

**Appeals from Complaints
About Police:
Powers of Review of Alberta's
Law Enforcement Review
Board**



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by the

**Alberta Civil Liberties Research
Centre**

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Executive Summary

A. Role of the Law Enforcement Review Board

The Law Enforcement Review Board ("LERB") was established under the *Police Act*¹ to provide an independent and impartial review of decisions related to complaints about police officers' and peace officers' conduct, and services and policies of police services. The initial decisions about these complaints are generally made by chiefs of police or presiding officers (often, current or former police officers that are appointed by a chief). Under the *Police Act*, the chief of police typically investigates a complaint regarding officer conduct and determines whether the complaint warrants further disciplinary actions. If the chief concludes that the complaint is serious, he or she will generally refer the matter to a hearing before the presiding officer. The presiding officer hears facts and evidence presented by the police officer whose conduct was the subject of the complaint and the presenting officer, who is appointed by the chief to bring a case against the police officer. The presiding officer will then reach a decision as to how to appropriately resolve the complaint, including any disciplinary actions that should apply to the officer. After a chief or presiding officer has made a decision, the person who made the complaint (the "complainant") or the officer cited in the complaint may appeal to the LERB.

Historically, the LERB reviewed the decisions of chiefs and presiding officers on a standard of review of correctness, using a *de novo* hearing. This approach essentially meant that the LERB would hear the facts and evidence considered during the initial investigation or hearing anew, as well as evidence presented by the complainant, and reach its own decision on the matter. If the LERB's decision matched the chief's or presiding officer's decision, the LERB would conclude that the prior decision was correct and let it stand. If the LERB reached a different conclusion from the chief or presiding

¹ RSA 2000, c P-17. See Appendix.

officer, however, the LERB would consider the prior decision incorrect and substitute its own finding and means of resolving the complaint.

Early cases by the LERB and Alberta Court of Appeal,² interpreted the *Police Act* as implicitly allowing the LERB to conduct *de novo* hearings. These decisions highlighted that a subsequent *de novo* hearing provided important oversight of internal police decisions related to complaints and enabled complainants to fully participate at the appellate level, after not being afforded standing during the initial investigation and hearing.

In 2010, *Newton v Criminal Trial Lawyers' Association*³ and *Pelech v Law Enforcement Review Board*,⁴ two Alberta Court of Appeal decisions that were heard consecutively, effectively established that appeals to the LERB are not to be given a *de novo* hearing and should generally be reviewed for reasonableness. In both of these cases, the Court of Appeal applied the factors for determining standard of review that were set out in previous administrative law cases to appeals to the LERB from prior decisions by chiefs and presiding officers. The judges in these cases held that the standard of review for appeals to the LERB will generally be reasonableness. In addition, appeals should be conducted on the record. On the record means that the LERB will base its decision on the written documentation from the prior decision, unless the complainant can establish that, on the face of the matter, there was misconduct or an obstruction of justice at the previous stage in the complaint process. The LERB's oversight function and ability to hear additional evidence on appeal will only be triggered if the complainant can make out a case for misconduct or obstruction of justice.

After *Newton* and *Pelech*, the Alberta Court of Appeal further restricted the LERB's review powers in *Edmonton Police Service v Furlong*⁵ and *Calgary Police Service v*

² See, for example: *Re Inspector Brian Boulanger*, 2006 ABLERB 021; *Robertson v Edmonton (City) Police Service (#10)*, 2004 ABQB 519 at para 214, 39 Alta LR (4th) 263 [*Robertson*].

³ 2010 ABCA 399 at para 42, 14 Admin LR (5th) 181.

⁴ 2010 ABCA 400, 328 DLR (4th) 156.

⁵ 2013 ABCA 121, 544 AR 191.

Alberta (Law Enforcement Review Board),⁶ which were heard consecutively in 2013. In those cases, the Court of Appeal found that the LERB's civilian oversight mandate is separate from its review function. Accordingly, civilian oversight will not be engaged in every case. Even when civilian oversight is required, that oversight only applies to policy-level issues and the LERB must still apply a reasonableness standard of review to decisions about the conduct of individual officers. Overtime, the LERB has come to regard these Court of Appeal decisions as requiring that it conduct an appeal on a reasonableness standard of review, using only the record of the prior decision. The LERB automatically applies this approach when reviewing decisions by police chiefs and presiding officers, without first considering the standard of review factors in light of the circumstances of specific cases.

