter;

(d) a matter concerning information that a person has requested he or she be allowed to give in private to the board or committee.

(3) On making an order under subsection (2), the board or committee must promptly submit to the minister a copy of the minutes of the meeting or hearing and a statement of the reasons for holding a portion of the meeting or hearing in private.

### **Oaths and affirmations**

**70** (1) A person must take an oath or affirmation in the prescribed form before that person assumes office, exercises any power or performs any duty or function as any of the following under this Act:

(a) an officer;

(b) a bylaw enforcement officer;

(c) a member of a board or committee;

(d) the director;

(e) any person employed or retained by, or engaged and retained by, the director.

(2) The minister may prescribe different forms of oaths and affirmations for provincial constables, auxiliary constables, designated constables, municipal constables, special municipal constables, special provincial constables, enforcement officers, bylaw enforcement officers and members of boards and committees.

(3) The minister may, by regulation, require that an employee of the provincial police force take an oath or affirmation in the form and manner the minister prescribes.

(4) An oath or affirmation required to be taken under this section must be filed with the person designated in the regulations.

(5) Subsection (3) does not apply to a person referred to in subsection (2).

### **Minutes and records**

71 Every board and committee must keep minutes of its meetings and hearings and records of its inquiries.

### **Ombudsperson**

72 The *Ombudsperson Act* does not apply to this Act or the regulations.

### **Service of notices**

73 (1) A notice required under this Act must be

(a) in writing, and

(b) served or mailed by registered mail.

(2) If a notice under this Act is mailed by registered mail, the addressee is deemed to have received the notice on the fifth day after the date of mailing.

### **Power to make regulations**

74 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) providing for or granting financial aid to the administration and course of study in a police training school or other educational institution;
- (b) developing procedures for handling complaints from members of the public against a class of officer;
- (c) for the government of police forces, police departments, designated policing units and designated law enforcement units;
- (d) prescribing the minimum salary or other remuneration and allowances to be paid to members of police forces, police departments, designated policing units or designated law enforcement units;
- (e) prescribing the minimum remuneration to be paid to the members of boards or committees who are designated by the Lieutenant Governor in Council or appointed by the minister;
- (f) prescribing the minimum number of members of police forces, police departments and designated policing units that are to be employed
  - (i) on a basis of population, area or property assessment,
  - (ii) on any combination of them, or
  - (iii) on another basis;
- (g) [Repealed 2010-21-192.]
- (h) prescribing or regulating the number of meetings to be held by boards and committees, the times and places they are to be held and the public notices and methods to be employed regarding the meetings;
- (i) prescribing the records, returns, books and accounts to be kept and made by police forces, police departments, designated policing units, designated law enforcement units, or a member of any of them;

(j) prescribing the method of accounting for fees, costs and other money that is received by an officer;

(k) providing for the payment of fees and expenses to witnesses at hearings or appeals under this Act, other than witnesses referred to in section 122 or witnesses called under section 141 (4) or 143 (5);

(l) prescribing the deployment and department of auxiliary constables or special provincial constables;

(m) prescribing the administration of rewards offered in respect of an offence;

(n) providing for the disposal of property where the provincial police force, a designated policing unit or designated law enforcement unit obtains custody of stolen or abandoned personal property;

(o) to (q) [Repealed 2009-28-9.]

(r) prescribing an entity for the purpose of paragraph (d) of the definition of "entity" in section 1;

(s) making all or any part of sections 18.1 and 18.2 applicable, with any modifications that the Lieutenant Governor in Council considers necessary or advisable, to a ministry, as if the ministry were an entity;

(t) [Repealed 2010-21-192.]

(t.1) prescribing the qualifications for appointments under section 38.06 (1)[*independent investigations office staff*];

(t.2) prescribing the qualifications for appointments under section 38.06 (2)[*IIO investigators*];

(t.3) establishing procedures that must be followed or performed by IIO investigators and staff members of the independent investigations office in order to assist civilian monitors in their reviews and assessments under section 38.08[*civilian monitors*];

(t.4) prescribing provisions of the [Criminal Code](#) or another federal or provincial enactment for the purposes of the following provisions of this Act:



(i) section 38.09 (1) (b) [*immediate reporting of critical incidents*];

(ii) section 38.10 (1) (c) [*immediate reporting of critical investigations*];

(iii) section 177.1 (c) [*duty of police complaint commissioner to notify IIO*];

(u) governing the qualifications, ranks, conduct, dress, duties, suspension, promotion, dismissal, punishment or discipline of a class of officers or of IIO investigators;

(v) respecting the implementation, use, maintenance, repair and upgrading of an information management system by a law enforcement service under section 68.1;

(w) prescribing fees that must be paid to the government or to persons specified by the minister who provide, software, hardware or any other service in relation to an information management system under section 68.1;

(x) providing for the phasing in of the operation of section 68.1 (3), or the phasing in of new or changed technology for an information management system under section 68.1, and the phasing in may be in relation to

(i) specified law enforcement services,

(ii) specified geographical areas of British Columbia, or

(iii) specified law enforcement services in specified geographical areas of British Columbia.

(3) For the purposes of regulations under subsection (2) and section 184[*regulations under Parts 9 and 11*], the minister may make regulations prescribing classes of officers and the classifications may be based on the different ranks, duties or functions of different officers, the different employers of different officers, the different nature of policing or law enforcement services provided by different officers, or on the following classes of officers under this Act:

(a) provincial constable;

(b) special provincial constable;

(c) designated constable;

- (d) municipal constable;
- (e) special municipal constable;
- (f) auxiliary constable;
- (g) enforcement officer.

(4) The Lieutenant Governor in Council may make different regulations under subsection (2) (b) or (u) for different classes of officers.

(5) [Repealed 2010-21-192.]

### **Offence Act**

75 Section 5 of the *Offence Act* does not apply to this Act or the regulations.

## **Part 11 — Misconduct, Complaints, Investigations, Discipline and Proceedings**

### **Division 1 — Interpretation**

#### **Definitions and interpretation**

76 (1) In this Part:

**"adjudicator"** means a person appointed under section 142 to preside over a public hearing or review on the record;

**"business day"** means a day other than a Saturday or a holiday;

**"commission counsel"** means legal counsel representing the police complaint commissioner;

**"complainant"**, subject to subsection (3), means

(a) a person who makes and registers a complaint under section 78[*how complaints are made*],

(b) a person on whose behalf a complaint is made under section 78, and

(c) if a complaint is made on behalf of another by an individual authorized to do so under section 78, the authorized individual,

but does not include a person whose complaint is discontinued under section 84[*discontinuance and consolidation of complaints made by third-party complainants*], 94 (2) [*withdrawal of complaint by complainant*] or 164 (1) (b) [*consequences if participant fails to attend mediation proceeding*];

**"conduct"** includes any act or omission, and a reference to the occurrence of any conduct includes the doing of an act or the making of an omission;

**"disciplinary or corrective measures"** means any one or more of the measures described in section 126 (1)[*imposition of disciplinary or corrective measures*];

**"discipline authority"** means the following:

(a) in relation to a complaint or an investigation under Division 3[*Process Respecting Alleged Misconduct*] concerning the conduct of a member who is not a chief constable or deputy chief constable,

(i) a chief constable of the municipal police department with which the member is employed, unless section 117 (9), 134 or 135 (1) applies,

(ii) if section 117 (9)[*appointment of new discipline authority if conclusion of no misconduct is incorrect*] applies, the retired judge appointed under that section,

(iii) if section 134[*chief constable may delegate discipline authority functions*] applies, a person referred to in subsection (1) (a) or (b) of that section, or

(iv) if section 135 (1)[*power to designate another discipline authority if in public interest*] applies, a senior officer designated under that section as discipline authority by the police complaint commissioner;

(b) in relation to a complaint or an investigation under Division 3 concerning the conduct of a member who is a chief constable or deputy chief constable,

- (i) the chair of the board by which the member is employed, unless section 117 (9) or 135 (2) applies,
- (ii) if section 117 (9)[*appointment of new discipline authority if conclusion of no misconduct is incorrect*] applies, the retired judge appointed under that section, or
- (iii) if section 135 (2)[*power to designate another discipline authority if in public interest*] applies, a retired judge appointed under that section as discipline authority by the police complaint commissioner;

(c) in relation to a complaint or an investigation under Division 3 concerning the conduct of a former member who, at the time of the conduct of concern, was not a chief constable or deputy chief constable,

- (i) a chief constable of the municipal police department with which the former member was employed at the time of the conduct of concern, unless section 117 (9), 134 or 135 (1) applies,
- (ii) if section 117 (9)[*appointment of new discipline authority if conclusion of no misconduct is incorrect*] applies, the retired judge appointed under that section,
- (iii) if section 134[*chief constable may delegate discipline authority functions*] applies, a person referred to in subsection (1) (a) or (b) of that section, or
- (iv) if section 135 (1)[*power to designate another discipline authority if in public interest*] applies, a senior officer designated under that section as discipline authority by the police complaint commissioner;

(d) in relation to a complaint or an investigation under Division 3 concerning the conduct of a former member who, at the time of the conduct of concern, was a chief constable or deputy chief constable,

- (i) the chair of the board by which the former member was employed at the time of the conduct of concern, unless section 117 (9) or 135 (2) applies,
- (ii) if section 117 (9)[*appointment of new discipline authority if conclusion of no misconduct is incorrect*] applies, the retired judge appointed under that section, or
- (iii) if section 135 (2)[*power to designate another discipline authority if in public interest*] applies, a retired judge appointed under that section as discipline authority by the police complaint commissioner;

**"discipline representative"** means a person appointed by the discipline authority under section 121 (1) (a)[*if member's or former member's request to question witnesses is accepted*];

**"external police force"**, in relation to a municipal police department to which section 89 (1)[*reporting of death, serious harm and reportable injury, and mandatory external investigation in cases of death and serious harm*], 91 (1) [*external investigation of chief constables*], 92 (1), (2) or (3) [*external investigations when in public interest*] or 93 (1) (b) (ii) [*independent power to order investigation*] applies, means

- (a) another municipal police department,
- (b) the provincial police force, or
- (c) a designated policing unit;

**"final investigation report"** means the report provided by an investigating officer under section 98 (4) or (10) (b) [*investigating officer's duty to file reports*], but does not include a report that is rejected under section 98 (9);

**"firearm"** means a gun that uses, as a propellant, compressed air, explosives or gas;

**"former member"**, in relation to a complaint or an investigation under Division 3 concerning the conduct of a person who, at the time of the conduct of concern, was a member of a municipal

police department but who after that time has retired or resigned and is no longer a member of any municipal police department, means that person;

**"internal discipline matter"** means a matter concerning the conduct or deportment of a member that

(a) is not the subject of an admissible complaint or an investigation under Division 3[*Process Respecting Alleged Misconduct*], and

(b) does not directly involve or affect the public;

**"investigating officer"** means a constable appointed to investigate

(a) a matter under section 89 (2)[*reporting of death, serious harm and reportable injury, and mandatory external investigation in cases of death and serious harm*],

(b) an admissible complaint under section 90 (1) (b)[*if complaint not resolved informally, investigation must be initiated*],

(c) an admissible complaint under section 91[*external investigation of chief constables*],

(d) an admissible complaint under section 92 (1), (2) or (3) [*external investigations when in public interest*], or

(e) conduct of a member under section 93[*independent power to order investigation*];

**"member"** means a municipal constable, deputy chief constable or chief constable of a municipal police department;

**"misconduct"** has the same meaning as in Division 2[*Misconduct*];

**"public hearing"** means a public hearing referred to in section 143[*public hearing*];

**"public hearing counsel"** means, in relation to a public hearing, legal counsel appointed by the police complaint commissioner under section 138 (7)[*determining whether to arrange public*

*hearing or review on the record]* for the purposes of that public hearing;

**"reportable injury"** means any of the following:

- (a) an injury caused by discharge of a firearm;
- (b) an injury requiring emergency care by a medical practitioner or nurse practitioner and transfer to a hospital;
- (c) an injury described by regulation under section 184 (2) (c)*[regulations under Parts 9 and 11]*;

**"review on the record"** means a review on the record referred to in section 141*[review on the record]*;

**"senior officer"** means a member of inspector rank or higher;

**"serious harm"** means injury that

- (a) may result in death,
- (b) may cause serious disfigurement, or
- (c) may cause substantial loss or impairment of mobility of the body as a whole or of the function of any limb or organ;

**"supervisor"** means, in relation to a member,

- (a) a chief constable of the municipal police department with which the member is employed, or
- (b) any other member designated by that chief constable to supervise members of the municipal police department;

**"supplementary report"** means the supplementary investigation report provided by an investigating officer under section 115 (2)*[if member's or former member's request for further investigation is accepted]*;

**"third-party complainant"** means a person who makes and registers a complaint under section 78 (1)*[how complaints are made]* who is not a person or an individual described in section 78 (1) (a) or (b).

(2) In Division 3*[Process Respecting Alleged Misconduct]*, **"agent"**, with reference to a member or former member, means the member's

or former member's trade union representative or some other individual of the member's or former member's choice, other than her or his legal counsel.

(3) In Division 3, "**complainant**" includes a representative appointed under section 87 [*appointment of representative for complainants*].

## **Division 2 – Misconduct**

### **Defining misconduct**

**77** (1) In this Part, "**misconduct**" means

(a) conduct that constitutes a public trust offence described in subsection (2), or

(b) conduct that constitutes

(i) an offence under section 86 [*offence to harass, coerce or intimidate anyone questioning or reporting police conduct or making complaint*] or 106 [*offence to hinder, delay, obstruct or interfere with investigating officer*], or

(ii) a disciplinary breach of public trust described in subsection (3) of this section.

(2) A public trust offence is an offence under an enactment of Canada, or of any province or territory in Canada, a conviction in respect of which does or would likely

(a) render a member unfit to perform her or his duties as a member, or

(b) discredit the reputation of the municipal police department with which the member is employed.

(3) Subject to subsection (4), any of the conduct described in the following paragraphs constitutes a disciplinary breach of public trust, when committed by a member:

(a) "abuse of authority", which is oppressive conduct towards a member of the public, including, without limitation,

(i) intentionally or recklessly making an arrest without good and sufficient cause,



(ii) in the performance, or purported performance, of duties, intentionally or recklessly

(A) using unnecessary force on any person, or

(B) detaining or searching any person without good and sufficient cause, or

(iii) when on duty, or off duty but in uniform, using profane, abusive or insulting language to any person including, without limitation, language that tends to demean or show disrespect to the person on the basis of that person's race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or economic and social status;

(b) "accessory to misconduct", which is knowingly being an accessory to any conduct set out in this subsection, including, without limitation, aiding, abetting, counselling or being an accessory after the fact;

(c) "corrupt practice", which is

(i) without lawful excuse, failing to make a prompt and true return of, or misappropriating, any money or property received in the performance of duties as a member,

(ii) agreeing or allowing to be under a pecuniary or other obligation to any person in a manner that would likely be seen to affect the member's ability to properly perform the duties of a member,

(iii) using or attempting to use one's position as a member for personal gain or other purposes unrelated to the proper performance of duties as a member, or

(iv) using or attempting to use any equipment or facilities of a municipal police department, or any other police force or law enforcement agency, for purposes unrelated to the performance of duties as a member;

(d) "damage to police property", which is

(i) intentionally or recklessly misusing, losing or damaging

(A) any police property, or

(B) any property that is in police custody or the care of which has been entrusted to the member in the performance of duties as a member, or

(ii) without lawful excuse, failing to report any loss or destruction of, or any damage to, any property referred to in subparagraph (i), however caused;

(e) "damage to property of others", which is

(i) when on duty, or off duty but in uniform, intentionally or recklessly damaging any property belonging to a member of the public, or

(ii) without lawful excuse, failing to report any such damage, however caused;

(f) "deceit", which is any of the following:

(i) in the capacity of a member, making or procuring the making of

(A) any oral or written statement, or

(B) any entry in an official document or record,

that, to the member's knowledge, is false or misleading;

(ii) doing any of the following with an intent to deceive any person:

(A) destroying, mutilating or concealing all or any part of an official record;

(B) altering or erasing, or adding to, any entry in an official record;

(iii) attempting to do any of the things described in subparagraph (i) or (ii);

(g) "discourtesy", which is failing to behave with courtesy due in the circumstances towards a member of the public in the performance of duties as a member;

(h) "discreditable conduct", which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department, including, without limitation, doing any of the following:

(i) acting in a disorderly manner that is prejudicial to the maintenance of discipline in the municipal police department;

(ii) contravening a provision of this Act or a regulation, rule or guideline made under this Act;

(iii) without lawful excuse, failing to report to a peace officer whose duty it is to receive the report, or to a Crown counsel, any information or evidence, either for or against any prisoner or defendant, that is material to an alleged offence under an enactment of British Columbia or Canada;

(i) "improper disclosure of information", which is intentionally or recklessly

(i) disclosing, or attempting to disclose, information that is acquired by the member in the performance of duties as a member, or

(ii) removing or copying, or attempting to remove or copy, a record of a municipal police department or any other police force or law enforcement agency;

(j) "improper off-duty conduct", which is, when off duty, asserting or purporting to assert authority as a member, an officer or a member of the Royal Canadian Mounted Police and conducting oneself in a manner that would constitute a disciplinary breach of trust if the member were on duty as a member;

(k) "improper use or care of firearms", which is failing to use or care for a firearm in accordance with standards or requirements established by law;

(l) "misuse of intoxicants", which is

(i) owing to the effects of intoxicating liquor or any drug, or any combination of them, being unfit for duty when on duty or reporting for duty, or

(ii) without proper authority, making use of or accepting from any other person intoxicating liquor when on duty or when off duty but in uniform in a public place;

(m) "neglect of duty", which is neglecting, without good or sufficient cause, to do any of the following:

(i) properly account for money or property received in one's capacity as a member;

(ii) promptly and diligently do anything that it is one's duty as a member to do;

(iii) promptly and diligently obey a lawful order of a supervisor.

(4) It is not a disciplinary breach of public trust for a member to engage in conduct that is necessary in the proper performance of authorized police work.

### **Division 3 – Process Respecting Alleged Misconduct**

#### **How complaints are made to and registered with police complaint commissioner**

**78** (1) Subject to section 79, a complaint concerning any conduct of a member that is alleged to constitute misconduct may be made to and registered with the police complaint commissioner

(a) by a person who is directly affected by, or who directly witnesses, the conduct,

(b) by an individual known to and acting on behalf of a person described in paragraph (a), if the person on whose behalf the complaint is being made consents to its being made or is, because of age or a mental or physical condition, incapable of giving consent, or

(c) by a third-party complainant.

(2) The complaint may be made and registered by stating or delivering it

(a) directly to the police complaint commissioner, or

(b) to one of the following for forwarding under section 80 to the police complaint commissioner:

(i) a member on duty at a station of any municipal police department who is assigned to receive and register complaints under this Division;

(ii) an individual designated by the police complaint commissioner under section 51 (5) (a) [*staff and other designated individuals*].

### **Time limit for making complaints**

**79** (1) A complaint must be made within the 12-month period beginning on the date of the conduct giving rise to the complaint or within any extension of that period allowed under subsection (2).

(2) The police complaint commissioner may extend the time limit for making a complaint if the police complaint commissioner considers that there are good reasons for doing so and it is not contrary to the public interest.

(3) A complaint is considered to be made as soon as it is received by

(a) the police complaint commissioner, if made directly to the police complaint commissioner, or

(b) a member or designated individual referred to in section 78 (2) (b), if the complaint is made by stating or delivering it as described in section 78 (2) (b).

### **If complaint made to member or designated individual under section 78 (2) (b)**

**80** (1) When a member or designated individual referred to in section 78

(2) (b) receives a complaint under that provision, she or he must immediately

(a) record the complaint and the date and time of its receipt,

(b) provide the complainant with a written acknowledgment of its receipt, and

(c) forward to the police complaint commissioner a copy of the complaint or, if the complaint was not made in writing, a copy of the record of the complaint.

(2) The member or designated individual receiving the complaint must

(a) provide the complainant with any assistance that complainant requires in making the complaint,

(b) provide any information or advice to the complainant that may be required under the guidelines prepared under section 177 (2) (a) by the police complaint commissioner,

(c) request from the complainant any information that may be required under the guidelines,

(d) 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

(e) complete and forward to the police complaint commissioner the record of complaint in the form and manner required by the police complaint commissioner.

### **If complaint made directly to police complaint commissioner**

**81** When the police complaint commissioner receives a complaint directly from a person under section 78 (2) (a), the police complaint commissioner must immediately

(a) record the complaint and the date and time of its receipt,

(b) provide the complainant with

(i) a written acknowledgment of its receipt, and

(ii) 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

(c) notify the following, as applicable:

- (i) a chief constable of the municipal police department with which the member whose conduct is the subject of the complaint is employed, unless the complaint concerns the conduct of a member who is a chief constable or deputy chief constable;
- (ii) if the complaint concerns the conduct of a chief constable or deputy chief constable, the board by which that constable is employed;
- (iii) if the complaint concerns the conduct of a member who has since the time of that conduct retired or resigned and is no longer a member of any municipal police department, a chief constable of the municipal police department with which the former member was employed at the time of the conduct of concern.

### **Determination of whether complaint is admissible**

**82** (1) On receiving a complaint directly from a complainant or receiving a copy or record of a complaint from a member or designated individual referred to in section 78 (2) (b), the police complaint commissioner must determine whether the complaint is admissible or inadmissible under this Division.

(2) A complaint or a part of a complaint is admissible under this Division if

- (a) the conduct alleged would, if substantiated, constitute misconduct by the member,
- (b) the complaint is made within the time allowed under section 79 (1) or (2) [*time limit for making complaints*], and
- (c) the complaint is not frivolous or vexatious.

(3) A complaint or a part of a complaint is inadmissible under this Division insofar as it relates to any of the following:

- (a) the general direction and management or operation of a municipal police department;

(b) the inadequacy or inappropriateness of any of the following in respect of a municipal police department:

- (i) its staffing or resource allocation;
- (ii) its training programs or resources;
- (iii) its standing orders or policies;
- (iv) its ability to respond to requests for assistance;
- (v) its internal procedures.

(4) A complaint concerning a person who, at the time of the conduct alleged, was a member is not inadmissible by reason only that the person

(a) is, at the time the complaint is made, no longer a member, or

(b) retires or resigns from the municipal police department at any time after the complaint is made.

(5) Nothing in this section limits the application of section 109[*power to discontinue investigation*].

(6) Any complaint or part of a complaint that is determined inadmissible under subsection (3) must be processed by the board of the municipal police department concerned under Division 5[*Process Respecting Department Service and Policy Complaints*].

### **Notification following determination of admissibility**

**83** (1) On determining under section 82 that a complaint is inadmissible, the police complaint commissioner must

- (a) give written notification of that determination to
  - (i) the complainant,
  - (ii) a chief constable of the municipal police department with which the member in respect of whom the complaint is made is employed or, if the complaint concerns the conduct of a former member, a chief constable of the municipal police department with which the former member was employed at the time of the conduct of concern, and



(iii) in the case of a complaint determined inadmissible under section 82 (3), the board of the municipal police department concerned,

(b) include in the notification the reason for the determination,

(c) if the determination results from the application of section 82 (3), include in the notification the requirement under section 82 (6) to process the complaint under Division 5 [*Process Respecting Department Service and Policy Complaints*], and

(d) take no further action under this Division in relation to the complaint.

(2) On determining under section 82 that a complaint is admissible, the police complaint commissioner must as soon as practicable give written notification of that determination to

(a) the complainant,

(b) unless paragraph (c) applies, a chief constable of the municipal police department with which the member in respect of whom the complaint is made is employed or, if the complaint concerns the conduct of a former member, a chief constable of the municipal police department with which the former member was employed at the time of the conduct of concern, and

(c) if the complaint concerns the conduct of a chief constable or former chief constable of a municipal police department, the chair of the board of that municipal police department.

(3) On being notified of an admissible complaint concerning a member or former member of a municipal police department, a chief constable of the municipal police department must, subject to section 88 (1)

(b) [*duty to preserve evidence relating to complaint or report*], notify the member or former member that a complaint has been made and specify the nature of the complaint and the name of the complainant.

(4) On being notified of an admissible complaint concerning a chief constable or a former chief constable of a municipal police department,

the chair of the board of that municipal police department must, subject to subsection (5), notify that chief constable or former chief constable that a complaint has been made and specify the nature of the complaint and the name of the complainant.

(5) The police complaint commissioner may direct the chair referred to in subsection (4) to postpone notifying the chief constable or former chief constable concerned until such time as the police complaint commissioner may direct.

(6) The chair must comply with the police complaint commissioner's direction under subsection (5).

### **Discontinuance and consolidation of complaints made by third-party complainants**

**84** (1) The police complaint commissioner must discontinue a complaint registered by a third-party complainant under section 78 (1) (c) concerning the conduct of a member or former member if a person described in section 78 (1) (a) or (b) makes and registers an admissible complaint concerning the same conduct.

(2) Unless subsection (1) applies, the police complaint commissioner may do any of the following if more than one third-party complainant registers a complaint under section 78 concerning the same conduct of a member or former member and the police complaint commissioner considers it to be in the public interest:

(a) consolidate the complaints for the purposes of an investigation or a proceeding under this Part;

(b) discontinue one or more of the complaints for the purposes of an investigation or a proceeding under this Part;

(c) discontinue one or more of the complaints and consolidate the remainder of them for the purposes of an investigation or a proceeding under this Part.

(3) If a complaint registered by a third-party complainant is discontinued under this section, the police complaint commissioner must

(a) give written notification of the discontinuance, together with reasons, to

(i) the third-party complainant, and

(ii) the discipline authority, and

(b) take no further action under this Division in relation to the complaint.

(4) Despite subsection (3) (b), on request of the third-party complainant referred to in that subsection, the police complaint commissioner may provide that person with one or more of the following records, if the police complaint commissioner considers it in the public interest to do so:

(a) a copy of the final investigation report received by the complainant under section 112 (1) (b) (i) [*discipline authority to review final investigation report and give early notice of next steps*];

(b) a copy of the notification under section 112 (1) (c);

(c) a copy of the supplementary report received by the complainant under section 116 (1) (b) (i) [*discipline authority to review supplementary report and give notice of next steps*];

(d) a copy of the notification under section 116 (1) (c);

(e) a copy of the report referred to in section 133 (1)

(a) [*review of discipline proceedings*].

(5) Before providing copies of any record referred to in subsection (4), the police complaint commissioner may sever 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](#).

(6) On being notified that a complaint concerning the conduct of a member or former member is discontinued under this section, the discipline authority must, subject to a postponement under section 88 (1) (b) [*duty to preserve evidence relating to complaint or report*] and subsection (7) of this section, notify the member or former member of that discontinuance.

(7) The police complaint commissioner may direct the discipline authority referred to in subsection (6) to postpone notifying the member or former member concerned until such time as the police complaint commissioner may direct.

(8) The discipline authority must comply with the police complaint commissioner's direction under subsection (7).

### **Departments to make record of reports not resulting in registered complaints**

**85** (1) The police complaint commissioner may, at any time,

(a) direct a chief constable or the board of a municipal police department to ensure that a record is made, in the form and manner required by the police complaint commissioner, of any oral or written report to the department by a member of the public or any other person that raises a question or concern about the conduct of a member of the municipal police department but that does not result in the making and registration of a complaint under section 78 [*how complaints are made*],

(b) direct a chief constable or the board of a municipal police department to ensure

(i) that every person who reports a question or concern described in paragraph (a) is provided the information or advice that may be required under the guidelines prepared by the police complaint commissioner under section 177 (2) (b) [*general responsibility and functions of police complaint commissioner*], and

(ii) that procedures under the guidelines referred to in subparagraph (i) are followed by all members of the municipal police department, and

(c) inspect a record made under paragraph (a) or require a senior officer of the municipal police department to produce the record to the police complaint commissioner for audit.

(2) Despite any other enactment and any claim of confidentiality or privilege, other than a claim based on solicitor-client privilege,

- (a) the chief constable of a municipal police department referred to in subsection (1) must ensure that the directions and requirements of the police complaint commissioner under that subsection are complied with, and
- (b) all members of the municipal police department must cooperate fully with the police complaint commissioner in an inspection or audit under subsection (1) (c).

(3) Subject to sections 79[*time limit for making complaints*] and 82 [*determination of whether complaint is admissible*], nothing in this section prevents any person who raises a question or concern about the conduct of a member or former member from making a complaint about the same matter under section 78[*how complaints are made*].

### **Offence to harass, coerce or intimidate anyone questioning or reporting police conduct or making a complaint**

- 86** (1) A person must not harass, coerce or intimidate any other person in relation to any complaint or report concerning the conduct of a member or former member under this Part.
- (2) A person who contravenes subsection (1) commits an offence.

### **Appointment of representative for complainants**

- 87** (1) Subject to subsection (3), the police complaint commissioner may appoint a representative for a complainant as follows:
- (a) if the complainant is under 19 years of age, a parent or legal guardian or, if no parent or legal guardian is available or willing to act, a responsible adult;
  - (b) if the police complaint commissioner considers that the complainant is unable to assert her or his rights under this Part because of age or a mental or physical condition, an adult of the complainant's choice or, if no such adult is identifiable, available or willing to act, a responsible adult;
  - (c) if the complainant dies after making a complaint, the executor of the complainant or the administrator of the complainant's estate or, if no executor or administrator is available or willing to act, a responsible adult.

(2) A representative appointed under subsection (1) has all of the rights and responsibilities available under this Part to a complainant who is a competent adult.

(3) In deciding whether to appoint a representative under this section, the police complaint commissioner must consider

(a) whether the complainant is capable of exercising the rights available under this Part to a complainant without the assistance of a representative, and

(b) the wishes of the complainant.

### **Duty to preserve evidence relating to complaint or report**

**88** (1) A chief constable

(a) must take every reasonable step to ensure that members of her or his municipal police department, on becoming aware of

(i) a death or the suffering of serious harm or a reportable injury described in section 89

(1)[*reporting of death, serious harm and reportable injury, and mandatory external investigation in cases of death and serious harm*], or

(ii) a complaint or report concerning the conduct of a member or former member,

take any lawful measures that appear to them to be necessary or expedient for the purposes of obtaining and preserving evidence relating to the matter, and

(b) may postpone notifying the member or former member whose conduct is the subject of the complaint or report until those measures are taken.

(2) Subsection (1) applies whether or not a determination has been made under section 82 about the admissibility of the complaint under this Division.

### **Reporting of death, serious harm and reportable injury, and mandatory external investigation in cases of death and serious harm**

**89** (1) A chief constable of a municipal police department must immediately report to the police complaint commissioner, in the form and manner required by the police complaint commissioner, if

(a) a person dies or suffers serious harm or a reportable injury

(i) while in the custody or care of a member of the municipal police department, or

(ii) as a result of the operations of that municipal police department, or

(b) a person dies or suffers serious harm or a reportable injury and the death, serious harm or reportable injury could be seen to be the result of

(i) the conduct of any member of the municipal police department, or

(ii) the operations of that municipal police department.

(2) Despite any other provision of this Part, if a person dies or suffers serious harm in circumstances described in subsection (1) (a) or (b), 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.

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

(4) The chief constable, chief officer or commissioner under subsection (2) (a)

(a) may appoint only a constable who meets both of the following criteria:

- (i) the constable has no connection with the matter;
- (ii) if the matter concerns the conduct of a member or former member, the constable's rank is equivalent to or higher than the rank of the member or former member,

(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.

(5) The police complaint commissioner may establish guidelines respecting the criteria to be applied by a chief constable in determining whether an injury constitutes serious harm for the purposes of subsection (1), which guidelines may provide for a determination to be made by the police complaint commissioner on the matter.

### **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.

### **External investigations when in public interest**

**92** (1) Despite section 90 (1), if at any time the police complaint commissioner considers that an external investigation of an admissible complaint against a member or former member of a municipal police department is necessary in the public interest, the police complaint commissioner may direct that the investigation 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) Despite section 90 (1), but subject to the approval of the police complaint commissioner, if at any time a chief constable of a municipal police department considers that an external investigation of an admissible complaint against a member or former member of the municipal police department is necessary in the public interest, the chief constable may direct that the investigation be conducted by 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.

(3) The police complaint commissioner may, if the police complaint commissioner considers it necessary and appropriate, redirect an external investigation under subsection (2) to

(a) a constable of another 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, or

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

(4) A chief constable, a chief officer or the commissioner referred to in subsection (1) (a), (2) or (3) (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 member or former member 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.

(5) If, after an investigation by an investigating officer has been initiated,

(a) the police complaint commissioner issues a direction under subsection (1) or a redirection under subsection (3), or

(b) the chief constable referred to in subsection (2) issues a direction under subsection (2),

the investigating officer must promptly provide all records related to the investigation to the constable or special provincial constable appointed under subsection (1), (2) or (3), as the case may be.

(6) In making an appointment under subsection (1) (b) or (3) (b), the minister must consider the recommendations, if any, of the police complaint commissioner.

### **Independent power to order investigation, whether or not complaint made**

**93** (1) Regardless of whether a complaint is made or registered under section 78, if at any time information comes to the attention of the police complaint commissioner concerning the conduct of a person who, at the time of the conduct, was a member of a municipal police department and that conduct would, if substantiated, constitute misconduct, the police complaint commissioner may

(a) order an investigation into the conduct of the member or former member, and

(b) direct that the investigation into the matter be conducted under this Division by any of the following as investigating officer:

(i) a constable of the municipal police department who has no connection with the matter and whose rank is equivalent to or higher than the rank of the member or former member whose conduct is the subject of the investigation;

(ii) 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;

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

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

(3) The police complaint commissioner must notify the following persons, as applicable, of any direction made under subsection (1) (b) (ii) or (iii):

(a) a chief constable of the member whose conduct is the subject of the investigation;

(b) a chief constable of the municipal police department with which the former member was employed at the time of the conduct that is the subject of the investigation;

(c) if the member whose conduct is the subject of the investigation is a chief constable or deputy chief constable of a municipal police department, the chair of the board of the municipal police department;

(d) if the member whose conduct is the subject of the investigation was, at the time of the conduct, a chief constable or deputy chief constable of a municipal police department, the chair of the board of that municipal police department.

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

(a) may appoint only a constable who meets both of the following criteria:

(i) the constable has no connection with the matter being investigated under subsection (1) (b);

(ii) 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 investigation,

(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.

(5) On being notified under subsection (3) (a) or (b), the chief constable must, subject to section 88 (1) (b) [*duty to preserve evidence relating to complaint or report*], notify the member or former member concerned that the police complaint commissioner has ordered an investigation under this section.

(6) On being notified under subsection (3) (c) or (d), the chair of the board must, subject to subsection (7), notify the member or former member concerned that the police complaint commissioner has ordered an investigation under this section.

(7) The police complaint commissioner may direct the chair referred to in subsection (6) to postpone notifying the member or former member concerned until such time as the police complaint commissioner may direct.

(8) The chair must comply with the police complaint commissioner's direction under subsection (7).

(9) The police complaint commissioner may provide information respecting an investigation under this section to any persons who, in the police complaint commissioner's opinion, have a direct interest in the matter.

(10) In providing information under subsection (9), the police complaint commissioner may sever any information that must or may be excepted from disclosure by the head of a public body under

### **Withdrawal of complaint by complainant**

**94** (1) If a complainant chooses to withdraw a complaint made or registered under section 78, the complainant must give notification to the police complaint commissioner in the form and manner required by the police complaint commissioner.

(2) If notification is received in accordance with subsection (1), the police complaint commissioner must accept that withdrawal, but the police complaint commissioner may order an investigation under section 93[*independent power to order investigation*] or continue to proceed with an ongoing investigation into the matter as if the investigation had been initiated under that section.

(3) The police complaint commissioner must notify the following of the withdrawal of a complaint under this section and whether an investigation will be ordered or continued under subsection (2):

(a) a chief constable of the member whose conduct was the subject of the complaint;

(b) a chief constable of the municipal police department with which the former member was employed at the time of the conduct that was the subject of the complaint;

(c) if the member whose conduct was the subject of the complaint is a chief constable or deputy chief constable of a municipal police department, the chair of the board of the municipal police department;

(d) if the member whose conduct was the subject of the complaint was, at the time of the conduct, a chief constable or deputy chief constable of a municipal police department, the chair of the board of that municipal police department;

(e) the investigating officer, if one had already been appointed to investigate the complaint.

(4) On being notified under subsection (3) (a) or (b), the chief constable must, subject to section 88 (1) (b)[*duty to preserve evidence relating to complaint or report*], notify the member or former

member concerned of the withdrawal of the complaint and, if applicable, that the police complaint commissioner has ordered or continued an investigation under this section.

(5) On being notified under subsection (3) (c) or (d), the chair of the board must, subject to subsection (6), notify the member or former member concerned of the withdrawal of the complaint and, if applicable, that the police complaint commissioner has ordered or continued an investigation under this section.

(6) The police complaint commissioner may direct the chair referred to in subsection (5) to postpone notifying the member or former member concerned until such time as the police complaint commissioner may direct.

(7) The chair must comply with the police complaint commissioner's direction under subsection (6).

### **Confidentiality of investigations**

**95** (1) Except as otherwise provided under this Part, the police complaint commissioner may not disclose

(a) that an investigation has been or may be initiated under this Part, or

(b) any information relating to an investigation under this Part.

(2) Despite subsection (1), the police complaint commissioner may make a disclosure described in subsection (1) if she or he considers it in the public interest.

### **Police complaint commissioner entitled to observe investigations**

**96** (1) At any time before an investigation is initiated under this Part or during the investigation, if the police complaint commissioner considers it in the public interest to do so, the police complaint commissioner may decide to

(a) observe the investigation, or

(b) designate an employee to observe and report on the investigation to the police complaint commissioner.