B. Issues Associated with Restricting the LERB to Reasonableness

The restrictions placed on the LERB's power to review prior decisions by chiefs of police and presiding officers have significantly interfered with its ability to enable complainants to participate in the complaint process, as well as to provide an independent review of decisions related to police complaints. The Hansard, or record of Legislative debates, on the issue of the introduction of amendments to the *Police Act* indicates that the Legislature meant to provide complainants with the right to an enhanced level of participation at the appellate level by giving these individuals standing and an opportunity to introduce their own evidence at a *de novo* hearing. The Hansard indicates that the Legislature created this hybrid system of an initial internal police discipline process followed by an appeal at which complainants receive standing as a means of promoting public confidence in the complaint system through meaningful public input, while maintaining an internal component that has the confidence of the police service. Without public participation at any stage of the complaint process, complainants may have cause to argue that there was a breach of procedural fairness and the disciplinary decision ought to be rendered invalid.

⁶ 2013 ABCA 124, 86 Alta LR (5th) 171.

By minimizing the role of the LERB, the Court of Appeal has essentially restricted police complaints to an internal system of investigation, adjudication, and discipline. Police complaints are generally investigated and adjudicated by current or former police officers. Under a reasonableness review, the LERB has little ability to intervene in the decisions by these officers. As a result, the LERB cannot effectively provide an independent, impartial review of conclusions and actions taken by chiefs and presiding officers.

According to one Alberta Court of Appeal decision,⁷ an appeal to the LERB created a method by which the LERB could supervise the powers of chiefs and presiding officers to ensure that these officers do not use their extensive powers inappropriately. Supervision, in turn, served as an evident check on police power, which assured the public that the police complaint process would remain fair and impartial despite the involvement of the police at the investigation and hearing stage. Because the LERB strictly applies a reasonableness standard of review to appeals, the LERB is not able to supervise the police by conducting an in-depth review of prior decisions and intervening in inappropriate decisions regarding the conduct of officers. In this way, an appeal to the LERB that is conducted on the record using a reasonableness standard of review has opened the door to an apprehension of bias and greater public mistrust in relation to the police complaint structure. To support this claim, current media makes it clear that the public perception of the police's ability to regulate itself is deteriorating in Alberta.

C. Conclusions and Recommendations

From an analysis of the issues associated with restricting the LERB to a reasonableness standard of review on appeals, it is clear that there are some significant issues with the current police complaint system. The lack of independent oversight combined with an inability for complainants to actively participate in the complaint process at any stage has created a police complaint system that is open to questions of bias and misuse of police power. Without the transparency and evident checks on police

⁷ *Robertson*.

powers that the LERB was intended to provide, the public seems to be growing increasingly distrustful of police conduct and the effectiveness of resolving issues with police behaviour through the complaint process. Current news in Alberta clearly reflects this degrading public perception and the pressing need for change to the police complaint process in order to restore trust in the performance and regulation of police duties.

This report provides a long-term and a short-term strategy for amending the *Police Act* in a manner that improves the balance between police powers and the authority of the LERB, as well as increases public transparency and participation within the complaint system. In the long-term, it is recommended that an independent panel complete further research on the efficacy of the police complaint system. This panel should have the support of the Alberta Government, which will give it authority to access police complaint files and investigations, review police policies, and conduct extensive consultations with stakeholders and the public. Using these resources, the panel should conduct an in-depth analysis of whether the current police complaint system effectively resolves public complaints in a manner that supports transparency, impartiality, and public and police confidence. Particular attention should be paid to whether the current police complaint system has maintained the confidence of police officers, as recent complaints by female Calgary Police Service officers regarding sexual harassment and bullying in the workplace suggest that there is a lack of trust in the complaint process.

For a more easily implemented short-term solution that will correct many of the significant issues in the police complaint system until further research can be completed, the *Police Act* should be amended to codify the LERB's ability to hold *de novo* hearings. *Newton* and *Pelech* raised some noteworthy instances in which the LERB should not be required to hold a *de novo* hearing, such as when charges have not yet been laid against a police officer. Given that there may be instances where a *de novo* hearing is not appropriate, the clause that enables the LERB to conduct this type of hearing should be discretionary. The *Police Act* should set out factors that will guide the

analysis of whether a *de novo* hearing ought to be used, but allow the LERB to reach the ultimate conclusion in respect to whether it will implement a *de novo* hearing in a particular case. The Legislature may look to similar provisions in other legislation, such as the Alberta *Provincial Court Act*,⁸ as examples of the type of factors that should inform the use of *de novo* hearings on appeals.⁹

⁸ SA 2000, c P-31.

⁹ In caselaw, these are also referred to as either *de novo* appeals, trials *de novo* or trial *de novo* appeals. In any case, we define a *de novo* hearing on appeal as one where an appeal court refers to the lower tribunal's record to determine the facts, but will rule on the evidence and questions of law without deference to the lower tribunal's findings.

Appeals from Complaints About Police: Powers of Review of Alberta's Law Enforcement Review Board

I. INTRODUCTION

In Alberta, the Law Enforcement Review Board (the "LERB") hears appeals from police complaints that have been resolved by decisions of chiefs of police or through hearings that are conducted within police services. The LERB provides an important oversight function for these initial internal decisions about complaints. Over the last few years, the powers of the LERB have changed quite drastically, as the courts and the LERB itself have reinterpreted the authority given to the LERB in the *Alberta Police Act*. Initially, the LERB was able to conduct a new hearing during an appeal of a decision related to a police complaint. Through a series of judicial decisions, however, the LERB has been restricted to only reviewing the prior decision to determine whether it is a reasonable option among a range of reasonable choices. In this way, the LERB has little room to intervene in the internal complaint process to ensure that decisions are fair. These reviews are also now conducted on the record, meaning the LERB does not have the ability to hold a new trial. As a result, the LERB is not able to provide the person who submitted the complaint with an opportunity to present evidence. Instead, that person must rely on the evidence that was presented at the initial hearing by the police officers involved in the proceedings.

The primary purpose of this report is to examine the role of the LERB in the police complaint process and the implications of the changes to the LERB's powers. This report will primarily focus on police complaints made by members of the public about the conduct of police officers. It will use that type of complaint as a basis for assessing whether the current state of public participation and oversight at the LERB is sufficient to ensure that the police complaint system functions properly and maintains public confidence. In particular, the analysis will focus on whether the current interpretation of the LERB's powers allows it to fulfill its mandate as an impartial, independent review body.

II. BACKGROUND

A. Role of the Law Enforcement Review Board

The LERB was first introduced in 1973 by Bill 26, which would later become the *Police Act*.¹⁰ The LERB derives its authority from the *Police Act*.¹¹ The primary function of the LERB is to act as an independent, quasi-judicial body¹² to provide “independent and impartial review.”¹³ This review function essentially means that the LERB’s main role is to hear appeals from complainants,¹⁴ police officers and peace officers¹⁵ after a complaint has been investigated and resolved by the police service involved or through another mechanism outlined in the *Police Act*.

B. Complaints Procedure

The complaints and discipline procedures are set out in Part 5 of the *Police Act*. In general, there are three types of complaints described under this Part: (1) a complaint about the conduct of a police or peace officer; (2) a complaint about the conduct of a chief of police; and (3) a complaint about a police policy or service. A person has standing to make a complaint regarding the conduct of a police officer if he or she is:

- (a) a person to whom the conduct complained of was directed;
- (b) a person who was present at the time the incident occurred and witnessed the conduct complained of;
- (c) an agent of a person referred to in clause (a)
- (d) a person who

¹⁰ *Re Inspector Brian Boulanger*, 2006 ABLERB 021 at para 24 [*Boulanger*].

¹¹ RSA 2000, c P-17 [*Police Act*]. Copy provided in Appendix.

¹² A quasi-judicial body is an arbitrator or tribunal board, generally from a public administrative agency, which has powers and procedures resembling those of a court of law or judge. Quasi-judicial bodies are usually authorized by statutes to objectively determine facts and draw conclusions from them so as to remedy a situation or impose legal penalties, and may affect the legal rights, duties or privileges of people who are subject to them.

¹³ Alberta Justice and Solicitor General, *Law Enforcement Review Board*, online: <https://www.solgps.alberta.ca/boards_commissions/law_enforcement_review_board/Pages/default.aspx> [Alberta Justice].

¹⁴ Complainant means the individual who brought a complaint against a police officer, peace officer, or police policy.

¹⁵ Under section 1(j) of the *Police Act*, “‘peace officer’ means a person employed for the purpose of preserving and maintaining the public peace”.