(2) The police complaint commissioner must notify the investigating officer of a decision under subsection (1).

### **Police complaint commissioner's powers relating to investigation**

**97** (1) For the purposes of monitoring an investigation under this Part, the police complaint commissioner may

(a) require the investigating officer to keep the police complaint commissioner or a designated observer informed of the progress of the investigation at times in addition to those required under section 98 [*investigating officer's duty to file reports*] or more frequently than required under that section,

(b) require the investigating officer to provide or copy to the police complaint commissioner or a designated observer any information or record related to the investigation, in the manner and form specified by the police complaint commissioner,

(c) provide advice to the investigating officer or the discipline authority in respect of further investigative steps, and

(d) subject to subsection (2), direct that further investigative steps be taken.

(2) A direction under subsection (1) (d) may be made only after consulting with the investigating officer and the discipline authority concerned.

(3) An investigating officer must comply with every requirement of the police complaint commissioner under subsection (1) (a) and (b).

(4) The discipline authority concerned must ensure that every direction of the police complaint commissioner under subsection (1) (d) is carried out.

### **Investigating officer's duty to file reports**

**98** (1) Within 30 business days after the initiation of an investigation, the investigating officer must file a report with the discipline authority and the police complaint commissioner on the progress of the investigation.



(2) At least once every 20 business days after the date of the initial report under subsection (1) and for as long as the investigation continues, the investigating officer must file a follow-up report with the discipline authority and the police complaint commissioner on the progress of the investigation.

(3) The police complaint commissioner must provide a copy of each report filed under subsections (1) and (2) to the complainant, if any, and member or former member concerned, unless the police complaint commissioner considers that doing so would hinder the investigation.

(4) Within 10 business days after the conclusion of an investigation, the investigating officer must file a final investigation report with the discipline authority and the police complaint commissioner.

(5) The investigating officer must include the following in the final investigation report:

- (a) a brief account of the investigative steps taken;
- (b) a complete summary of the relevant evidence;
- (c) a list of all witnesses interviewed by the investigating officer;
- (d) a list of all records related to the investigation;
- (e) the investigating officer's assessment of the evidence and analysis of the facts.

(6) The investigating officer must make available to the discipline authority and the police complaint commissioner all of the evidence and the records referenced in the final investigation report.

(7) The discipline authority or the police complaint commissioner, or both, may require the investigating officer to provide or copy to them any record in the list under subsection (5) (d), or any information that may be in such a record, and to do so within the time and in the manner and form that the discipline authority or police complaint commissioner may direct.

(8) An investigating officer must comply with every requirement and direction of the discipline authority or police complaint commissioner under subsection (7).

(9) Within 10 business days after receiving an investigating officer's final investigation report, the discipline authority, or the police complaint commissioner in consultation with the discipline authority, may reject that report and direct that further investigative steps be taken.

(10) An investigating officer must

(a) promptly comply with a direction under subsection (9), and

(b) resubmit a final investigation report to the discipline authority and the police complaint commissioner

(i) within 5 business days after carrying out those steps, and

(ii) in accordance with subsection (5).

(11) The discipline authority must ensure that every direction under subsection (9) is carried out.

### **Investigations to be completed in 6 months**

**99** (1) An investigation into the conduct of a member or former member must be completed within 6 months after the date the investigation is initiated, unless

(a) the police complaint commissioner grants one or more extensions under this section, or

(b) the discipline authority directs further investigation under section 115[*if member's or former member's request for further investigation is accepted*] or 132

(2) [*adjournment of discipline proceeding for further investigation*].

(2) The police complaint commissioner may grant an extension under this section only if the police complaint commissioner is satisfied that one or more of the following applies:

(a) new investigative leads are discovered that could not have been revealed with reasonable care;

(b) the case or investigation is unusually complex;

(c) an extension is in the public interest.

## **Investigation powers in relation to municipal police departments**

**100** (1) For the purposes of an investigation under this Part, the investigating officer is entitled to access at any reasonable time, without a warrant or any order,

- (a) the premises of a municipal police department,
- (b) any thing on or in the premises of a municipal police department, including, without limitation, any vehicle, equipment, device or other thing used or operated by a member or former member, and
- (c) any record in the custody or under the control of a municipal police department.

(2) The investigating officer may do one or more of the following for the purposes of the investigation:

- (a) bring along and use any equipment or materials required for the investigation;
- (b) inspect the premises and any thing at the premises;
- (c) take samples and conduct tests of any thing referred to in paragraph (b);
- (d) require that any place within the premises under paragraph (b) not be disturbed for a reasonable period of time;
- (e) search for, or require a person employed by the municipal police board concerned to produce within a reasonable time, any record or thing in the person's possession or control that the investigating officer has reason to believe is relevant to the investigation, except a record that is subject to solicitor-client privilege or the disclosure of which
  - (i) would be an offence under an Act of Parliament, or
  - (ii) could reasonably be expected to do any of the things described in section 15 (1) of the *Freedom of Information and Protection of Privacy Act*;

(f) inspect, copy or remove records or things described in paragraph (e);

(g) use any data storage, processing or retrieval device or system used at or available to the premises under paragraph (b) to produce, in readable form, any record, data or information that, subject to the exceptions set out in paragraph (e), the investigating officer has reason to believe is relevant to the investigation;

(h) take photographs or recordings of any part of the premises under paragraph (b);

(i) exercise other powers that may be necessary or incidental to conducting an investigation under this Part.

(3) On request by an investigating officer, a peace officer or any other person who has special, expert or professional knowledge may accompany and assist the investigating officer in the exercise of powers or performance of duties under this Part.

(4) Despite any other enactment and any claim of confidentiality or privilege, other than a claim based on solicitor-client privilege or any other exception described in subsection (2) (e), a person must promptly comply with a request or requirement that an investigating officer makes under this section.

(5) On application by the investigating officer and on notification to a chief constable of the municipal police department concerned or, if the investigation concerns the conduct of the chief constable, to the chair of the board of that municipal police department, a justice may issue an order authorizing the investigating officer to enter premises referred to in subsection (1) (a), search those premises or any thing referred to in subsection (1) (b), including a record, and exercise any of the powers set out in subsection (2) or (3) if the justice is satisfied by information under oath that there are reasonable grounds to suspect that

(a) the investigating officer has been prevented from exercising a right of access under subsection (1) or a power under subsection (2) or (3), or

(b) the investigating officer is likely to be prevented from exercising a right of access under subsection (1) or a power under subsection (2) or (3).

(6) An order under subsection (5) may contain terms and conditions that the justice considers advisable in the circumstances.

(7) An order under subsection (5) is valid for 20 business days or for a shorter period as may be specified in the order.

(8) In this section, "**vehicle**" includes a boat, a ship, a vessel, an aircraft, a train, a railway car or equipment, a motor vehicle, an all-terrain vehicle, a trailer or another movable structure.

### **Members' duty to cooperate with investigating officer, answer questions and provide written statements**

**101** (1) A member must cooperate fully with an investigating officer conducting an investigation under this Part.

(2) Without limiting subsection (1), at any time during an investigation under this Part and as often as the investigating officer considers necessary, the investigating officer may request a member to do one or more of the following, and the member must fully comply with the request:

(a) answer questions in respect of matters relevant to the investigation and attend at a place specified by the investigating officer to answer those questions;

(b) provide the investigating officer with a written statement in respect of matters relevant to the investigation;

(c) maintain confidentiality with respect to any aspect of an investigation, including the fact of being questioned under paragraph (a) or being asked to provide a written statement under paragraph (b).

(3) A member requested to attend before an investigating officer must, if so requested by the investigating officer, confirm in writing that all answers and written statements provided by the member under subsection (2) are true and complete.

(4) Unless the discipline authority grants an extension under subsection (5), the member must comply with any request under subsection (2) within 5 business days after it is made.

(5) If satisfied that special circumstances exist, the discipline authority may extend the period within which the member must comply with a request under subsection (2).

### **Use of statements made to investigating officer by members and former members**

**102** (1) A statement provided or an answer given during an investigation under this Part by a member or former member is inadmissible in evidence in court or in any other proceeding, except

(a) in a discipline proceeding, public hearing or review on the record concerning the conduct under investigation,

(b) in a prosecution for perjury in respect of sworn testimony,

(c) in a prosecution for an offence under this Act, or

(d) in an application for judicial review or an appeal from a decision with respect to that application.

(2) Subsection (1) applies also in respect of evidence of the existence of a request to make a statement under section 101.

### **Investigation powers in relation to other premises**

**103** (1) A justice may, on application by the investigating officer without notice to any other person, issue an order in relation to any place, other than premises to which section 100 (5) [*investigation powers in relation to municipal police departments*] applies, authorizing the investigating officer to enter the place for which the order is issued and to exercise any of the powers set out in the order if the justice is satisfied by information under oath that

(a) the investigation relates to the conduct of a member or former member,

(b) there are reasonable grounds to believe that the conduct would, if substantiated, constitute misconduct,

(c) there are reasonable grounds to believe that there is in the place a record or thing that relates to the investigation, and

(d) it is in the interests of the administration of justice to issue the order having regard to all relevant matters, including the nature of the place sought to be entered.

(2) An order under subsection (1) does not apply to a place used wholly or partly as a private dwelling unless

(a) the investigating officer informs the justice that the order is being sought to authorize entry into a place used wholly or partly as a private dwelling, and

(b) the justice issues the order specifically authorizing entry into the private dwelling.

(3) An order under subsection (1) may

(a) authorize peace officers or other persons who have special, expert or professional knowledge to accompany and assist the investigating officer in the execution of the order, and

(b) contain terms and conditions that the justice considers advisable in the circumstances.

(4) An order under subsection (1) must be executed between 6 a.m. and 9 p.m., unless the order specifies otherwise.

(5) A justice may issue further orders under subsection (1).

(6) In this section, "**private dwelling**" means a structure that is used as a private residence, or a residential accommodation within any other structure.

### **Records or things removed**

**104** (1) In removing a record or other thing while acting under section 100 (2) [*investigation powers in relation to municipal police departments*] or under an order issued under section 100 (5) or 103 [*investigation powers in relation to other premises*], an investigating officer must give a receipt to the person from whom the record or thing is removed.

(2) The investigating officer

(a) may detain a record or thing referred to in subsection (1), and

(b) must return within a reasonable time the record or thing detained under paragraph (a) if satisfied that it is no longer required for the purposes of the investigation or a proceeding under this Part arising from the investigation.

(3) If the investigating officer has removed a record or thing under an order issued under section 103[*investigation powers in relation to other premises*], the investigating officer, or a person designated by the investigating officer, must as soon as reasonably possible

(a) bring the record or thing before a justice, or

(b) make a report of the removal of the record or thing to a justice.

(4) The justice under subsection (3) (a) or (b) must do the following, as applicable:

(a) if the justice is satisfied that the record or thing should be detained for the purposes of the investigation, or a proceeding under this Part arising from the investigation, order that the record or thing be detained in the care of one of the following until the conclusion of the investigation or proceeding, if any:

(i) the investigating officer;

(ii) a person designated by the discipline authority;

(b) in any other case, order that the record or thing be returned to the person from whom it was removed.

(5) On application by a person having an interest in a record or thing detained under subsection (2) (a) or (4) (a) and on reasonable notice to

(a) the person from whom the record or thing was removed,

(b) the investigating officer, and

(c) any other person who has an apparent interest in the record or thing detained,



a justice may make an order for the examination, testing, inspection or copying of the record or thing.

(6) An order under subsection (5) may contain terms and conditions that the justice considers reasonably necessary in the circumstances.

(7) On application by a person having an interest in a record or thing detained under subsection (2) (a) or (4) (a) and on reasonable notice to

(a) the person from whom the record or thing was removed,

(b) the investigating officer, and

(c) any other person who has an apparent interest in the record or thing detained,

a justice may make an order for the release of the record or thing to the person from whom it was removed, if it appears that the record or thing is no longer necessary for the purposes of the investigation or a proceeding under this Part arising from the investigation.

### **Copies admissible in evidence**

**105** A copy of a record or other thing that purports to be certified by the investigating officer, the discipline authority or the police complaint commissioner as being a true copy of the original is admissible in evidence and, in the absence of evidence to the contrary, has the same evidentiary value as the original would have if it were proved in the ordinary way.

### **Offence to hinder, delay, obstruct or interfere with investigating officer**

**106** (1) A person must not knowingly hinder, delay, obstruct or interfere with an investigating officer acting under this Part.

(2) A person must not, in relation to a complaint or an investigation under this Part, provide to the police complaint commissioner or an investigating officer information that the person knows to be false or misleading.

(3) A person who contravenes subsection (1) or (2) commits an offence.

### **Duty of investigating officer to keep records and produce them**

**107** During an investigation of a member or former member under this Division, the discipline authority must ensure that the investigating officer

- (a) keep and maintain all records relevant to the investigation, and
- (b) produce them for the police complaint commissioner at the times and in the form and manner required by the police complaint commissioner.

### **Ongoing duty of investigating officer to report information**

**108** (1) If, during the course of an investigation,

- (a) information comes to the attention of an investigating officer concerning the conduct of a member or former member of a municipal police department,
- (b) the conduct is not the subject of the investigating officer's investigation, and
- (c) the conduct would constitute misconduct, if the information were substantiated,

the investigating officer must immediately report the information to a chief constable of that municipal police department, unless subsection (2) applies, and to the police complaint commissioner.

(2) If the conduct referred to in subsection (1) is that of the chief constable or former chief constable of the municipal police department, the investigating officer must immediately report the information to the chair of the board of that municipal police department.

### **Power to discontinue investigation**

**109** (1) Despite any other provision of this Act, the police complaint commissioner may direct that an investigation under this Division be discontinued if,

- (a) having regard to all the circumstances, the police complaint commissioner considers that further investigation is neither necessary nor reasonably practicable, or

(b) in the case of an investigation initiated under an admissible complaint,

- (i) the police complaint commissioner is satisfied, as a result of information obtained after the complaint was determined to be admissible, that the complaint is frivolous or vexatious, or
- (ii) the police complaint commissioner considers that the complaint was made with the knowledge that it was false or misleading.

(2) If a direction is made under subsection (1) in relation to a complaint, the police complaint commissioner must notify the following persons of the direction and the reasons for it:

- (a) the complainant;
- (b) the member or former member whose conduct was the subject of the complaint;
- (c) a chief constable of the municipal police department with which that member is employed or, in the case of a former member, a chief constable of the municipal police department with which the former member was employed at the time of the conduct of concern;
- (d) if the complaint concerned a chief constable or former chief constable of a municipal police department, the board of that municipal police department.

### **Member's reassignment or suspension pending investigation and hearing**

**110** (1) If a member is being investigated under this Division or as a result of an allegation that the member committed an offence under a federal or provincial enactment, the discipline authority for that member may, until the completion of the investigation, reassign, transfer or suspend the member, if both of the following apply:

- (a) the discipline authority considers that
  - (i) reassignment, transfer or suspension of the member is needed to protect other members or other persons from the risk of harm,

(ii) failure to reassign, transfer or suspend the member is likely to discredit the reputation of the municipal police department, or

(iii) there are reasonable grounds to believe that the member is incapable of carrying out her or his regular duties as a constable;

(b) the discipline authority considers that there is no reasonable alternative available to reassignment, transfer or suspension.

(2) During a period of suspension from duty, the member must not exercise powers as a municipal constable, chief constable or deputy chief constable and must not wear the uniform or use the equipment of the municipal police department.

(3) At the earliest opportunity, and in any event within 10 business days after the suspension, the discipline authority must decide whether the suspension is to continue in effect or is to be rescinded with or without conditions.

(4) Unless subsection (5) applies, a member under suspension for a period within which that member, if not suspended, would have worked one or more days must receive her or his pay and allowances for the number of days that she or he could have worked during the period of suspension had the suspension not been imposed.

(5) If at any time the board decides that it is in the public interest, the board may require that a suspension under subsection (1) be without pay or may discontinue the pay and allowances of the member under suspension.

(6) Before the board makes a decision under subsection (5), the board must give the member an opportunity to be heard by

(a) notifying the member in writing of the member's right to request, within 5 business days after receiving the notification, an opportunity to be heard, and

(b) giving the member the opportunity to be heard within 20 business days of receiving the request under paragraph (a).

(7) If the board makes a decision under subsection (5), the board must give the member concerned written reasons for the decision.

(8) The board may reconsider a decision under subsection (5) at any time.

(9) A member must receive her or his full pay and allowances for any unpaid period of suspension if all of the following apply:

(a) the suspension related to an investigation resulting from an allegation that she or he committed an offence under a federal or provincial enactment;

(b) the member is either acquitted of all charges in proceedings before a criminal court or the charges are withdrawn, stayed or otherwise not proceeded with;

(c) no disciplinary or corrective measures are taken in relation to the member for the acts or omissions that constituted the alleged offence.

### **If police complaint commissioner considers that member or former member has committed offence**

**111** If the police complaint commissioner considers that the conduct of the member or former member under investigation may constitute an offence created under any enactment, including an enactment of Canada or another province, the police complaint commissioner may report the matter to Crown counsel.

### **Discipline authority to review final investigation report and give early notice of next steps**

**112** (1) Within 10 business days after receiving an investigating officer's final investigation report in respect of the conduct of a member or former member, the discipline authority must

(a) review the report and the evidence and records referenced in it,

(b) subject to subsection (6), provide

(i) the complainant, if any, with a copy of the final investigation report, and

(ii) the member or former member with a copy of the final investigation report and the evidence and records referenced in it, and

(c) notify the complainant, if any, the member or former member, the police complaint commissioner and the investigating officer of the next applicable steps to be taken in accordance with this section.

(2) Notification under subsection (1) (c) must be in writing and include the following, as applicable:

(a) a description of the complaint, if any, and any conduct of concern;

(b) a statement of a complainant's right to make submissions under section 113 [*complainant's right to make submissions*];

(c) a list or description of each allegation of misconduct considered by the discipline authority;

(d) if subsection (3) applies, the discipline authority's determination as to the following:

(i) whether or not, in relation to each allegation of misconduct considered by the discipline authority, the evidence referenced in the report appears to substantiate the allegation and require the taking of disciplinary or corrective measures;

(ii) whether or not a prehearing conference will be offered to the member or former member under section 120[*prehearing conference*];

(iii) the range of disciplinary or corrective measures being considered by the discipline authority in the case;

(e) if subsection (4) applies, a statement that

(i) the complainant, if any, may file with the police complaint commissioner a written request for an appointment under section 117[*appointment of new discipline authority if conclusion of no misconduct is incorrect*], and

(ii) includes the effect of subsection (5) of this section.

(3) If, on review of the report and the evidence and records referenced in it, the discipline authority considers that the conduct of the member or former member appears to constitute misconduct, the discipline authority must convene a discipline proceeding in respect of the matter, unless section 120 (16)[*prehearing conference*] applies.

(4) If, on review of the report and the evidence and records referenced in it, the discipline authority decides that the conduct of the member or former member does not constitute misconduct, the discipline authority must include that decision, with reasons, in the notification under subsection (1) (c).

(5) The discipline authority's decision under subsection (4)

(a) is not open to question or review by a court on any ground, and

(b) is final and conclusive, unless the police complaint commissioner appoints a retired judge under section 117 (1)[*appointment of new discipline authority if conclusion of no misconduct is incorrect*].

(6) The discipline authority may sever from the copy of the final investigation report to be provided under subsection (1) (b) 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*.

(7) Within 10 business days after receiving the copy of the final investigation report referred to in subsection (1) (b), the complainant or member or former member concerned may apply to the police complaint commissioner for disclosure of all or part of the information that was severed from the report.

(8) The police complaint commissioner may disclose information requested under subsection (7) 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*.

### **Complainant's right to make submissions**

**113** (1) At any time after receiving a copy of the investigating officer's final investigation report under section 112 (1) (b) (i) [*discipline authority to review final investigation report and give early notice of next steps*] or a supplementary report under section 116 (1) (b) (i) [*discipline authority to review supplementary report and give notice of next steps*], but at least 10 business days before the date of the discipline proceeding specified in the notice under section 123 (1) (b) [*matters related to discipline proceeding*], the complainant may make written or oral submissions, or both, to the discipline authority in relation to one or more of the following matters:

- (a) the complaint;
- (b) the adequacy of the investigation;
- (c) the disciplinary or corrective measures that would be appropriate.

(2) Subsection (1) does not apply if

- (a) a discipline authority decides under section 112 (4) [*discipline authority to review final investigation report and give early notice of next steps*] or 116 (4) [*discipline authority to review supplementary report and give notice of next steps*] that the conduct of the member or former member concerned does not constitute misconduct, and
- (b) the decision is final and conclusive under section 112 (5) [*discipline authority to review final investigation report and give early notice of next steps*] or 116 (5) [*discipline authority to review supplementary report and give notice of next steps*].

(3) If oral submissions are made under subsection (1), the discipline authority must have a transcript of those submissions made.

(4) On receiving written submissions or having a transcript made under this section, the discipline authority must provide each of the following with a copy of those written submissions and any transcripts:



- (a) the complainant;
- (b) the member or former member whose conduct is the subject of the complaint;
- (c) the investigating officer;
- (d) the police complaint commissioner.

(5) Written submissions and transcripts made under this section form part of the record of proceedings under this Part that may be held in relation to the conduct that is the subject of the complainant's complaint.

### **Member or former member may request further investigation**

**114** (1) Within 10 business days after receiving a copy of the final investigation report referred to in section 112 (1) [*discipline authority to review final investigation report and give early notice of next steps*], the member or former member whose conduct is the subject of the investigation may file with the discipline authority a request for further investigation in accordance with this section.

(2) A request filed under subsection (1) must

- (a) be in writing, and
- (b) include
  - (i) reasons for the request,
  - (ii) a description of further investigative steps that should be taken,
  - (iii) if the member or former member considers that relevant witnesses, other than those listed in the final investigation report, should be interviewed by the investigating officer, the names of those witnesses and their contact information, if known, and
  - (iv) if the member or former member considers that relevant records or other evidence, other than any referred to in the final investigation report, should be reviewed by the investigating officer, a list of those records and that evidence and where they are located, if known.

(3) On receipt of a request under subsection (1), the discipline authority must immediately provide a copy of the request to the police complaint commissioner.

(4) Within 10 business days after receiving the member's or former member's request, the discipline authority must

(a) decide whether to accept or reject the request, and

(b) give notice of that decision, with written reasons, to the member or former member, the police complaint commissioner, the investigating officer and, subject to subsection (6), the complainant, if any.

(5) The discipline authority may accept the member's or former member's request only if the discipline authority is satisfied that

(a) taking any of the further investigative steps described in the request may assist in ensuring that the investigation is complete, or

(b) one or more of the witnesses named in the request, or the records or evidence listed in the request, may be material in determining whether any conduct of concern constitutes misconduct.

(6) The discipline authority may sever from the notice of decision to be provided to a complainant under subsection (4) (b) any portions of that notice 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*.

(7) Within 10 business days after receiving the notice of decision referred to in subsection (4) (b), the complainant may apply to the police complaint commissioner for disclosure of all or part of the information that was severed.

(8) The police complaint commissioner may disclose information requested under subsection (7) 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*.

**If member's or former member's request for further investigation is accepted**

- 115** (1) If a discipline authority decides to accept a member's or former member's request under section 114[*member or former member may request further investigation*], the discipline authority may direct the investigating officer to further investigate in respect of the matter.
- (2) The investigating officer must
- (a) comply with a discipline authority's direction under subsection (1) within 15 business days after the direction is issued,
  - (b) prepare a supplementary investigation report on the matter, including all of the following in relation to the investigation conducted under this section:
    - (i) a brief account of the investigative steps taken;
    - (ii) a complete summary of the relevant evidence;
    - (iii) a list of all witnesses interviewed by the investigating officer;
    - (iv) a list of all records related to the investigation;
    - (v) the investigating officer's assessment of the evidence and analysis of the facts, and
  - (c) file the supplementary investigation report with the discipline authority and the police complaint commissioner within 20 business days after the direction is issued.
- (3) The investigating officer must make available to the discipline authority and the police complaint commissioner all of the evidence and the records referenced in the supplementary report.

**Discipline authority to review supplementary report and give notice of next steps**

- 116** (1) Within 10 business days after receiving an investigating officer's supplementary report in respect of the conduct of a member or former member, the discipline authority must
- (a) review the supplementary report and the evidence and records referenced in it,
  - (b) subject to subsection (6), provide

- (i) the complainant, if any, with a copy of the supplementary report, and
- (ii) the member or former member with a copy of the supplementary report and the evidence and records referenced in it, and

(c) notify the complainant, if any, the member or former member, the police complaint commissioner and the investigating officer of the next applicable steps to be taken in accordance with this section.

(2) Notification under subsection (1) (c) must be in writing and include the following, as applicable:

(a) a description of the complaint, if any, and any conduct of concern;

(b) a statement of a complainant's right to make submissions under section 113 [*complainant's right to make submissions*];

(c) a list or description of each allegation of misconduct considered by the discipline authority;

(d) if subsection (3) applies, the discipline authority's determination as to the following:

(i) whether or not, in relation to each allegation of misconduct considered by the discipline authority, the evidence referenced in the report appears to substantiate the allegation and require the taking of disciplinary or corrective measures;

(ii) whether or not a prehearing conference will be offered to the member or former member under section 120 [*prehearing conference*];

(iii) the range of disciplinary or corrective measures being considered by the discipline authority in the case;

(e) if subsection (4) applies, a statement that

(i) the complainant, if any, may file with the police complaint commissioner a written request for an appointment under section 117 (1) [*appointment of*

*new discipline authority if conclusion of no misconduct is incorrect*], and

(ii) includes the effect of subsection (5) of this section.

(3) If, on review of the supplementary report and the evidence and records referenced in it, the discipline authority continues to consider that the conduct of the member or former member appears to constitute misconduct, the discipline authority must convene a discipline proceeding in respect of the matter, unless section 120 (16)[*prehearing conference*] applies.

(4) If, on review of the report and the evidence and records referenced in it, the discipline authority decides that the conduct of the member or former member does not constitute misconduct, the discipline authority must

(a) include that decision, with reasons, in the notification under subsection (1) (c), and

(b) cancel the discipline proceeding.

(5) The discipline authority's decision under subsection (4)

(a) is not open to question or review by a court on any ground, and

(b) is final and conclusive, unless the police complaint commissioner appoints a retired judge under section 117 (1)[*appointment of new discipline authority if conclusion of no misconduct is incorrect*].

(6) The discipline authority may sever from the copy of the supplementary report to be provided under subsection (1) (b) 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*.

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

(8) The police complaint commissioner may disclose information requested under subsection (7) 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*.

### **Appointment of new discipline authority if conclusion of no misconduct is incorrect**

**117** (1) If, on review of a discipline authority's decision under section 112 (4) [*discipline authority to review final investigation report and give early notice of next steps*] or 116 (4) [*discipline authority to review supplementary report and give notice of next steps*] that conduct of a member or former member does not constitute misconduct, the police complaint commissioner considers that there is a reasonable basis to believe that the decision is incorrect, the police complaint commissioner may appoint a retired judge recommended under subsection (4) of this section to do the following:

(a) review the investigating officer's report referred to in section 112 or 116, as the case may be, and the evidence and records referenced in that report;

(b) make her or his own decision on the matter;

(c) if subsection (9) of this section applies, exercise the powers and perform the duties of discipline authority in respect of the matter for the purposes of this Division.

(2) A complainant seeking an appointment under subsection (1) must file a written request with the police complaint commissioner within 10 business days after receiving the notification under section 112 (1) (c) [*discipline authority to review final investigation report and give early notice of next steps*] or 116 (1) (c) [*discipline authority to review supplementary report and give notice of next steps*].

(3) An appointment under subsection (1) must be made within 20 business days after receiving the notification under section 112 (1) (c) [*discipline authority to review final investigation report and give*

*early notice of next steps]* or 116 (1) (c)[*discipline authority to review supplementary report and give notice of next steps*].

(4) The police complaint commissioner must request the Associate Chief Justice of the Supreme Court to

(a) consult with retired judges of the Provincial Court, the Supreme Court and the Court of Appeal, and

(b) recommend one or more retired judges for the purposes of this section.

(5) The police complaint commissioner must notify all of the following, as applicable, of an appointment under this section:

(a) the complainant, if any;

(b) the member or former member whose conduct is to be the subject of the review;

(c) a chief constable of the municipal police department with which the member is employed or former member was employed at the time of the conduct of concern;

(d) the board of the municipal police department referred to in paragraph (c);

(e) the investigating officer;

(f) the retired judge appointed.

(6) The police complaint commissioner must provide the retired judge appointed with copies of all reports under sections 98[*investigating officer's duty to file reports*], 115 [*if member's or former member's request for further investigation is accepted*] and 132 [*adjournment of discipline proceeding for further investigation*] that may have been filed with the police complaint commissioner before the appointment.

(7) Within 10 business days after receiving the reports under subsection (6), the retired judge appointed must conduct the review described in subsection (1) (a) and notify the complainant, if any, the member or former member, the police complaint commissioner and the investigating officer of the next applicable steps to be taken in accordance with this section.

(8) Notification under subsection (7) must include

(a) a description of the complaint, if any, and any conduct of concern,

(b) a statement of a complainant's right to make submissions under section 113 [*complainant's right to make submissions*],

(c) a list or description of each allegation of misconduct considered by the retired judge,

(d) if subsection (9) applies, the retired judge's determination as to the following:

(i) whether or not, in relation to each allegation of misconduct considered by the retired judge, the evidence referenced in the report appears sufficient to substantiate the allegation and require the taking of disciplinary or corrective measures;

(ii) whether or not a prehearing conference will be offered to the member or former member under section 120[*prehearing conference*];

(iii) the range of disciplinary or corrective measures being considered by the retired judge in the case, and

(e) if subsection (10) applies, a statement that includes the effect of subsection (11).

(9) If, on review of the investigating officer's reports and the evidence and records referenced in them, the retired judge appointed considers that the conduct of the member or former member appears to constitute misconduct, the retired judge becomes the discipline authority in respect of the matter and must convene a discipline proceeding, unless section 120 (16)[*prehearing conference*] applies.

(10) If, on review of the report and the evidence and records referenced in it, the retired judge decides that the conduct of the member or former member does not constitute misconduct, the retired judge must include that decision, with reasons, in the notification under subsection (7).

(11) The retired judge's decision under subsection (10)



- (a) is not open to question or review by a court on any ground, and
- (b) is final and conclusive.

**Discipline proceeding to be convened within 40 business days after receiving investigation report or police complaint commissioner's notification**

**118** (1) A discipline authority required to convene a discipline proceeding under section 112 (3)[*discipline authority to review final investigation report and give early notice of next steps*], 116 (3) [*discipline authority to review supplementary report and give notice of next steps*] or 117 (9) [*appointment of new discipline authority if conclusion of no misconduct is incorrect*] must convene the discipline proceeding within 40 business days after receiving the investigating officer's final investigation report or supplementary report, or a notification of misconduct under section 117 (8) (d), as the case may be, unless the police complaint commissioner grants one or more extensions under this section.

(2) The police complaint commissioner may grant an extension under this section only if the police complaint commissioner is satisfied

- (a) that the circumstances are exceptional, and
- (b) that
  - (i) an extension is necessary to ensure a just determination of the matter, or
  - (ii) an extension is in the public interest.

**Member or former member may request permission to question witnesses at discipline proceeding**

**119** (1) Within 10 business days after receiving

- (a) a copy of the final investigation report referred to in section 112 (1)[*discipline authority to review final investigation report and give early notice of next steps*],
- (b) a copy of the supplementary report referred to in section 116 (1)[*discipline authority to review supplementary report and give notice of next steps*], or

- (c) a notification of misconduct under section 117 (8)
- (d)[*appointment of new discipline authority if conclusion of no misconduct is incorrect*],

a member or former member whose conduct is the subject of a discipline proceeding may file with the discipline authority a request to call and examine or cross-examine at the discipline proceeding one or more witnesses listed in that final investigation report or supplementary report.

(2) A request under subsection (1) must

- (a) be in writing, and
- (b) include the names of witnesses requested and reasons for the request.

(3) Within 5 business days after receiving the member's or former member's request under subsection (1), the discipline authority must

- (a) decide whether to accept or reject the request, in whole or in part, and
- (b) give notice of that decision, with written reasons, to the member or former member, the police complaint commissioner and the investigating officer.

(4) The discipline authority may accept the member's or former member's request only if either or both of the following apply:

- (a) the discipline authority considers that
  - (i) the evidence against the member appears sufficient to warrant dismissal or a reduction in rank, or
  - (ii) in the case of a former member, the evidence against the former member would have been sufficient to warrant dismissal or a reduction in rank;
- (b) the discipline authority is satisfied that
  - (i) there is an apparent conflict between the evidence of 2 or more witnesses,
  - (ii) the evidence referred to in subparagraph (i) is material in determining whether any conduct of concern constitutes misconduct, and

(iii) examination or cross-examination of the witnesses referred to in subparagraph (i) would assist in resolving the conflict.

### **Prehearing conference**

**120** (1) In this section, "**prehearing conference authority**", in relation to a member or former member of a municipal police department, means

(a) a chief constable, a deputy chief constable or a senior officer of the municipal police department, or

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

(2) Subject to the exceptions set out in subsection (3), if the discipline authority

(a) considers that the evidence referenced in the final investigation report or any supplementary report appears to substantiate an allegation of misconduct and require the taking of disciplinary or corrective measures, and

(b) has complied with section 112[*discipline authority to review final investigation report and give early notice of next steps*] and, if applicable, section 116[*discipline authority to review supplementary report and give notice of next steps*],

the discipline authority may offer the member or former member a confidential, without prejudice, prehearing conference with a prehearing conference authority to determine whether the member or former member is prepared to admit misconduct and, if so, what disciplinary or corrective measures the member or former member is prepared to accept.

(3) Subject to subsection (4), a discipline authority must not offer a prehearing conference to a member or former member under this section if

(a) the discipline authority decides to accept the member's or former member's request under section 119[*member or former member may request permission to question witnesses at discipline proceeding*], or

(b) the discipline authority concludes that

- (i) the evidence against the member is sufficiently serious to warrant dismissal or reduction in rank or, in the case of a former member, is sufficiently serious to have warranted dismissal or reduction in rank, or
- (ii) a prehearing conference would be contrary to the public interest.

(4) Despite subsection (3) (b) (i), the discipline authority may offer a prehearing conference to a member or former member if, in the police complaint commissioner's opinion, it would not be contrary to the public interest.

(5) A member or former member who accepts an offer for a prehearing conference under this section may be accompanied at the prehearing conference by one or both of the following:

- (a) the member's or former member's agent;
- (b) the member's or former member's legal counsel.

(6) If

- (a) a member or former member accepts an offer for a prehearing conference under this section, and
- (b) a complainant has been notified under section 112 (1) (c) [*discipline authority to review final investigation report and give early notice of next steps*] or 116 (1) (c) [*discipline authority to review supplementary report and give notice of next steps*] but the complainant has not yet exercised her or his right to make submissions to the discipline authority under section 113 [*complainant's right to make submissions*],

the discipline authority must notify the complainant in writing of the complainant's right to make written or oral submissions, or both, respecting the matters referred to in section 113 (1) (a) to (c) [*complainant's right to make submissions*].

(7) Despite section 113 (1) [*complainant's right to make submissions*], submissions referred to in subsection (6) of this section must be made

- (a) to the prehearing conference authority, and

(b) within 10 business days after the complainant receives notification under subsection (6) of this section.

(8) Section 113 (2) and (4) [*complainant's right to make submissions*] applies in relation to submissions made under this section except that the references to "discipline authority" in section 113 (2) and (4) must be read as references to "prehearing conference authority".

(9) On receiving written submissions or having a transcript of oral submissions made, the prehearing conference authority must provide each of the following with a copy of those written submissions and any transcripts:

- (a) the complainant;
- (b) the member or former member whose conduct is the subject of the complaint;
- (c) the police complaint commissioner;
- (d) the investigating officer;
- (e) the discipline authority.

(10) If subsection (6) applies, the prehearing conference may not be held before the expiry of the period described in subsection (7) (b).

(11) A prehearing conference authority must apply section 126[*imposition of disciplinary or corrective measures*] in proposing, determining and approving any disciplinary or corrective measures under this section.

(12) If disciplinary or corrective measures are accepted by a member or former member and approved by the prehearing conference authority at a prehearing conference, the prehearing conference authority must, within 10 business days after the prehearing conference, provide the complainant, if any, the member or former member, the police complaint commissioner and the discipline authority with a report that includes all of the following, subject to subsection (13):

- (a) the disciplinary or corrective measures accepted and approved for each allegation of misconduct and the reasons for approving those measures;

(b) any recommendations in respect of changes in policy or practices of the member's or former member's municipal police department and the reasons for those recommendations;

(c) any noted aggravating and mitigating factors in the case;

(d) a statement of the effect of subsection (16).

(13) The prehearing conference authority may sever from the report to be provided to a complainant under subsection (12) 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*.

(14) Within 10 business days after receiving the report referred to in subsection (12), the complainant may apply to the police complaint commissioner for disclosure of all or part of the information that was severed from the report.

(15) The police complaint commissioner may disclose information requested under subsection (14) 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*.

(16) On approval by the police complaint commissioner, disciplinary or corrective measures accepted by a member or former member and approved by a prehearing conference authority at a prehearing conference constitute a resolution of the matter, which resolution is final and conclusive and not open to question or review by a court on any ground.

(17) If the resolution is approved by the police complaint commissioner under subsection (16),

(a) the police complaint commissioner must notify the following of that approval:

(i) the complainant, if any;

(ii) the member or former member concerned;

(iii) the discipline authority;

(iv) the prehearing conference authority, and

(b) the discipline authority must record, on the member's or former member's service record of discipline, the member's or former member's admission, any disciplinary or corrective measures approved and the fact that the measures were voluntarily accepted by the member or former member.