**(i) was in a personal relationship with the person referred to in clause (a) at the time the incident occurred, and
(ii) suffered a loss, damage, distress, danger or inconvenience as a result of the conduct complained of.¹⁶**

In addition to these directly and indirectly affected individuals, the chief of police may also initiate a complaint against a police officer, though the chief must treat the complaint as if it were made by another person.¹⁷ Any person, whether directly affected or not, can make a complaint about a policy or service—that person is said to have “standing” to make to complaint.¹⁸ Complaints related to the police service or police officers are sent to the chief of police, while complaints about the chief are referred to the chair of the Police Commission.¹⁹ All complaints must be initiated within one year of the alleged conduct or the date that the complainant knew or ought to have known that the contested conduct occurred.²⁰

When a complaint about the conduct of a police officer is submitted to the chief of police, the chief will initiate an investigation into that complaint.²¹ Once the investigation is complete, the chief will decide whether the conduct may constitute a criminal offence or violate the regulations governing the discipline or performance of duty of police officers. If it may be considered an offence under a federal or Alberta law, the chief must refer the matter to the Minister of Justice and Solicitor General (“Minister”). Alternatively, when the officer’s actions likely breach discipline or performance practices, the impugned conduct will be addressed by a hearing into the matter by the chief or a person delegated by the chief under the *Police Service Regulation*²² (the “*Regulation*”), provided that the chief considers the police action serious enough to warrant a hearing.²³ When the chief is of the opinion that the contravention of the discipline or performance procedures is not of a serious nature, the

¹⁶ *Police Act*, s 42.1(2).

¹⁷ *Police Act*, s 43(6).

¹⁸ *Police Act*, s 42.1(3).

¹⁹ *Police Act*, ss 43(1)-(2).

²⁰ *Police Act*, s 43(11).

²¹ *Police Act*, s 45(1).

²² Alta Reg 356/1990 [*Regulation*]. Copy provided in Appendix.

²³ *Police Act*, s 45(2)-(4).

chief may resolve the matter without conducting a hearing, as long as the chief abides by the regulations.²⁴

The chief of police may request that the chair of the Police Commission arrange for another police service to carry out either or both the investigation and hearing regarding a complaint about a police officer's actions. The chief generally should make this request when he or she is of the opinion that there is not a police officer of sufficient rank in the same service to comply with the requirements in the *Police Act* or it would be in the public interest for police officers from another service to carry out the investigation and hearing functions.²⁵

When the complaint pertains to the chief of police, the matter will be referred to the Police Commission. If the Commission forms the opinion that the actions of the chief may amount to an offence or contravention of the regulations governing the duties of police officers, the Commission will request that the Minister arrange for another police service to investigate the complaint.²⁶ If the police service conducting the investigation reaches the conclusion that the chief's actions contravened the regulations pertaining to discipline or performance of police officers, that police service will refer the matter back to the Police Commission to decide whether the conduct was serious enough to warrant a hearing. For a serious matter, the Commission will conduct the hearing.²⁷

When a serious injury or death may have occurred because of the actions of a police officer, the chief must notify the Minister of that situation. The Minister may then arrange for another police service to assist with or conduct the investigation. The Minister also has the discretion to appoint one or more members of the public to oversee, monitor or review an investigation.²⁸ This power to appoint another police service or members of the public is intended to safeguard the integrity of the investigation. Alternatively, an integrated investigative unit may take charge of the

²⁴ *Police Act*, s 45(4).

²⁵ *Police Act*, s 45(5).

²⁶ *Police Act*, s 46(1)-(2).

²⁷ *Police Act*, s 46(3)-(5).

²⁸ *Police Act*, s 46.1.

investigation into a serious incident.²⁹ The Alberta Serious Incident Response Team ("ASIRT") generally acts as the integrated investigative unit in Alberta. The Director of Law Enforcement determines whether ASIRT will run the investigation into a serious incident, take over the investigation for another police service, or will assist and advise a police service in its investigations.³⁰

The Police Commission also may provide some oversight in relation to the complaint process. At the request of the Commission, the chief of police must permit the Commission, or a person appointed by the Commission, to monitor the complaint and review any document or other record related to the complaint or subsequent disciplinary proceeding.³¹ The Commission or any member appointed by it to monitor a complaint made under Part 5 of the *Police Act* may attend any disciplinary proceeding related to that complaint.³²

The *Police Act* also incorporates informal resolution measures for complaints. Any time before or during an investigation, if the complainant and cited officer or chief agree, the chief or the Police Commission may attempt to resolve the issue through an alternative dispute resolution process.³³ The chief of police or Commission also may dispose of a complaint relating to the police service's policies or services in any manner that the chief or Commission considers appropriate. The chief or Commission must notify the complainant of that resolution in writing. The complainant may appeal the disposition of the police service or policy complaint to the Police Commission within 30 days of that notice.³⁴

C. Complaint Hearings

The hearing procedures are set out in section 47 of the *Police Act* and the *Regulation*. Not every complaint will result in a hearing. The complaint may be disposed

²⁹ *Police Act*, ss 46.1(2)(d), 42.2.