**If member's or former member's request to question witnesses is accepted**

**121** (1) If the discipline authority decides to accept the member's or former member's request under section 119[*member or former member may request permission to question witnesses at discipline proceeding*], the discipline authority must do the following:

(a) appoint a member or legal counsel to present to the discipline authority at the discipline proceeding the case relative to the alleged misconduct of the member or former member;

(b) in accordance with the regulations, if any, under section 184 (2) (d)[*regulations under Parts 9 and 11*], serve the witnesses named in the request with a notice to appear, in the prescribed form, requiring the witness to appear at the discipline proceeding to

(i) give evidence on oath, and

(ii) bring to the discipline proceeding

(A) any record specified in the notice to appear, and

(B) any record that may be relevant and is in the witness's possession or control;

(c) withdraw any offer of a prehearing conference that may have been made to the member or former member concerned and cancel that prehearing conference.

(2) On request of the discipline representative, the discipline authority may serve a notice to appear described in subsection (1) (b) on any other witness listed in the final investigation report.

(3) The discipline authority must forward copies of the notices to appear served under subsection (1) (b) or (2) to

(a) the member or former member concerned or her or his agent or legal counsel,

(b) the discipline representative, and

(c) the police complaint commissioner.

(4) A discipline authority may apply to the Supreme Court for an order directing a witness to comply with a notice to appear served on the witness under this section.

### **Fees and expenses of witnesses**

**122** (1) Subject to subsection (4) and the regulations, if any, made under section 184 (2) (e)[*regulations under Parts 9 and 11*], a discipline authority

(a) must pay, as part of the expenses of a discipline proceeding, appearance fees and expenses reasonably and necessarily incurred by a witness required to give evidence at the discipline proceeding, and

(b) may require the member or former member whose conduct is the subject of the discipline proceeding to pay all or part of the fees and expenses referred to in paragraph (a) if the witness is named in the request of the member under section 119 (2) (b)[*member or former member may request permission to question witnesses at discipline proceeding*].

(2) A discipline authority may apportion fees and expenses under subsection (1) between the member or former member concerned and the expenses of the discipline proceeding.

(3) Subject to the regulations, a discipline authority may give directions to the member or former member concerned respecting appearance fees and expenses reasonably and necessarily incurred by a witness.

(4) A witness is responsible for paying fees and expenses the witness incurs for legal representation or advice in relation to the discipline proceeding.



## **Matters related to discipline proceeding**

**123** (1) Subject to subsections (3) and (4), if a prehearing conference is not offered or held under section 120 or, if held, does not result in a resolution of each allegation of misconduct against the member or former member concerned, the discipline authority must

(a) hold and preside over a discipline proceeding in respect of the matter within the time period required under section 118[*discipline proceeding to be convened within 40 business days after receiving investigation report or police complaint commissioner's notification*] unless an adjournment is granted under subsection (10) of this section,

(b) at least 15 business days before the discipline proceeding and in accordance with the regulations, if any, under section 184 (2) (g)[*regulations under Parts 9 and 11*], serve notice of the discipline proceeding on

- (i) the member or former member, and
- (ii) each 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*], and

(c) at least 15 business days before the discipline proceeding, deliver notice of the discipline proceeding to

- (i) the complainant, if any,
- (ii) the discipline representative, if any,
- (iii) the police complaint commissioner, and
- (iv) the investigating officer.

(2) Notice under subsection (1) (b) and (c) must

(a) be in the form prescribed, and

(b) include a statement of the complainant's right to make submissions under section 113[*complainant's right to make submissions*].

(3) If at any time a public hearing is arranged by the police complaint commissioner in respect of conduct that is the subject of a discipline

proceeding, the discipline authority must cancel the discipline proceeding.

(4) If a prehearing conference was held under section 120 in respect of the same conduct that is the subject of a discipline proceeding under this section, the discipline authority presiding over the discipline proceeding must be a chief constable, deputy chief constable or senior officer other than the chief constable, deputy chief constable or senior officer who acted as the prehearing conference authority under section 120.

(5) Subject to subsection (6), the discipline proceeding may be held in any location determined by the discipline authority.

(6) The discipline proceeding must be held at a location, date and time approved by police complaint commissioner if

(a) the discipline authority has accepted a member's or former member's request under section 121 (1) [*if member's or former member's request to question witnesses is accepted*], and

(b) one or more of the witnesses on whom a notice to appear is served are not members.

(7) The following persons must attend the discipline proceeding at the location, date and time specified in the notice:

(a) the member or former member whose conduct is the subject of the discipline proceeding;

(b) the investigating officer;

(c) a 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*].

(8) At any time before or during the discipline proceeding, the police complaint commissioner may designate an employee to observe the discipline proceeding.

(9) A discipline proceeding is not open to the public, but the following persons may attend:

(a) the police complaint commissioner;

- (b) a person designated to observe the discipline proceeding;
- (c) the member's or former member's agent;
- (d) the member's or former member's legal counsel;
- (e) the discipline representative, if any;
- (f) legal counsel for the discipline authority.

(10) If satisfied that it is in the public interest, the discipline authority may grant an adjournment of the discipline proceeding for up to 20 business days, on the discipline authority's own initiative or on the request of the member or former member concerned, the investigating officer, any witness to whom a notice to appear is served or the discipline representative.

### **Discipline proceeding**

**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.

### **Conclusion of discipline proceeding**

**125** (1) Within 10 business days after hearing evidence and submissions under section 124[*discipline proceeding*] concerning the conduct of a member or former member, the discipline authority must

- (a) make a finding in relation to each allegation of misconduct against the member or former member as to whether the misconduct has been proven,
- (b) record those findings and the reasons for them in the prescribed form,
- (c) serve a copy of that form on the member or former member and provide another copy of it to the police complaint commissioner, and
- (d) invite submissions from the member or former member, or her or his agent or legal counsel, as to appropriate disciplinary or corrective measures for each allegation found to be proven under paragraph (a).

(2) Submissions referred to in subsection (1) (d) must be made to the discipline authority within 10 business days after receiving a copy of the form referred to in subsection (1) (c).

### **Imposition of disciplinary or corrective measures in relation to members**

**126** (1) After finding that the conduct of a member is misconduct and hearing submissions, if any, from the member or her or his agent or legal counsel, or from the complainant under section 113[*complainant's right to make submissions*], the discipline authority must, subject to this section and sections 141 (10)[*review on the record*] and 143 (9) [*public hearing*], propose to take one or more of the following disciplinary or corrective measures in relation to the member:

- (a) dismiss the member;
- (b) reduce the member's rank;
- (c) suspend the member without pay for not more than 30 scheduled working days;
- (d) transfer or reassign the member within the municipal police department;
- (e) require the member to work under close supervision;
- (f) require the member to undertake specified training or retraining;

(g) require the member to undertake specified counselling or treatment;

(h) require the member to participate in a specified program or activity;

(i) reprimand the member in writing;

(j) reprimand the member verbally;

(k) give the member advice as to her or his conduct.

(2) Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures in relation to the misconduct of a member of a municipal police department, including, without limitation,

(a) the seriousness of the misconduct,

(b) the member's record of employment as a member, including, without limitation, her or his service record of discipline, if any, and any other current record concerning past misconduct,

(c) the impact of proposed disciplinary or corrective measures on the member and on her or his family and career,

(d) the likelihood of future misconduct by the member,

(e) whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence,

(f) the degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct,

(g) the range of disciplinary or corrective measures taken in similar circumstances, and

(h) other aggravating or mitigating factors.

(3) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the member concerned takes precedence, unless it is

unworkable or would bring the administration of police discipline into disrepute.

### **Proposed disciplinary or corrective measures in relation to former members**

**127** (1) After finding that the conduct of a former member is misconduct and hearing submissions, if any, from the former member or her or his agent or legal counsel, the discipline authority must apply the provisions of section 126 (2) and (3) [*imposition of disciplinary or corrective measures*] in respect of the matter as if the former member had continued to be a member, then determine what disciplinary or corrective measures the discipline authority would have taken under section 126 (1) if the former member had continued to be a member.

(2) The disciplinary or corrective measures determined in accordance with subsection (1) of this section are the disciplinary or corrective measures to be proposed by the discipline authority for the purposes of section 128 (1) (a) [*disciplinary disposition record*].

### **Disciplinary disposition record**

**128** (1) Unless the police complaint commissioner grants an extension under subsection (2) of this section, within 10 business days after hearing submissions under section 125 (1) (d) [*conclusion of discipline proceeding*], the discipline authority must

(a) propose disciplinary or corrective measures to be taken for each allegation of misconduct found to be proven,

(b) record the date and the proposed disciplinary or corrective measures in a disposition record in the prescribed form,

(c) include in the disposition record any aggravating or mitigating factors in the case,

(d) serve a copy of the disposition record on the member or former member concerned, together with notification of the effect of sections 133 (6) [*review of discipline proceeding*] and 136 (1) [*time limit for requesting public hearing or review on the record*], and



(e) provide another copy of the disposition record to the police complaint commissioner, together with the entire unedited record of the proceedings.

(2) The police complaint commissioner may grant an extension under subsection (1) if the police complaint commissioner considers that there are good reasons for doing so and it is not contrary to the public interest.

(3) After receiving the records referred to in subsection (1) (e), the police complaint commissioner may order that the discipline authority provide to the police complaint commissioner further reasons justifying the particular disciplinary or corrective measures proposed.

(4) A discipline authority must comply with an order under subsection (3).

### **Duty of investigating officer to provide all records to police complaint commissioner**

**129** (1) As soon as reasonably practicable after the conclusion of an investigation concerning the conduct of a member or former member under this Division, the investigating officer must provide all records related to the investigation to the police complaint commissioner, in the form and manner required by the police complaint commissioner.

(2) In subsection (1), "**conclusion of an investigation**" means any of the following times, as applicable:

(a) when the police complaint commissioner directs the investigation to be discontinued under section 109 (1) [*power to discontinue investigation*];

(b) when the discipline authority's decision is final and conclusive under section 112 (5) (b) [*discipline authority to review final investigation report and give early notice of next steps*] or 116 (5) (b) [*discipline authority to review supplementary report and give notice of next steps*];

(c) when the police complaint commissioner approves disciplinary or corrective measures under section 120 (16) [*prehearing conference*];

(d) when a resolution is final and binding under section 157 (7)[*informal complaint resolution*] or 163 (5) [*outcome of mediation*];

(e) when discipline proceedings concerning the conduct under investigation conclude.

### **If member fails to attend discipline proceeding**

**130** If a member or former member whose conduct is the subject of a discipline proceeding fails to attend or remain in attendance at the discipline proceeding and the discipline authority is satisfied that the member or former member has been served with notice of the discipline proceeding, the discipline authority may

(a) proceed with the discipline proceeding in the absence of the member or former member,

(b) draw an adverse inference from that failure, and

(c) make any finding and propose any disciplinary or corrective measure that the discipline authority considers appropriate.

### **Admissibility of witness evidence in other proceedings**

**131** (1) Evidence given by a witness in a discipline proceeding, including the member or former member concerned, is inadmissible in evidence in court or in any other proceeding, except in

(a) a public hearing or review on the record under this Part,

(b) a public inquiry referred to in section 177 (4) (f),

(c) a prosecution for perjury in respect of sworn testimony,

(d) a prosecution for an offence under this Act, or

(e) an application for judicial review or an appeal from a decision with respect to that application.

(2) Subsection (1) applies also in respect of evidence of the existence of a discipline proceeding under this Part.

### **Adjournment of discipline proceeding for further investigation**

**132** (1) At any time before or during a discipline proceeding, the discipline authority may adjourn the proceeding for up to 30 business days if the discipline authority considers that further investigation into the conduct of a member or former member that is the subject of the discipline proceeding, or into the circumstances surrounding that conduct, is necessary in the public interest.

(2) In ordering an adjournment under subsection (1), the discipline authority may direct the investigating officer to investigate further any aspect of the conduct of the member or former member or the circumstances surrounding that conduct.

(3) If a direction is issued under subsection (2), the investigating officer must

(a) comply with the direction within 15 business days after the direction is issued,

(b) prepare an investigation report on the matter, including all of the following in relation to the investigation conducted under this section:

(i) a brief account of the investigative steps taken;

(ii) a complete summary of the relevant evidence;

(iii) a list of all witnesses interviewed by the investigating officer;

(iv) a list of all records related to the investigation;

(v) the investigating officer's assessment of the evidence and analysis of the facts, and

(c) file the investigation report with the discipline authority and the police complaint commissioner within 20 business days after the direction is issued.

(4) The investigating officer must make available to the discipline authority and the police complaint commissioner all of the evidence and the records referenced in the investigation report.

(5) Within 5 business days after receiving the investigation report, the discipline authority must, subject to subsection (6), provide

(a) the complainant, if any, with a copy of the investigation report, and

(b) the member or former member with a copy of the investigation report and the evidence and records referenced in it.

(6) The discipline authority may sever from the investigation report 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*.

(7) Within 5 business days after receiving the report referred to in subsection (5), the complainant or the member or former member concerned may apply to the police complaint commissioner for disclosure of all or part of the information that was severed from the report.

(8) The police complaint commissioner may disclose information under subsection (7) 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*.

### **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.

### **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.

### **Power to designate another discipline authority if in public interest**

**135** (1) Subject to subsection (2), at any time after an investigation is initiated under this Part into the conduct of a member or former member of a municipal police department, if the police complaint commissioner considers it necessary in the public interest that a person other than a chief constable of the municipal police department, or her or his delegate, be the discipline authority for the purposes of one or more provisions of this Division, the police complaint commissioner may designate a senior officer of another municipal police department to exercise the powers and perform the duties of a discipline authority under the applicable provision, in substitution of the chief constable or the delegate, as the case may be.

(2) At any time after an investigation is initiated under this Part into the conduct of a member or former member of a municipal police department who is or was a chief constable or deputy chief constable at the time of the conduct of concern, if the police complaint commissioner considers it necessary in the public interest that a person other than the chair of the board be the discipline authority for the purposes of one or more provisions of this Division,

(a) the police complaint commissioner must request the Associate Chief Justice of the Supreme Court to

(i) consult with retired judges of the Provincial Court, the Supreme Court and the Court of Appeal, and

(ii) recommend one or more retired judges to act as discipline authority for the purposes of those provisions, and

(b) the police complaint commissioner must appoint one of the retired judges recommended to exercise the powers and perform the duties of a discipline authority under the applicable provision, in substitution of the chair of the board of the municipal police department.

(3) The police complaint commissioner may make a designation under subsection (1) or an appointment under subsection (2)

(a) on application by

(i) a chief constable of the municipal police department with which the member is employed or former member was employed at the time of the conduct of concern, or

(ii) the chair of the board of the municipal police department with which the member is employed or former member was employed at the time of the conduct of concern, or

(b) on the police complaint commissioner's own motion.

(4) The police complaint commissioner must notify all of the following, as applicable, of the designation or appointment:

(a) the complainant, if any;

(b) the member or former member;

(c) a chief constable of the municipal police department with which the member is employed or former member was employed at the time of the conduct of concern;

(d) the investigating officer;

(e) the board of the municipal police department with which the member is employed or former member was employed at the time of the conduct of concern.

(5) The police complaint commissioner must provide the designated or appointed discipline authority with copies of all reports under sections 98[*investigating officer's duty to file reports*], 115 [*if member's or former member's request for further investigation is accepted*] and 132 [*adjournment of discipline proceeding for further investigation*] that may have been filed with the police complaint commissioner before the designation or appointment.

### **Time limit for requesting public hearing or review on the record**

**136** (1) A written request for a public hearing or review on the record, from a complainant or member or former member described in section 133 (5)[*review of discipline proceedings*], must be received by the police complaint commissioner within 20 business days after the complainant or member or former member, as the case may be, receives the report referred to in section 133 (1) (a).

(2) The police complaint commissioner may extend the period within which a complainant or member or former member has to request a public hearing or review on the record under subsection (1) if the police complaint commissioner considers that

(a) there are good reasons for the delay in making the request, and

(b) an extension would not be contrary to the public interest.

### **Circumstances when member or former member concerned is entitled to public hearing**

**137** (1) Subject to subsection (2), the police complaint commissioner must promptly arrange a public hearing on receiving a request under section 136[*time limit for requesting public hearing or review on the record*] from a member or former member in respect of whose conduct the discipline authority proposes as a disciplinary measure dismissal or reduction in rank.



(2) The police complaint commissioner may arrange a review on the record under section 141[*review on the record*] instead of a public hearing if the police complaint commissioner is satisfied, in the circumstances, that

(a) it is unnecessary to do either of the following:

(i) examine or cross-examine witnesses;

(ii) receive evidence that is not part of the record of the disciplinary decision described in section 141

(3)[*review on the record*] or the service record of the member or former member, and

(b) a public hearing is not required to preserve or restore public confidence in the investigation of misconduct and the administration of police discipline.

### **Determining whether to arrange public hearing or review on the record in other circumstances**

138 (1) On

(a) receiving a request under section 136 in circumstances other than those described in section 137

(1)[*circumstances when member or former member concerned is entitled to public hearing*], or

(b) the police complaint commissioner's own initiative if the limitation period established for making the request under section 136 (1)[*time limit for requesting public hearing or review on the record*] has expired,

the police complaint commissioner must arrange a public hearing or review on the record if the police complaint commissioner

(c) considers that there is a reasonable basis to believe that

(i) the discipline authority's findings under section 125 (1) (a)[*conclusion of discipline proceeding*] are incorrect, or

(ii) the discipline authority has incorrectly applied section 126[*imposition of disciplinary or corrective measures*] in proposing disciplinary or corrective

measures under section 128 (1)[*disciplinary disposition record*], or

(d) otherwise considers that a public hearing or review on the record is necessary in the public interest.

(2) In considering whether a public hearing or review on the record is necessary in the public interest, the police complaint commissioner must consider all relevant factors including, without limitation, the following factors:

(a) the nature and seriousness of the complaint or alleged misconduct;

(b) the nature and seriousness of harm or loss alleged to have been suffered by any person as a result of the conduct of the member or former member, including, without limitation, whether

(i) the conduct has caused, or would be likely to cause, physical, emotional or psychological harm or financial loss to a person,

(ii) the conduct has violated, or would be likely to violate, a person's dignity, privacy or other rights recognized by law, or

(iii) the conduct has undermined, or would be likely to undermine, public confidence in the police, the handling of complaints or the disciplinary process;

(c) whether there is a reasonable prospect that a public hearing or review would assist in determining the truth;

(d) whether an arguable case can be made that

(i) there was a flaw in the investigation,

(ii) the disciplinary or corrective measures proposed are inappropriate or inadequate, or

(iii) the discipline authority's interpretation or application of this Part or any other enactment was incorrect.

(3) The police complaint commissioner must make a determination as to whether to arrange a public hearing or review on the record under this section promptly after receiving the request referred to in

subsection (1) or promptly after expiry of the relevant limitation period, as the case may be, but in any event, the determination must be made within 20 business days after that request is received or that limitation period has expired.