³⁰ Alberta Serious Incident Response Team, *What we do*, online: <<https://solgps.alberta.ca/asirt/what-we-do/Pages/default.aspx>>.

³¹ *Regulation*, s 24(1).

³² *Police Act*, s 24(2).

³³ *Police Act*, s 43.1.

³⁴ *Police Act*, s 44.

of by the chief of police without going to a hearing if the chief finds that the factors in section 19(1.1), which essentially address the severity of the action and the officer's conduct record, do not necessitate a hearing. If the chief determines that a hearing is not required, section 19(1) of the *Regulation* affords the chief the power to dismiss the complaint, issue a warning, or take any other action that the chief considers appropriate in the circumstances.

For complaints about the conduct of a police officer that require a hearing, either the chief of police or a person designated by the chief, known as a "presiding officer", will conduct the hearing.³⁵ Under the *Regulation*, the presiding officer may be a current or former police officer or a former judge, including former judges from the Alberta Court of Queen's Bench and Provincial Court.³⁶ The presiding officer cannot have direct knowledge of the investigation into the complaint, and, if it is a current or former police officer, must be of superior rank to the officer named (cited) in the complaint.³⁷ Notably, the *Regulation* does not stop a person from acting as a presiding officer if he or she personally knows the officer or chief who has been cited in the complaint. In addition, section 52.1 of the *Police Act* makes it clear that a hearing, decision related to that hearing, and everything done in respect of a hearing under Part 5 is not made invalid simply because the presiding officer conducting the hearing was a former police officer or former member of the judiciary.

A chief may also appoint an officer or retain a lawyer to be a "presenting officer", meaning that the person will present the evidence against the cited officer.³⁸ The hearing may be conducted publicly or privately, depending on the discretion of the chief of police.³⁹ If the hearing is held in private, only those who are involved in the proceedings may attend. There are three exceptions to the restrictions on attendance at private hearings: (1) a member of the commission may attend the hearing; (2) the parent or representative of a minor may be present when the minor is testifying at the

³⁵ *Police Act*, s 45(3).

³⁶ *Police Act*, s 13(1).

³⁷ *Regulation*, s 13(1.1)-(2).

³⁸ *Regulation*, s 14.

³⁹ *Regulation*, s 16(1).

hearing; and (3) the chief may authorize an officer to attend the hearing as an observer in order to become familiar with the process.⁴⁰

Under section 47(c) of the *Police Act*, the person conducting a hearing may summon witnesses and enforce their attendance, compel a witness to give evidence or produce documents or other materials. The officer or chief who is the subject of the complaint has the explicit right to appear before and make representations to the presiding officer, as well as to be represented by a lawyer or agent.⁴¹ This is an important difference between the cited officer's and complainant's rights at a hearing. The complainant does not have an explicit (clear and obvious) right under the *Police Act* or *Regulation* to give evidence at the hearing. The complainant, however, may be called on by the presiding officer to give evidence at the hearing or provide documents for evidence. If the complainant fails to comply with those directions, the person conducting the hearing may dismiss the matter.⁴²

After considering the matter, the presiding officer may dismiss the matter or, subject to the *Regulation*, take any action that he or she thinks is appropriate in the circumstances.⁴³ After a decision is reached, the chief of police or the commission, depending on the type of complaint, must provide written notice to the cited officer or chief and the complainant of the conclusions from the hearing and any actions that have been ordered. When the chief or Police Commission determine that a hearing should not be held, the chief or Commission must also inform the cited officer or chief and complainant of that decision and the rationale for it. In either case, the cited officer or chief and complainant must be advised about the right of appeal set out in the *Police Act*.⁴⁴ After receiving written notice of the resolution of the complaint or hearing, the cited officer and the complainant have 30 days from the date that they were notified to appeal to the LERB by filing a notice of appeal with the secretary of the LERB.⁴⁵

⁴⁰ *Regulation*, s 16(2.1), (3)-(4).