(4) Within 10 business days after making a determination under this section, the police complaint commissioner must notify the following of that determination:

- (a) the complainant, if any;
- (b) the member or former member whose conduct is the subject of concern;
- (c) a chief constable of the municipal police department with which the member is employed or, in the case of a former member, a chief constable of the municipal police department with which the former member was employed at the time of the conduct of concern;
- (d) if the member or former member concerned is or was the chief constable of a municipal police department, the chair of the board of that municipal police department;
- (e) the discipline authority involved, if different than the chief constable or chair of the board referred to in paragraph (c) or (d).

(5) If the police complaint commissioner determines, in respect of a request referred to in subsection (1) (a), that there are insufficient grounds to arrange a public hearing or review on the record under this section, the police complaint commissioner must give written reasons for that determination in the notification under subsection (4).

(6) A determination under subsection (5) is final and conclusive and is not open to question or review by a court on any ground.

(7) If the police complaint commissioner

- (a) determines that there are sufficient grounds to arrange a public hearing under this section, or
- (b) arranges a public hearing under section 137[*circumstances when member or former member concerned is entitled to public hearing*],

the police complaint commissioner must, for the purposes of the public hearing under section 143, appoint legal counsel to present to the adjudicator the case relative to each allegation of misconduct against the member or former member concerned.

### **Reconsideration on new evidence**

**139** (1) Despite section 138 (3) and (6) [*determining whether to arrange public hearing or review on the record*], at any time after the police complaint commissioner has determined in a case that there are insufficient grounds to arrange a public hearing or review on the record under section 138, the police complaint commissioner may reconsider the determination if satisfied, on application by any person or on the police complaint commissioner's own initiative, that new evidence has become available or been discovered that is substantial and material to the case or that determination.

(2) In reconsidering whether there are sufficient grounds to arrange a public hearing or review on the record, the police complaint commissioner must consider all relevant factors, including, without limitation, the factors described in section 138 (2) and (3).

(3) Within 10 business days after making a determination on reconsideration, the police complaint commissioner must notify the persons referred to in section 138 (4), and section 138 (5) to (7) applies.

### **Determinations may be made available to public**

**140** (1) The police complaint commissioner may make available to members of the public, by both of the following means, any determination made under section 138 [*determining whether to arrange public hearing or review on the record*] or 139 [*reconsideration on new evidence*]:

(a) posting the determination on a publicly accessible website maintained by or on behalf of the police complaint commissioner;

(b) having the determination available for public inspection in the office of the police complaint commissioner during regular office hours.

(2) The police complaint commissioner may sever from a determination referred to in subsection (1) any portions of the determination 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*.

## **Review on the record**

**141** (1) In this section and section 143[*public hearing*], "**disciplinary decision**", in relation to a discipline proceeding under section 124[*discipline proceeding*], means any of the matters described in section 133 (1) (a) (i) to (iv) [*review of discipline proceedings*], including any further reasons provided under section 128 (3)[*disciplinary disposition record*].

(2) Subject to section 143 (1)[*public hearing*], if the police complaint commissioner determines that there are sufficient grounds to arrange a public hearing or review on the record in respect of a disciplinary decision under section 138[*determining whether to arrange public hearing or review on the record*] or 139 [*reconsideration on new evidence*], the police complaint commissioner may appoint an adjudicator under section 142[*appointment of adjudicator for public hearing or review on the record*] to conduct a review on the record of the disciplinary decision under this section.

(3) For the purposes of a review on the record under this section, the record of a disciplinary decision consists of

(a) the final investigation report of the investigating officer, any supplementary reports or investigation reports under section 132[*adjournment of discipline proceeding for further investigation*] and all records related to the investigation and the discipline proceeding,

(b) the records referred to in section 128 (1)[*disciplinary disposition record*],

(c) the report referred to in section 133 (1) (a)[*review of discipline proceedings*], and

(d) in the case of a review on the record initiated under section 139[*reconsideration on new evidence*], any record relating to the new evidence referred to in that section.

(4) Despite subsections (2) and (3) of this section and section 137 (2) (a) [*circumstance when member or former member concerned is entitled to public hearing*], if the adjudicator considers that there are special circumstances and it is necessary and appropriate to do so, the adjudicator may receive evidence that is not part of either of the following:

- (a) the record of the disciplinary decision concerned;
- (b) the service record of the member or former member concerned.

(5) The member or former member concerned is not compellable at a review on the record under this section, but the member or former member or her or his agent or legal counsel, if any, may make submissions concerning the matters under review.

(6) In addition to the member or former member concerned or her or his agent or legal counsel, the police complaint commissioner or her or his commission counsel may also make submissions concerning the matters under review.

(7) The adjudicator may permit the following persons to make submissions concerning the matters under review:

- (a) the complainant, if any, or the complainant's agent or legal counsel;
- (b) the discipline authority or the discipline representative.

(8) The adjudicator may permit submissions under subsection (5), (6) or (7) to be oral or written.

(9) In a review proceeding under this section, the standard of review to be applied by an adjudicator to a disciplinary decision is correctness.

(10) After a review of a disciplinary decision under this section, the adjudicator must do the following:

- (a) decide whether any misconduct has been proven;
- (b) determine the appropriate disciplinary or corrective measures to be taken in relation to the member or former member in accordance with section 126 [*imposition of disciplinary or corrective measures*] or 127 [*proposed disciplinary or corrective measures*];

(c) recommend to a chief constable or the board of the municipal police department concerned any changes in policy or practice that the adjudicator considers advisable in respect of the matter.

(11) Within 10 business days after reaching a decision under subsection (10), the adjudicator must provide notice of the decision, together with written reasons, to the following:

(a) the complainant, if any;

(b) the member or former member whose conduct is the subject of the review;

(c) a chief constable or chair of the board of the municipal police department with which the member is employed or former member was employed at the time of the conduct of concern;

(d) the discipline authority involved in the matter, if different than a chief constable or chair of the board referred to in paragraph (c);

(e) the police complaint commissioner.

### **Appointment of adjudicator for public hearing or review on the record**

**142** (1) In circumstances described in section 137 [*circumstances when member or former member concerned is entitled to public hearing*] or when the police complaint commissioner determines that there are sufficient grounds to arrange a public hearing or review on the record under section 138 [*determining whether to arrange public hearing or review on the record*] or 139 [*reconsideration on new evidence*], the police complaint commissioner must request the Associate Chief Justice of the Supreme Court to

(a) consult with retired judges of the Provincial Court, the Supreme Court and the Court of Appeal, and

(b) recommend one or more retired judges to act as adjudicator for the purposes of section 141 [*review on the record*] or 143 [*public hearing*], as the case may be.

(2) The police complaint commissioner must appoint one of the retired judges recommended as adjudicator for the public hearing or review on the record.

(3) The adjudicator appointed must arrange, and set the earliest practicable date or dates for, the public hearing or review on the record, and the police complaint commissioner must serve written notice of the proceeding on the following persons at least 15 business days before the proceeding may commence:

- (a) the complainant, if any;
- (b) the member or former member whose conduct is the subject of the proceeding;
- (c) the discipline authority concerned.

(4) If, after reasonable effort, service under subsection (3) cannot be effected on the complainant or the member or former member, the police complaint commissioner may serve the notice referred to in that subsection by registered mail to that person's last address known to, or on record with, the police complaint commissioner.

## **Public hearing**

**143** (1) Despite section 141[*review on the record*], the police complaint commissioner must appoint an adjudicator under section 142 to conduct a public hearing under this section instead of a review on the record under section 141[*review on the record*]if either of the following applies:

- (a) the police complaint commissioner determines that
  - (i) there are sufficient grounds to arrange a public hearing or review on the record under section 138[*determining whether to arrange public hearing or review on the record*] or 139 [*reconsideration on new evidence*], and
  - (ii) it is likely that evidence other than
    - (A) the record of the disciplinary decision described in section 141 (3)[*review on the record*],



- (B) the service record of the member or former member concerned, and
- (C) submissions described in section 141 (5), (6) and (7) [*review on the record*],

will be necessary to complete a review of the disciplinary decision on a standard of correctness and do the things described in section 141 (10);

(b) in the police complaint commissioner's opinion, a public hearing of the matter under this section is required to preserve or restore public confidence in the investigation of misconduct or the administration of police discipline.

(2) A public hearing is a new hearing concerning conduct of a member or former member that was the subject of an investigation or complaint under this Division.

(3) A public hearing is not limited to the evidence and issues that were before a discipline authority in a discipline proceeding.

(4) For the purposes of a public hearing under this section, public hearing counsel must present to the adjudicator the case relative to each allegation of misconduct against the member or former member concerned.

(5) Public hearing counsel, the member or former member concerned, or her or his agent or legal counsel, and commission counsel may

- (a) call any witness who has relevant evidence to give, whether or not the witness was interviewed during the original investigation or called at the discipline proceeding,
- (b) examine or cross-examine witnesses,
- (c) introduce into evidence any record or report concerning the matter, and
- (d) make oral or written submissions, or both, after all of the evidence is called.

(6) The adjudicator may

- (a) receive and accept information that the adjudicator considers relevant, necessary and appropriate, whether or not the information would be admissible in any court, and

(b) without limiting section 145[*powers respecting participants*], exclude anything unduly repetitious.

(7) If the public hearing concerns conduct that was the subject of an admissible complaint under this Division, the complainant, or her or his agent or legal counsel, may make oral or written submissions, or both, after all of the evidence is called.

(8) Subject to section 150[*power to prohibit or limit attendance or access*], a public hearing must be open to the public.

(9) The adjudicator must do the following:

(a) decide whether any misconduct has been proven;

(b) determine the appropriate disciplinary or corrective measures to be taken in relation to the member or former member in accordance with section 126[*imposition of disciplinary or corrective measures*] or 127 [*proposed disciplinary or corrective measures*];

(c) recommend to a chief constable or the board of the municipal police department concerned any changes in policy or practice that the adjudicator considers advisable in respect of the matter.

(10) Within 10 business days after reaching a decision under subsection (9), the adjudicator must provide notice of that decision, together with written reasons, to the following:

(a) the complainant, if any;

(b) the member or former member whose conduct is the subject of the public hearing;

(c) a chief constable or chair of the board of the municipal police department with which the member is employed or former member was employed at the time of the conduct of concern;

(d) the discipline authority involved in the matter, if different than a chief constable or chair of the board referred to in paragraph (c);

(e) the police complaint commissioner.

### **Other participants in public hearing**

**144** (1) A person, other than public hearing counsel, commission counsel and the member or former member concerned, may apply to be a participant in a public hearing by applying to an adjudicator in the manner and form the adjudicator requires.

(2) On receiving an application under subsection (1), an adjudicator may accept the applicant as a participant after considering all of the following:

- (a) whether, and to what extent, the person's interests may be affected by the findings of the adjudicator;
- (b) whether the person's participation would further the conduct of the public hearing;
- (c) whether the person's participation would contribute to the fairness of the public hearing.

### **Powers respecting participants at public hearings**

**145** (1) Subject to section 146[*rights of participants*], an adjudicator of a public hearing may make orders respecting

- (a) the manner and extent of a participant's participation,
- (b) the rights and responsibilities, if any, of a participant, and
- (c) any limits or conditions on a participant's participation.

(2) In making an order under subsection (1), the adjudicator may

- (a) make different orders for different participants or classes of participants, and
- (b) waive or modify one or more of the adjudicator's orders as necessary.

### **Rights of participants and witnesses in public hearings and reviews on the record**

**146** (1) A participant in a public hearing may

- (a) participate on her or his own behalf, or

(b) be represented by legal counsel or, with the approval of the adjudicator, by an agent.

(2) A participant or witness in a public hearing or review on the record

(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 participant or witness in a criminal proceeding, or

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

(3) Any answer provided by a participant or witness before an adjudicator must not be used or admitted in evidence against the participant or witness in any trial or other proceedings, other than a prosecution for perjury in respect of the answer provided.

### **Orders to attend and produce records or things**

**147** (1) The adjudicator of a public hearing or review on the record may order a person to do either or both of the following:

(a) attend, in person or by electronic means, before the adjudicator to give evidence on oath or in any other manner;

(b) produce for the adjudicator a record or thing in the person's possession or control.

(2) An order under subsection (1) must be in the form of a summons, served on the person by personal delivery or registered mail to the person's last address known to, or on record with, the police complaint commissioner.

### **Maintenance of order at public hearing or review on the record**

**148** (1) At a public hearing or review on the record, the adjudicator may make orders or give directions that the adjudicator considers necessary for the maintenance of order at the public hearing or review on the record.

(2) Without limiting subsection (1), the adjudicator may do any of the following by order:

- (a) impose restrictions on a person's continued participation in or attendance at the public hearing or review on the record;
- (b) exclude a person from further participation in or attendance at the public hearing or review on the record until the adjudicator orders otherwise.

### **Power to enforce summons and punish for contempt**

**149** (1) An adjudicator may make an order finding a person to be in contempt, and may impose a fine on or commit the person for contempt, if the person has been served with a summons under section 147[*orders to attend and produce records or things*] and fails or refuses to do any of the following:

- (a) attend before the adjudicator;
- (b) take an oath or make an affirmation;
- (c) answer questions;
- (d) produce records or things in the person's possession or control.

(2) The adjudicator may make an order finding a person to be in contempt, and may commit the person for contempt, if the person fails or refuses to comply with an order or a direction under section 148[*maintenance of order at public hearing or review on the record*].

(3) Subsections (1) and (2) do not limit the conduct for which the adjudicator may make an order finding a person to be in contempt.

(4) The adjudicator may call on the assistance of any peace officer to enforce an order made under this section or an order or direction made under section 147[*orders to attend and produce records or things*], and, if called on, the peace officer may take any action that is necessary to enforce the order or direction and may use the force reasonably required for that purpose.

### **Power to prohibit or limit attendance or access**

**150** (1) An adjudicator may, by order, prohibit or restrict a person or a class of persons, or the public, from attending all or part of a public hearing or review on the record, or from accessing all or part of any information provided to or held by the adjudicator of a public hearing or review on the record,

(a) if there is an assertion of privilege or immunity over the information,

(b) for any reason for which information 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*, or

(c) if the adjudicator has reason to believe that the order is necessary for the effective and efficient fulfillment of the adjudicator's duties under section 141 (10) [*review on the record*] or 143 (9) [*public hearing*].

(2) In making an order under subsection (1), an adjudicator must not unduly prejudice the rights and interests of any person against whom a finding of misconduct, or a report alleging misconduct, may be made.

### **Compellability**

**151** (1) A member or former member whose conduct is the subject of a public hearing or review on the record is not compellable to testify as a witness at the public hearing or review on the record, but an adverse inference may be drawn from the member's or former member's failure to testify at that public hearing or review on the record.

(2) Subject to the law of privilege, all witnesses, other than the member or former member whose conduct is the subject of a public hearing or review on the record, are compellable at the public hearing or review on the record.

### **Recording public hearings and reviews on the record**

**152** (1) The police complaint commissioner is responsible for ensuring that the proceedings of a public hearing or review on the record are transcribed or that a record of all meetings and hearings is made.

(2) A transcript or recording made under this section must be considered to be correct and to constitute part of the record of the public hearing, review on the record or any meeting or hearing in respect of it.

(3) The validity of the public hearing or review on the record is not affected if, by a mechanical or human failure or other accident, the transcript or recording is destroyed, interrupted or incomplete.

### **When police complaint commissioner may cancel public hearing or review on the record**

**153** The police complaint commissioner may cancel a public hearing or review on the record at any time if

(a) the public hearing or review on the record was initiated on the police complaint commissioner's own initiative, whether under section 138 [*determining whether to arrange public hearing or review on the record*] or 139 [*reconsideration on new evidence*], and the police complaint commissioner is satisfied that

(i) new evidence has since become available or been discovered that is substantial and material to the case, and

(ii) holding the public hearing or review on the record is no longer in the public interest, having considered all relevant factors, including, without limitation, the factors referred to in section 138 (2), or

(b) all of the following apply:

(i) the public hearing or review on the record was initiated by a request of the member or former member concerned under section 136 [*time limit for requesting public hearing or review on the record*];

(ii) the member or former member referred to in subparagraph (i) requests the police complaint commissioner to cancel the public hearing or review on the record;

(iii) the police complaint commissioner is satisfied that holding the public hearing or review on the record is no longer in the public interest, having considered all relevant factors, including, without limitation, the factors referred to in section 138 (2)[*determining whether to arrange public hearing or review on the record*].

### **Exclusive jurisdiction and appeals from public hearing decisions**

**154** (1) An adjudicator has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising or required to be determined in respect of a public hearing or review on the record, and to make any order the adjudicator is permitted under this Division to make.

(2) A decision of an adjudicator in a review proceeding under section 141[*review on the record*] is final and conclusive and is not open to question or review in any court.

(3) An appeal on a question of law lies to the Court of Appeal, with leave of a justice of the Court of Appeal, from a decision of an adjudicator under section 143 (9)[*public hearing*].

(4) Technical errors as to form, failure to file or to give notice on time and other procedural errors of a minor nature do not go to jurisdiction and may not be appealed to the Court of Appeal on any ground, unless the error prejudiced a fair determination of the issues at the public hearing.

### **Immunity protection for adjudicators and retired judges acting under this Act**

**155** (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against a retired judge who is appointed as an adjudicator, who becomes a discipline authority under section 117 (9)[*appointment of new discipline authority if conclusion of no misconduct is incorrect*] or who is appointed as a discipline authority under section 135 (2)[*power to designate another discipline authority if in public interest*], or a person acting on behalf of or under the direction of that adjudicator or discipline authority, because of anything done or omitted



(a) in the exercise or intended exercise of any power under this Part, or

(b) in the performance or intended performance of any duty under this Part.

(2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

## **Division 4 – Resolution of Complaints by Mediation or Other Informal Means**

### **Guidelines for resolution of suitable admissible complaints**

**156** (1) The police complaint commissioner may issue guidelines providing for the resolution, by mediation or other informal means, of admissible complaints under Division 3 [*Process Respecting Alleged Misconduct*] other than the following:

(a) complaints concerning a death or the suffering of serious harm or a reportable injury described in section 89 (1) [*reporting of death, serious harm and reportable injury, and mandatory external investigation in cases of death and serious harm*];

(b) complaints determined in accordance with the guidelines not to be suitable for resolution by mediation or other informal means.

(2) Subject to this Division, the guidelines

(a) must establish the criteria to be applied in determining whether resolution under this Division is suitable, and

(b) may provide for the following:

(i) a determination to be made by the police complaint commissioner about whether a complaint is suitable for resolution by mediation or other informal means;

(ii) a roster, or the selection and identification, of those persons who may attempt to mediate or otherwise resolve a complaint;

- (iii) timelines in respect of which mediation or other informal means of resolution must be conducted or concluded;
- (iv) forms and procedures that may or must be used or followed before, during or after a mediation or other informal means of resolution under this Division;
- (v) the manner and form of recording a resolution under this Division.

### **Informal complaint resolution**

**157** (1) If, at any time before or during an investigation into a complaint concerning the conduct of a member or former member, the complaint appears to the discipline authority to be such that, under the guidelines, the matter is suitable for resolution by informal means other than mediation, the discipline authority may resolve the matter informally, if the complainant and the member or former member agree in writing to the proposed resolution.

(2) Before attempting to resolve a complaint under this section, the discipline authority must 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.

(3) If a complaint is informally resolved under this section, the discipline authority must

(a) notify the police complaint commissioner of the proposed resolution, and

(b) provide the police complaint commissioner any other information that the police complaint commissioner may require respecting the proposed resolution.

(4) Within 10 business days after agreeing to the proposed resolution under subsection (1), the complainant or member or former member may revoke agreement by giving written notification of the revocation to the discipline authority concerned or the police complaint commissioner.

(5) If agreement is revoked under subsection (4), the recipient of the notification of that revocation must promptly notify the other party to the proposed resolution and those of the police complaint commissioner or the discipline authority who are not aware of the revocation.

(6) Within 15 business days of receiving notification under subsection (3) (a), the police complaint commissioner may set aside the proposed resolution if the police complaint commissioner considers it inappropriate or inadequate.

(7) Unless the police complaint commissioner sets aside the proposed resolution under subsection (6), a proposed resolution consented to and not revoked under this section is final and binding and, with the exception of sections 166 and 167, no other provisions of this Part apply in respect of the matter.

### **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.

## **Complainant assistance**

- 159** (1) Complainants have the right to seek advice before and during an attempt to mediate or otherwise informally resolve a complaint under this Division.
- (2) At any time before or during any mediation or informal resolution process under this Division, a complainant may enlist the assistance of a support person of the complainant's choice or may ask the police complaint commissioner to appoint a support person for the complainant.
- (3) A support person enlisted or appointed under subsection (2) may
- (a) be present at any session of the mediation or other informal resolution process, as the case may be, including, without limitation, the pre-mediation conference under section 160,
  - (b) with the consent of the mediator, participate in any mediation session and conference, and
  - (c) with the consent of the member or former member whose conduct is the subject of the complaint, participate in any informal resolution session.

## **Pre-mediation conferences**

- 160** (1) A mediator selected or appointed under this Division must hold a pre-mediation conference separately with each of the complainant and the member or former member concerned.
- (2) At a pre-mediation conference with a complainant or a member or former member, the mediator must do the following:
- (a) determine whether there is any factor that would render mediation unfair to one of those participants, and assess whether mediation is appropriate in the circumstances;
  - (b) discuss with the participant the importance of independent legal advice;
  - (c) consider all organizational matters relating to the mediation, including the following:

- (i) the issues that are to be dealt with during the mediation process;
- (ii) the exchange of documents;
- (iii) scheduling.

### **Power of mediator to end process at any time**

**161** (1) Without limiting any other rights and powers of the mediator relating to the mediation process, at any time after the mediator has held a pre-mediation conference, the mediator may end the mediation process if the mediator concludes that

- (a) mediation is not appropriate, or
- (b) the mediation process will not be productive.

(2) The mediator must promptly notify the police complaint commissioner of a conclusion described in subsection (1) (a) or (b) and the police complaint commissioner, on receiving that notification, 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 and the complainant.

(3) If mediation is cancelled under subsection (2), the complaint must continue to be dealt with under and in accordance with Division 3.

### **Conduct of mediation proceedings**

**162** Subject to section 160, a mediator may conduct a pre-mediation conference and the mediation in any manner the mediator considers appropriate to assist the complainant and the member or former member concerned in reaching

- (a) an agreement as to a resolution, and
- (b) in the case of misconduct, an agreement as to appropriate disciplinary or corrective measures.

### **Outcome of mediation**

**163** (1) A mediation is completed when

- (a) all issues are resolved in accordance with the guidelines, or
- (b) the mediation session is completed and there is no agreement to continue.

(2) The mediator must promptly notify the police complaint commissioner of

- (a) completion of mediation described in subsection (1) (a) or (b), and
- (b) if the outcome is as described in subsection (1) (a), the disciplinary or corrective measures accepted by the member or former member.

(3) On receiving notification under subsection (2), the police complaint commissioner must

- (a) notify the discipline authority, the investigating officer, the member or former member concerned and the complainant of the outcome, including any disciplinary or corrective measures accepted by the member or former member, and
- (b) if the outcome is as described in subsection (1) (b), cancel the mediation and lift the suspension of the investigation and report filing, if any.

(4) If mediation is cancelled under subsection (3) (b), the complaint must continue to be dealt with under and in accordance with Division 3.

(5) If a resolution described in subsection (1) (a) is achieved, the resolution is final and binding and, with the exception of sections 166 and 167, no other provisions of this Part apply in respect of the matter.

### **Consequences if participant fails to attend mediation proceeding**

**164** (1) If a complainant fails to attend a pre-mediation conference or a mediation session, the police complaint commissioner may do either of the following, as the police complaint commissioner considers appropriate in the public interest:

(a) cancel the mediation, discontinue the complaint and take no further action under Division 3 in relation to the complaint;

(b) cancel the mediation, discontinue the complaint, lift the suspension of the investigation and report filing, if any, and continue the investigation under and in accordance with Division 3.

(2) If mediation is cancelled under subsection (1) (b), the continued investigation is deemed to have been initiated under section 93[*independent power to order investigation*] without a complainant.

(3) If the member or former member whose conduct is the subject of the complaint fails to attend a pre-mediation conference or a mediation session, the police complaint commissioner

(a) must cancel the mediation and lift the suspension of the investigation and report filing, if any, and continue the investigation under and in accordance with Division 3, and

(b) may, in the case of a member and if the police complaint commissioner considers appropriate in the public interest, order an investigation into that failure to attend under and in accordance with section 93.

(4) Before exercising a power or performing a duty under subsection (1) or (3), the police complaint commissioner must consult with the discipline authority of the member or former member concerned.

### **Cost of mediation**

**165** (1) The fees, rates and disbursements that may be charged in relation to mediation under this section, other than legal costs incurred by the complainant or the member or former member concerned, must be borne and paid for by the board of the municipal police department with which the member is employed or, in the case of a former member, with which the former member was employed at the time of the conduct of concern.

(2) The Lieutenant Governor in Council may make regulations setting the fees, rates and disbursements that may be charged in relation to mediation under this section.



## **Confidentiality of statements**

**166** (1) An oral or written answer or statement made by the complainant, the member or former member concerned or any other person in the course of attempting to resolve a complaint through mediation or other informal means under this Division

(a) must not be communicated to any person other than those persons participating in the attempt to resolve the complaint, and

(b) must not be used in any criminal or civil proceedings, including disciplinary proceedings under this Act.

(2) A proceeding under this Division is not open to the public.

## **If complaint is resolved and no disciplinary or corrective measures are taken**

**167** (1) If a resolution is final and binding under section 157 (7) or 163 (5) and no disciplinary or corrective measures are taken against the member or former member concerned in relation to the complaint, the record of the complaint must not be entered in the service record of discipline of the member or former member concerned, but it may be entered in that member's or former member's personnel file.

(2) A record of complaint in a member's or former member's personnel file under subsection (1) may be opened only

(a) for the purposes of deciding whether a subsequent attempt at informal resolution or mediation is appropriate, or

(b) for personnel matters unrelated to discipline.

## **Division 5 – Process Respecting Department Service and Policy Complaints**

### **Making a service or policy complaint**

**168** (1) Subject to subsection (3), any person may make a complaint to the police complaint commissioner about

(a) the general direction and management or operation of a municipal police department, or

(b) the inadequacy or inappropriateness of any of the following in respect of a municipal police department:

- (i) its staffing or resource allocation;
- (ii) its training programs or resources;
- (iii) its standing orders or policies;
- (iv) its ability to respond to requests for assistance;
- (v) its internal procedures.

(2) The complaint may be made by stating or delivering it

(a) directly to the police complaint commissioner, or

(b) for forwarding under section 169 to the police complaint commissioner, to

- (i) a member on duty at a station of any municipal police department who is assigned to receive and register complaints under this Division,
- (ii) an individual designated by the police complaint commissioner under section 51 (5) (b), or
- (iii) the chair of the board of a municipal police department.

(3) A member may not make a complaint under this Division in respect of the municipal police department with which the member is employed if the subject of the complaint is one to which the grievance procedure under the member's collective agreement applies.

**If complaint made to member, designated individual or chair under section 168 (2) (b)**

**169** (1) When a member, an individual or a chair referred to in section 168

(2) (b) [*making a service or policy complaint*] receives a complaint under that provision, she or he must immediately

(a) record the complaint and the date and time of its receipt,

(b) provide the person making the complaint with written acknowledgment of its receipt, and

(c) forward a copy of the complaint or, if the complaint was not made in writing, a copy of the record of the complaint to

- (i) a chief constable of the municipal police department concerned,
- (ii) the board of that municipal police department, and
- (iii) the police complaint commissioner.

(2) The member, individual or chair receiving the complaint must

- (a) provide the person making the complaint with any assistance that person requires in making the complaint,
- (b) provide the person making the complaint with any information or advice that may be required under the guidelines prepared under section 177 (2) (a) by the police complaint commissioner, and
- (c) complete and forward, to the persons referred to in subsection (1) (c), the record of the complaint in the form and manner required by the police complaint commissioner.

### **If complaint made directly to police complaint commissioner**

**170** When the police complaint commissioner receives a complaint directly from a person under section 168 (2) (a), the police complaint commissioner must immediately

- (a) record the complaint and the date and time of its receipt,
- (b) provide the person making the complaint with written acknowledgment of its receipt, and
- (c) forward a copy of the complaint or, if the complaint was not made in writing, a copy of the record of the complaint to both a chief constable of the municipal police department concerned and to the board of that municipal police department.

### **Investigation of department service and policy complaints**

**171** (1) On receiving a copy of a complaint, or a record of a complaint, under this Division, or, in the case of a complaint or part of a complaint described in section 82 (6) [*determination of whether complaint is admissible*], on receiving notification under section 83 (1) (a) (iii) [*notification following determination of admissibility*], the board of the municipal police department concerned must promptly do one or more of the following:

- (a) request a chief constable of that municipal police department to investigate and report on the complaint;
- (b) initiate a study concerning the complaint;
- (c) initiate an investigation into the complaint;
- (d) dismiss the complaint with reasons;
- (e) take any other course of action the board considers necessary to respond adequately to the complaint.

(2) The police complaint commissioner may recommend that the board initiate an investigation into the complaint if the board does not choose to do so under subsection (1) (c).

(3) Within 20 business days after doing any of the things described in subsection (1) (a) to (e), the board must notify the person who made the complaint, the director and the police complaint commissioner regarding the course of action being taken.

(4) The police complaint commissioner may request a status report from the board regarding the progress of an investigation or a study concerning a complaint under this Division, and the police complaint commissioner must forward to the person who made the complaint a copy of any report the police complaint commissioner receives in response to that request.

### **If investigation or study is initiated under section 171**

**172** (1) At the conclusion of an investigation or a study initiated under section 171 (1) (a), (b) or (c) [*investigation of department service and policy complaints*], on dismissing the complaint under section 171 (1) (d) or on taking a course of action under section 171 (1) (e), the board must send to the person who made the complaint, the director and the police complaint commissioner

(a) an explanation for the board's action under section 171 (1) in respect of the service or policy that is the subject of the complaint, and

(b) if applicable, a detailed summary of the results of any investigation or study initiated under that section.

(2) If the person who made the complaint is dissatisfied with

(a) the actions or inactions of the board under section 171 (1) (a) to (e),

(b) the explanation given under subsection (1) (a) of this section,

(c) the results of any investigation or study initiated under section 171, or

(d) the summary of the results sent under subsection (1) (b) of this section,

the person may, within 20 business days of receiving the explanation or summary referred to in subsection (1) of this section, request the police complaint commissioner to review the matter.

### **Police complaint commissioner's review of board decisions**

**173** (1) Subject to subsection (2) of this section, whether or not the person who made the complaint has requested a review under section 172 (2) [*if investigation or study is initiated under section 171*], the police complaint commissioner may do any of the following:

(a) review the decisions of a board under section 172;

(b) recommend to the board further investigation, study, courses of action or changes to service or policy;

(c) make recommendations to the director under section 177 (4) (e) [*general responsibility and functions of police complaint commissioner*].

(2) A review conducted under subsection (1) must be completed within 40 business days of receiving the board's explanation referred to in section 172 (1).

(3) The police complaint commissioner must include in the police complaint commissioner's annual report any recommendations made

to boards or the director under subsection (1) and may comment on the responses received, if any.

## **Division 6 – Internal Discipline Matters**

### **Definition**

**174** In this Division, "**internal discipline authority**" means the following:

(a) in relation to an internal discipline matter concerning the conduct or department of a member who is not a chief constable or deputy chief constable,

(i) a chief constable of the municipal police department with which the member is employed, unless section 176 applies, or

(ii) if section 176[*chief constable may delegate internal discipline authority functions*] applies, a person referred to in subsection (1) of that section;

(b) in relation to an internal discipline matter concerning the conduct or department of a member who is a chief constable or deputy chief constable, the chair of the board of the municipal police department with which the member is employed.

### **Internal discipline matters**

**175** (1) A chief constable of a municipal police department and the chair of the board of the municipal police department must establish procedures, not inconsistent with this Act, for dealing with internal discipline matters and taking disciplinary or corrective measures in respect of them.

(2) The procedures established under subsection (1) take effect after

(a) a copy of the procedures is filed with the police complaint commissioner, and

(b) the board of the municipal police department concerned approves the procedures.

(3) An internal discipline authority, the board and any arbitrator that may be appointed under the grievance procedure of the collective agreement may use, but are not restricted by,

(a) Division 2 to determine standards against which the conduct or deportment of a member may be judged, and

(b) section 126 [*imposition of disciplinary or corrective measures*] to determine appropriate discipline in respect of the matter.

(4) The internal discipline authority must provide the police complaint commissioner with a copy of

(a) any recommendation on disciplinary or corrective measures arising from an internal discipline matter, and

(b) the final decision reached by the internal discipline authority, the board or the arbitrator.

(5) On request of the police complaint commissioner, an internal discipline authority must provide any additional information or records respecting an internal discipline matter that are in the possession or control of the municipal police department concerned.

(6) The internal discipline authority may determine any issue respecting a member's competence or suitability to perform police duties that arises in an internal discipline matter.

### **Chief constable may delegate internal discipline authority functions**

**176** (1) A chief constable of a municipal police department may delegate to a deputy chief constable or senior officer of the municipal police department any of her or his powers or duties as internal discipline authority in a member's case under this Division.

(2) A delegation under this section must be in writing, and the chief constable making the delegation must, as soon as practicable after the delegation is made, notify the police complaint commissioner and the member concerned of that delegation.

## **Division 7 – General**

### **General responsibility and functions of police complaint commissioner**

**177** (1) The police complaint commissioner is generally responsible for overseeing and monitoring complaints, investigations and the administration of discipline and proceedings under this Part, and ensuring that the purposes of this Part are achieved.

(2) In addition to any other duties imposed under this Part or Part 9, the police complaint commissioner must do the following:

(a) establish guidelines to be followed by members or individuals referred to in section 78 (2) (b) *[how complaints are made]* or 168 (2) (b) *[making a service or policy complaint]* in receiving a complaint under Division 3 or 5;

(b) establish guidelines to be followed by municipal police departments and their employees in receiving and handling an oral or written report by a member of the public or any other person that raises a question or concern about the conduct of a municipal constable, but which question or concern does not result in a complaint being made and registered under section 78 *[how complaints are made]*;

(c) establish forms for the purposes of section 80 (2) (e) *[if complaint made to member or designated individual under section 78 (2) (b)]*, 85 (1) (a) *[departments to make record of reports not resulting in registered complaints]* or 89 (1) *[reporting of death, serious harm and reportable injury, and mandatory external investigation in cases of death and serious harm]*;

(d) establish and maintain a record of each complaint and investigation under this Part, including all records related to each complaint and investigation under this Part;

(e) compile statistical information in respect of records referred to in paragraph (d), including, without limitation,

(i) demographical information in respect of persons who make complaints under this Part, if available,

(ii) information respecting the number and frequency of complaints and investigations or of different types or classes of complaints and investigations, and the outcome or resolution of them, and



(iii) any trends in relation to information compiled under subparagraphs (i) and (ii);

(f) at least annually and subject to subsection (3), prepare reports respecting the matters described in paragraphs (d) and (e) and make those reports available to the public by posting them on a publicly accessible website maintained by or on behalf of the police complaint commissioner;

(g) develop and provide outreach programs and services for the purposes of informing and educating the public in respect of this Part and the powers and duties of the police complaint commissioner;

(h) for the purposes of paragraph (g), consider and address the particular informational needs of British Columbia's diverse communities;

(i) accept and consider comments from any interested person respecting the administration of this Part and Part 9;

(j) inform, advise and assist the following in respect of this Part:

- (i) persons who make complaints;
- (ii) members and former members;
- (iii) discipline authorities;
- (iv) boards;
- (v) adjudicators;

(k) establish a list of support groups and neutral dispute resolution service providers and agencies that may assist complainants with any mediation or other informal resolution process under Division 4 and make that list available to the public;

(l) make any recommendations for improvement of the complaint process in the annual report under section 51.1.

(3) Before making the reports referred to in subsection (2) (f) available to the public, the police complaint commissioner may sever 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*.

(4) The police complaint commissioner may also do any of the following:

- (a) prepare and provide informational reports on any matter related to the functions of the police complaint commissioner;
- (b) engage in or commission research on any matter relating to the purposes of this Part or Part 9;
- (c) make recommendations to a board that it examine and reconsider any policies or procedures that may have been a factor in conduct that is the subject of a complaint or an investigation under this Part;
- (d) make recommendations to the director or the minister that a review, a study or an audit be undertaken to assist police departments or forces, or any designated policing unit or designated law enforcement unit to which this Part is made applicable by regulation of the Lieutenant Governor in Council, in developing training or other programs designed to prevent recurrence of any problems revealed by the complaint process;
- (e) make recommendations to the director that the director exercise one or more of the director's functions under sections 40[*functions of director*], 42 [*studies by director*] and 44 [*special investigations*] in relation to a service or policy complaint under Division 5 about a municipal police department or a service or policy complaint about any designated policing unit or designated law enforcement unit to which Division 5 is made applicable by regulation of the Lieutenant Governor in Council;
- (f) make recommendations to the minister for a public inquiry under the [Public Inquiry Act](#) if there are reasonable grounds to believe that
  - (i) the issues in respect of which the inquiry is recommended are so serious or so widespread that a public inquiry is necessary in the public interest,

(ii) an investigation conducted under this Part, even if followed by a public hearing or review on the record, would be too limited in scope, and

(iii) powers granted under the *Public Inquiry Act* are needed;

(g) consult with and advise persons who, in other jurisdictions of Canada or within the Royal Canadian Mounted Police, hold the same or a similar position as the police complaint commissioner.