⁴¹ *Police Act*, s 47(1)(j).

⁴² *Police Act*, s 47(1)(d.1).

⁴³ *Police Act*, s 47(4).

⁴⁴ *Police Act*, 47(5).

⁴⁵ *Police Act*, s 48.

D. Appeals to the Law Enforcement Review Board (LERB)

Under section 40 of the *Police Act*, the cited officer or chief and complainant may appeal a finding or action to the LERB within 30 days of being notified of the decision. According to section 19.2 of the *Regulation*, the LERB will review a written notice of appeal and choose between the following three options: (1) dismiss the matter if it believes the appeal is frivolous, vexatious or made in bad faith; (2) make a determination based on a review of the record and factors in the regulations related to appeals; or (3) schedule a hearing of the appeal when it is unable to dismiss the matter or resolve the appeal based on a review of the record or regulations. When deciding whether an appeal can be concluded on the record,⁴⁶ the LERB must consider whether the record was tainted, flawed or grossly inadequate, the complainant's conduct, such as whether the complainant actively participated in the investigation, and whether the appeal raises issues associated with the acceptability of police conduct or the integrity of the discipline process.⁴⁷

E. Standard of Review

The LERB is an administrative body—meaning it is created by and derives its authority from legislation. When an administrative body renders a decision, the parties may challenge the decision through judicial review, or, if there is an appeal provision, the appeal procedure set out in the statute. Under judicial review, the Alberta Court of Queen's Bench evaluates the decision made by the administrative body.⁴⁸ A court has discretion to decide whether or not it will hear a judicial review application, particularly when there is a right of appeal in the legislation. Generally, any adequate alternative remedies, such as a statutory right of appeal, must be exhausted before judicial review

⁴⁶ An appeal concluded on the record occurs when a decision is based on a review of the written record of the previous hearing.

⁴⁷ *Regulation*, s 23.1(2).

⁴⁸ Alberta Civil Liberties Research Centre, *Judicial Review of Human Rights Decisions*, online: <http://www.aclrc.com/appealing-from-tribunal-decisions/> [ACLRC].

is open to a party.⁴⁹ Whether an alternative remedy is adequate depends on such factors as: the appeal procedure, composition and powers of the body hearing the appeal, and expeditiousness and cost of the appeal.⁵⁰ Further, a court's decision in respect to hearing a judicial review application will largely depend on the subject matter. For instance, a court may decline an application for judicial review if the enabling statute includes an appeal for that particular issue.⁵¹

Regardless of whether a party proceeds by way of statutory appeal or judicial review, the court must assess the appropriate standard of review that should be applied.⁵² Essentially, the standard of review dictates how much deference⁵³ the court will give to the administrative body in relation to their decision. One standard is correctness, which basically means that the court will review all of the facts and evidence and reach its own conclusion. If the court's conclusion matches the administrative body's finding, the initial decision was correct; if it does not match, the court will hold that the administrative body reached an incorrect conclusion. The other standard of review is reasonableness. For this standard, the court will review the decision in light of all of the facts and evidence and determine if the administrative body made a reasonable decision. The administrative body simply must have made a decision that could be considered one of a range of acceptable options.

A court will choose the appropriate standard of review by looking at four primary factors, as well as the standard that was applied in previous similar cases.⁵⁴ The first factor is the existence of a privative clause, which is a provision that indicates that courts should not interfere with the decisions made by the administrative board or tribunal.⁵⁵ If the administrative body's enabling legislation includes a privative clause, it

⁴⁹ *Harelkin v University of Regina*, [1979] 2 SCR 561 at paras 3, 84, 96 DLR (3d) 14 [*Harelkin*]; *Gateway Charters Ltd v Edmonton (City)*, 2012 ABCA 93 at para 13, [2012] AWLD 4330 [*Gateway Charters*].

⁵⁰ *Harelkin*, at para 61.

⁵¹ *Foster v Alberta (Transportation & Safety Board)*, 2006 ABCA 282 at paras 17-18, 303 DLR (4th) 351.

⁵² *Ryan v Law Society (New Brunswick)*, 2003 SCC 20 at para 21, 223 DLR (4th) 577.

⁵³ Deference implies that the court will respect the expertise of the decision maker in the subject area of the matter at hand. Thus, the court would have to be convinced that the decision was very unreasonable before it would interfere.

⁵⁴ ACLRC.

⁵⁵ ACLRC.

is a strong indication that courts should give the administrative decision-maker more leeway and apply a reasonableness standard.⁵⁶ Second, the expertise of the administrative body has a bearing on the standard of review. The court will generally defer to the administrative decision-maker through reasonableness if that decision-maker has specialized expertise.⁵⁷ Conversely, if the tribunal or board does not have expertise on the issue, that may factor into a correctness standard. Third, the court will consider the nature of the question. A question of fact, mixed fact and law, discretion (being free to decide), or policy creates a presumption in favour of reasonableness. A legal question that is of significant importance to the legal system and is outside of the expertise of the administrative decision maker requires a correctness standard.⁵⁸ The final factor is the purpose of the board or tribunal as determined by the statute. If the purpose of the statute is to set policy, the court will likely apply the reasonableness standard of review. The court will lean toward correctness if the administrative body is intended to resolve disputes between individuals.⁵⁹ None of these factors, however, is by itself determinative. They must be considered as a whole when determining what standard should apply to a particular case given the circumstances.⁶⁰

Importantly for appeals to the LERB, the law does not definitively specify whether a standard of review analysis is required when the legislation provides for an appeal from one administrative body to another, rather than to a court. Some cases support the conclusion that the subsequent administrative body must consider the standard of review it should apply to the decision of the first decision-maker, while other cases have concluded that no analysis is required and the decision of the initial administrative body should always be reviewed for correctness.⁶¹ Recent Alberta Court of Appeal cases, however, have indicated that the LERB must consider the standard of review to apply to the decision by a chief of police or a presiding officer during the initial

⁵⁶ *New Brunswick (Board of Management) v Dunsmuir*, 2008 SCC 9 at para 52, 291 DLR (4th) 577 [Dunsmuir].

⁵⁷ *Dunsmuir*, at para 54.

⁵⁸ *Dunsmuir*, at para 53.

⁵⁹ ACLRC.

⁶⁰ *Dunsmuir*, at paras 56-57.

⁶¹ See, for example: *Halifax (Regional Municipality) v Anglican Diocesan Centre Corp*, 2010 NSCA 38 at para 23, 290 NSR (2d) 361.

hearing of the matter on appeal.⁶² *Newton v Criminal Trial Lawyers' Association* listed the factors that should be used to determine the standard of review as:

- (a) the respective roles of the tribunal of first instance and the appellate tribunal, as determined by interpreting the enabling legislation;
- (b) the nature of the question in issue;
- (c) the expertise and advantageous position of the tribunal of first instance, compare to that of the appellate tribunal;
- (d) the expertise and advantageous position of the tribunal of first instance, compared to that of the appellate tribunal;
- (e) the need to limit the number, length and cost of appeals;
- (f) preserving the economy and integrity of the proceedings in the tribunal of first instance; and
- (g) other factors that are relevant in the particular context.⁶³

The scope of a statutory appeal depends on the appeal provision in the legislation. The statute may restrict the appeal to a question of law or jurisdiction or allow for an appeal on the merits of the administrative body's decision. Appeals on the merits also take a variety of forms, including a hearing *de novo*. *De novo* **means** that entirely new hearing will be held, with no reference to the evidence or finding at the initial hearing.

III. THE *POLICEACTOF* ALBERTA

A. **Statutory Right of Appeal under the *Police Act***

The *Police Act* outlines three rights of appeal. The first statutory right of appeal is the complainant's right to appeal the disposition (outcome) of a complaint regarding police policies or services to the Police Commission, as outlined in section 44(2)-(3) of the *Police Act*. Second, under section 48 of the *Police Act*, the **complainant** and cited officer or chief are given the right to appeal the findings or actions taken as a result of a

⁶² See, for example: *Plimmer v Calgary (City) Chief of Police*, 2004 ABCA 175 at para 20, 16 Admin LR (4th) 137 [*Plimmer*]; *Newton v Criminal Trial Lawyers' Assn*, 2010 ABCA 399 at para 42, 14 Admin LR (5th) 181 [*Newton*].