(5) In exercising the police complaint commissioner's powers and duties under this Act, the police complaint commissioner may request an interview or statement from any discipline authority, prehearing conference authority or chief constable, deputy chief constable or chair of the board of a municipal police department.

(6) A person to whom a request is made under subsection (5) must comply with that request.

(7) On receiving a recommendation under subsection (4) (f), the minister may request the Lieutenant Governor in Council to appoint a commission under the *Public Inquiry Act*.

### **Duty of police complaint commissioner to notify independent investigations office if**

#### **complaint or report involves death, serious harm or specified contraventions**

**177.1** When the police complaint commissioner receives a complaint or report, whether directly or indirectly under section 78 (2) (a) or (b) or 89 or otherwise, that a member has, whether on or off duty,

(a) caused the death of a person,

(b) caused a person serious harm, or

(c) contravened a prescribed provision of the *Criminal Code* or a prescribed provision of another federal or provincial enactment,

the police complaint commissioner must immediately notify the independent investigations office.

## **Duty of members to cooperate with police complaint commissioner and staff**

**178** A member has a duty to cooperate with the police complaint commissioner in the police complaint commissioner's exercise of powers or performance of duties under this Act and with any deputy police complaint commissioner or other employee of the police complaint commissioner who is acting on behalf of the police complaint commissioner.

## **Criminal prosecutions and civil remedies not prohibited**

**179** (1) Nothing in this Act or the regulations prohibits

(a) civil or criminal proceedings against a member or former member, or

(b) proceedings under the [Labour Relations Code](#) as to the interpretation, application or operation of a collective agreement.

(2) A decision by Crown counsel not to commence or proceed with a criminal charge arising out of the same facts and circumstances as those related to a complaint or an investigation under this Part does not preclude the continuation or initiation of proceedings under this Act.

(3) Acquittal or conviction on a criminal charge arising out of the same facts and circumstances as those related to a complaint or an investigation under this Part does not preclude the continuation or initiation of proceedings under this Act.

(4) The police complaint commissioner or an adjudicator may suspend proceedings under this Part if, in the police complaint commissioner's or adjudicator's opinion, continuation of the proceedings would prejudice a criminal investigation or prosecution.

(5) Without limiting the authority of the police complaint commissioner or adjudicator to reconsider the matter, the complainant or the member or former member whose conduct is the subject of the complaint or investigation may, on written notification to each other, request the police complaint commissioner or adjudicator to reconsider a suspension under subsection (4).

(6) From the date of giving or receiving written notification of a request for reconsideration, the complainant and the member or former member have 10 business days to make written submissions to the police complaint commissioner or adjudicator in respect of the decision to suspend.

(7) Any period of suspension under this section must not be counted for the purposes of proceedings under this Part.

### **Members' service records of discipline**

**180** (1) Subject to this section and section 167[*if complaint is resolved and no disciplinary or corrective measures are taken*], the service record of discipline of a member or former member must include the following records:

(a) a record of each complaint against the member or former member that is determined by the police complaint commissioner to be an admissible complaint under section 82[*determination of whether complaint is admissible*];

(b) a record of each investigation that is initiated under section 93[*independent power to order investigation*] in respect of the member or former member;

(c) a record of each disciplinary or corrective measure that is

(i) taken in respect of the member or former member as a result of a finding of misconduct,

(ii) accepted by the member under section 120[*prehearing conference*] or under Division 4[*Resolution of Complaints by Mediation or Other Informal Means*], or

(iii) determined by an adjudicator to be appropriate under section 141 (10)[*review on the record*] or 143 (9) [*public hearing*];

(c.1) a record of each complaint against the member or former member that is withdrawn by the complainant under section 94[*withdrawal of complaint by complainant*], noting whether the police complaint commissioner has ordered or

continued an investigation into the matter under that section;

(c.2) a record of each investigation initiated in respect of the member or former member, or each complaint against the member or former member, in respect of which the police complaint commissioner issues a direction under section 109 (1)*[power to discontinue investigation]*;

(d) a record of each of the following:

(i) every decision in respect of the member or former member that is final and conclusive under section 112 (5)*[discipline authority to review final investigation report and give early notice of next steps]* or 116 (5) *[discipline authority to review supplementary report and give notice of next steps]*;

(ii) every resolution in respect of the member or former member that is final and conclusive under section 120 (16)*[prehearing conference]*;

(iii) every finding or determination in respect of the member or former member that is final and conclusive under section 133 (6)*[review of discipline proceedings]*;

(e) a record of each adjudicator decision made in respect of the member or former member under section 141 (10)*[review on the record]* or 143 (9) *[public hearing]*;

(f) a record of discipline taken in respect of the member in an internal disciplinary proceeding.

(2) The board of a municipal police department must ensure that

(a) the service records of discipline of its members and former members are

(i) kept in a secure place, separate from the personnel files of the members and former members, and

(ii) maintained and updated in accordance with subsections (1) and (8), and

(b) members of the municipal police department comply with the provisions of this section.

(3) The service record of discipline of a member or former member of a municipal police department may be disclosed only as follows:

(a) to the member or former member;

(b) in relation to a complaint or an investigation under Division 3 concerning the conduct of the member or former member, to the discipline authority;

(c) in circumstances where the member or former member accepts an offer for a prehearing conference under section 120[*prehearing conference*], to the prehearing conference authority;

(d) in the case of a member and in relation to an internal discipline matter concerning the conduct of the member, to the internal discipline authority as defined in Division 6[*Internal Discipline Matters*];

(e) to a chief constable of the member or, in relation to a former member, to a chief constable of the municipal police department with which the former member was employed at the time of the conduct of concern;

(f) to the chair of the board of that municipal police department;

(g) in circumstances where the conduct of the member or former member is the subject of an investigation under Division 3, to the investigating officer;

(h) to the police complaint commissioner;

(i) in circumstances where the police complaint commissioner arranges a public hearing or review on the record in respect of a disciplinary decision, as defined in section 141, concerning the conduct of the member or former member, to the adjudicator appointed for that proceeding under section 142[*appointment of adjudicator for public hearing or review on the record*];

(j) in the case of a member who is a member of a police union and in relation to an internal discipline matter

concerning the conduct of that member that is before an arbitrator appointed under the collective agreement, to that arbitrator;

(k) in circumstances set out in subsection (4), to the persons referred to in that subsection.

(4) The service record of discipline of a member or former member may be disclosed to a senior officer or board of another police force or law enforcement agency or to the commissioner of the Royal Canadian Mounted Police, but only on their written request and only in respect of potential employment with the other police force or law enforcement agency or the Royal Canadian Mounted Police.

(5) Disclosure of a member's or former member's service record of discipline to persons other than those referred to in subsection (3) requires both

(a) authorization by a chief constable of the municipal police department with which the member is employed or, in the case of a former member, a chief constable of the municipal police department with which the former member was employed at the time of the conduct of concern, and

(b) consent of the member.

(6) If a disciplinary or corrective measure is imposed in relation to, or agreed to by, a member or former member, and the measure includes treatment, counselling or some other program, the member's or former member's service record of discipline must be updated to indicate whether the counselling, treatment or other program was completed.

(7) Nothing in this section precludes the internal use of a member's service record of discipline for non-disciplinary action, including, without limitation, promotion, transfer and reassignment, within the municipal police department with which the member is employed.

(8) Records referred to in subsection (1) (a) to (f) in relation to a member must be expunged from the member's service record of discipline if any of the following apply:

(a) subject to subsection (9), no other complaint made against the member is determined to be admissible under



section 82 and no other investigation has been initiated concerning the conduct of the member under this Part within the 2-year period immediately following the last disciplinary or corrective measures recorded in the service record of discipline in respect of the member, and those measures consist of nothing more than a written or verbal reprimand or advice as to future conduct;

(b) subject to subsection (9), no other complaint made against the member is determined to be admissible under section 82 and no other investigation has been initiated concerning the conduct of the member under this Part within the 3-year period immediately following the last disciplinary or corrective measures recorded in the service record of discipline in respect of the member, and those measures

- (i) consist of one or more directions to work under close supervision, to undertake specified training or retraining, to undertake counselling or treatment, or to participate in a program or activity, and
- (ii) do not include dismissal, reduction in rank, suspension or transfer or reassignment;

(c) subject to subsection (9), no other complaint made against the member is determined to be admissible under section 82 and no other investigation has been initiated concerning the conduct of the member under this Part within the 5-year period immediately following the last disciplinary or corrective measures recorded in the service record of discipline in respect of the member, and those measures

- (i) consist of one or more of
  - (A) reduction in rank,
  - (B) suspension, or
  - (C) transfer or reassignment, and
- (ii) do not include dismissal;

(d) the records are, or relate to, a recorded complaint or investigation that has been concluded and no disciplinary or

corrective measures are recorded in relation to the complaint or investigation because one of the following has occurred:

- (i) the complaint has been withdrawn by the complainant under section 94 [*withdrawal of complaint by complainant*] and the police complaint commissioner has not ordered or continued an investigation into the matter;
- (ii) the police complaint commissioner has issued a direction under section 109 (1)[*power to discontinue investigation*] to discontinue the investigation into the matter;
- (iii) the matter has been finally determined and, in that final determination, no disciplinary or corrective measures are imposed in relation to, or accepted by, the member.

(9) An admissible complaint or any investigation of a matter is irrelevant and not to be considered for the purposes of subsection (8) (a), (b) or (c) when one of the following occurs:

- (a) the complaint is withdrawn by the complainant under section 94[*withdrawal of complaint by complainant*] and the police complaint commissioner does not order or continue an investigation into the matter;
- (b) the police complaint commissioner issues a direction under section 109 (1)[*power to discontinue investigation*] to discontinue the investigation into the matter;
- (c) the matter is finally determined and, in that final determination, no disciplinary or corrective measures are imposed in relation to, or accepted by, the member.

(10) [Repealed 2012-18-92.]

### **Duties of chief constable and chair of board to ensure disciplinary or corrective measures are taken**

**181** (1) This section applies in respect of every disciplinary or corrective measure

(a) that is approved by the police complaint commissioner in relation to a member under section 120 (16)[*prehearing conference*],

(b) that is proposed by a discipline authority in relation to a member under section 128 (1) (a)[*disciplinary disposition record*] and is final and conclusive under section 133 (6)[*review of discipline proceedings*],

(c) that is determined by an adjudicator to be appropriate in relation to a member under section 141 (10)[*review on the record*] or 143 (9) [*public hearing*], or

(d) that is accepted by a member under Division 4[*Resolution of Complaints by Mediation or Other Informal Means*].

(2) If the disciplinary or corrective measure set out in subsection (1) concerns a member of a municipal police department other than a chief constable, a chief constable of the municipal police department must take every reasonable step to ensure that that disciplinary or corrective measure is taken.

(3) If the disciplinary or corrective measure set out in subsection (1) concerns a chief constable of a municipal police department, the chair of the board of the municipal police department must take every reasonable step to ensure that that disciplinary or corrective measure is taken.

### ***Freedom of Information and Protection of Privacy Act does not apply***

**182** Except as provided by this Act and by section 3 (3) of the *Freedom of Information and Protection of Privacy Act*, that Act does not apply to

(a) any record of a complaint concerning the conduct of a member that is made, submitted, registered or processed under this Part,

(b) any record related to a record described in paragraph (a), including, without limitation, any record related to a public hearing or review on the record in respect of the matter,

(c) any information or report in respect of which an investigation is initiated under this Part, or

(d) any record related to information or a report described in paragraph (c), including, without limitation, any record related to a public hearing or review on the record in respect of the matter,

whether that record, information or report is created on or after a complaint is made, submitted or registered or the investigation is initiated, as the case may be.

### **Requirement to use contemporaneous file monitoring system**

**183** (1) In this section:

**"contemporaneous file monitoring system"** means software, or a system of software and hardware components and related technology, that

(a) enables the police complaint commissioner to securely and electronically monitor records respecting investigations and proceedings under this Part, and

(b) is approved by the minister under subsection (2) for that purpose;

**"designated service provider"** means a corporation that

(a) provides software, hardware or services related to a contemporaneous file monitoring system, and

(b) is designated by order of the Lieutenant Governor in Council for the purposes of subsection (9);

**"law enforcement service"** means the following:

(a) the provincial police force;

(b) a municipal police department;

(c) any designated policing unit or designated law enforcement unit that is also designated by the minister as a law enforcement service for the purposes of this section;

**"protected person"** means

- (a) a designated service provider,
- (b) a current or former member of a designated service provider, and
- (c) a current or former director or employee of a designated service provider.

(2) The minister may approve one or more contemporaneous file monitoring systems for the purposes of this section.

(3) The board of a municipal police department must ensure that the municipal police department and its members implement, use, maintain, repair and upgrade a contemporaneous file monitoring system in accordance with this section and the regulations, if any, made under section 184 (2) (j) or (l).

(4) For the purposes of this section, the minister, in consultation with the police complaint commissioner, may set or adopt standards respecting

- (a) the manner, form, exchange and transfer of information and data in a contemporaneous file monitoring system, and
- (b) the maintenance of security and information and data integrity of a contemporaneous file monitoring system

to be followed by

- (c) a municipal police department,
- (d) an investigating officer,
- (e) a discipline authority,
- (f) the police complaint commissioner and employees of the office of the police complaint commissioner,
- (g) an adjudicator,
- (h) an individual designated under section 51 (5) *[staff and other designated individuals]*,
- (i) a member referred to in section 78 (2) (b) (i) *[how complaints are made]*, and
- (j) a prehearing conference authority under section 120 *[prehearing conference]*.

(5) A municipal police department and the persons referenced in subsection (4) must comply with all standards set or adopted under that subsection.

(6) Without limiting subsection (5),

(a) a member appointed as investigating officer to investigate the conduct of another member or former member under Division 3 must use the contemporaneous file monitoring system in accordance with the minister's standards to immediately file all records related to the investigation, including, without limitation, all interim reports, the final investigation report, any supplementary report or investigation report under section 132 [*adjournment of discipline proceeding for further investigation*] and all other related records in respect of the matter, and

(b) a member who is the discipline authority or prehearing conference authority in respect of a matter must use the contemporaneous file monitoring system in accordance with the minister's standards to immediately file all records related to the matter, including, without limitation, the following:

(i) a notification required under section 112 (1) (c) [*discipline authority to review final investigation report and give early notice of next steps*] or 116 (1) (c) [*discipline authority to review supplementary report and give notice of next steps*];

(ii) a copy of any request received under section 114 (1) [*member or former member may request further investigation*] and the notice of decision in respect of that request under section 114 (4) (b);

(iii) a copy of any request filed by the member or former member under section 119 (1) [*member or former member may request permission to question witnesses at discipline proceeding*] and the notice of decision in respect of that request under section 119 (3) (b);

- (iv) a report provided under section 120 (12)[*prehearing conference*];
- (v) a notice to appear served on a witness under section 121 (1) (b) or (2) [*if member's or former member's request to question witnesses is accepted*];
- (vi) copies of the notices served under section 123 (1) (b)[*matters related to discipline proceeding*] and delivered under section 123 (1) (c) (i);
- (vii) the record of findings under section 125 (1) (b)[*conclusion of discipline proceeding*];
- (viii) a copy of the disposition record and notification under section 128 (1) (d)[*disciplinary disposition record*] and the unedited record of the proceedings referred to in section 128 (1) (e);
- (ix) any transcript made of discipline proceedings in respect of the matter and records submitted as evidence in those proceedings;
- (x) a notification of proposed resolution under section 157 (3)[*informal complaint resolution*].

(7) The filing requirements of this section are in addition to and not instead of any other requirements under this Part.

(8) Subject to the regulations, all costs incurred in the implementation, use, maintenance, repair and upgrading of a contemporaneous file monitoring system by a law enforcement service, or incurred in complying with the standards set or adopted under subsection (4), are

(a) the responsibility of

- (i) the municipality, in the case of a municipal police department or an investigating officer or a discipline authority who is a member of the municipal police department, and
- (ii) the entity on behalf of which a designated policing unit or designated law enforcement unit is established under section 4.1 or 18.1, in the case of a designated policing unit or designated law enforcement unit, or an investigating officer or

discipline authority who is a member of such a unit,  
and

(b) a debt due to and recoverable by the government or one or more persons specified by the minister who provide software, hardware or any other service in relation to a contemporaneous file monitoring system under this section.

(9) No action lies and no proceedings may be brought against a protected person, and a protected person is not liable for any loss or damages suffered by any person, in respect of anything done or omitted to be done by the protected person in relation to the provision or operation of a contemporaneous file monitoring system provided by a designated service provider.

(10) As an exception, the immunity from legal action otherwise provided to a protected person by subsection (9) does not apply if the protected person has been guilty of malice or wilful misconduct in relation to the subject of the action.

### **Regulations under Parts 9 and 11**

**184** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing forms for the purposes of this Part;
- (b) governing the selection and appointment of a deputy police complaint commissioner under section 51 (1) [*staff and other designated individuals*], including the requisite qualifications for the appointment of a person to that office;
- (c) describing an injury for the purposes of the definition of "reportable injury" in section 76 and its use in section 89 (1) [*reporting of death, serious harm and reportable injury, and mandatory external investigation in cases of death and serious harm*], which description may focus on the nature of the injury or its cause or both;



(d) respecting the service of a notice to appear on a witness under section 121 (1) (b) or (2) [*if member's or former member's request to question witnesses is accepted*];

(e) respecting appearance fees and expenses to be paid to a witness under section 122 [*fees and expenses of witnesses*], including limiting or excluding appearance fees and expenses;

(f) respecting directions that may be made by a discipline authority under section 122 (3) [*fees and expenses of witnesses*];

(g) respecting the service of notice on a witness under section 123 (1) (b) [*matters related to discipline proceeding*];

(h) providing for the payment of appearance fees and expenses reasonably and necessarily incurred by witnesses called under section 141 (4) [*review on the record*] or 143 (5) [*public hearing*];

(i) respecting the handling of complaints against IIO investigators, the chief civilian director or officers other than municipal constables, the investigation of those complaints and the discipline of those persons, including, without limitation, making all or any part of Part 11 applicable, with any changes the minister considers necessary or advisable, to the IIO investigators, the chief civilian director or a class of officers other than municipal constables;

(j) respecting the implementation, use, maintenance, repair and upgrading of a contemporaneous file monitoring system by a law enforcement service under section 183;

(k) prescribing fees that must be paid to the government or to persons specified by the minister who provide software, hardware or any other service in relation to a contemporaneous file monitoring system under section 183;

(l) providing for the phasing in of the operation of section 183 (3), or the phasing in of new or changed technology for

a software, hardware or any other service in relation to a contemporaneous file monitoring system under section 183, and the phasing in may be in relation to

- (i) specified law enforcement services,
- (ii) specified geographical areas of British Columbia, or
- (iii) specified law enforcement services in specified geographical areas of British Columbia.

(3) The Lieutenant Governor in Council may make different regulations under subsection (2) (d) to (h) in respect of witnesses who are members and witnesses who are not.

(4) The Lieutenant Governor in Council may make different regulations under subsection (2) (i) for different classes of officers.