⁶³ *Newton*, at para 43.

hearing to the LERB. Finally, section 18 of the *Police Act* expressly states that decisions made by the LERB in relation to an appeal under section 48 may be appealed to the Alberta Court of Appeal on a question of law, as long as the appellant receives the permission of at least one Court of Appeal Judge. Aside from these rights of appeal, the *Police Act* also makes it clear that the decision of the chief of police that an officer's contravention of the discipline or performance standards is not of a serious nature and does not warrant a hearing is final.⁶⁴

B. Historical Approach to the Standard of Review Employed by the LERB

Historically, the LERB approached appeals as *de novo* hearings. This was the practice from 1994⁶⁵ until the *Newton* and *Pelech* Alberta Court of Appeal decisions in 2010. In *Plimmer*, 2004, the Alberta Court of Appeal recognized that a standard of review analysis must be conducted for decisions of an administrative body that are appealed to another administrative board or tribunal. The Court in that case used the *Pushpanathan*⁶⁶ factors, which essentially included the first version of the four primary factors for determining standard of review that the Supreme Court of Canada incorporated into the *Dunsmuir* decision.

The Court in *Plimmer* noted that there is no privative clause⁶⁷ in the *Police Act* to restrict the LERB's ability to review the presiding officer's decision at the initial hearing. Further, the Court found that the LERB may conduct a new hearing or, with the parties' consent, make a decision based on the record of the presiding officer's decision and the new evidence that the parties provided to supplement the hearing record.⁶⁸ The Court next discussed the expertise associated with appeals to the LERB. The presiding officer generally has extensive expertise in the area of police conduct and appropriate punishments, as the *Police Act* mandates that hearing take place in front of the chief of

⁶⁴ *Police Act*, s 45(4.1).

⁶⁵ *Newton*, at para 26, citing *Re Dahlgren and McKinley*, 1984 ABLERB 017 at pp 3-4.

⁶⁶ *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982, 160 DLR (4th) 193 [*Pushpanathan*].

⁶⁷ A section of the Act that prevents anyone from doing a particular activity.

⁶⁸ *Plimmer*, at paras 23-24.

police or a senior officer.⁶⁹ The Court also determined that the *Police Act* is meant to ensure that there is an effective level of policing in the province. More specifically, the Court stated “the particular purpose of the hearing and appeal provisions at issue in this appeal, is to allow an avenue for public complaint and a mechanism for inquiring into such complaints, with a view to balancing the need for public confidence with the employment rights of the officer in the context of the safe, efficient and effective operation of the police service.”⁷⁰ In relation to the nature of the question, the Court recognized that the appeal involved a question of mixed fact and law, requiring “the presiding officer to consider and balance a number of fact-intensive factors, including the severity of the complaint, the appellant’s record, public confidence in the police service, public safety, adherence to procedures and the maintenance of discipline and the integrity of the police service.”⁷¹ Several of these factors suggested that the LERB should give more deference to the presiding officer. The Court in *Plimmer* ultimately concluded that the LERB was correct in applying a reasonableness standard to the decision by the presiding officer.

In *Plimmer*, Justice Conrad dissented and concluded that an administrative body that is tasked with reviewing the decisions of another administrative body does not need to conduct a standard of review analysis. According to Justice Conrad, “A reviewing tribunal which is given the power to hold a hearing and make its own decision... should assume it has the power and the need to make the correct decision unless the language of the statute expressly, or by implication, suggests otherwise.”⁷² In the dissent, Justice Conrad also reviewed the LERB’s powers, as detailed in the *Police Act*. From the extensive list of procedural and remedial powers that the LERB has, Justice Conrad found that the LERB has an inherent right to conduct the appeal hearing *de novo*.⁷³

⁶⁹ *Plimmer*, at paras 25-31.

⁷⁰ *Plimmer*, at para 32.

⁷¹ *Plimmer*, at para 36.

⁷² *Plimmer*, at para 64.

⁷³ *Plimmer*, at para 76.

A subsequent decision by the LERB in *Re Inspector Brian Boulanger* seems to follow the dissent in *Plimmer*, finding that the LERB has the ability to conduct *de novo* hearings where it may consider new evidence.⁷⁴ In this case, the LERB determined that its oversight function would be significantly limited if it was entirely prohibited from hearing evidentiary appeals when the cited officer was exonerated through internal disciplinary proceedings. According to the LERB, such a limitation on oversight would be contrary to the *Police Act*.⁷⁵

In addition, the LERB in *Boulanger* interpreted section 20(p) of the *Police Act* as providing it with the authority to conduct a *de novo* oral hearing, unless the parties agree to conduct the hearing on the record. In reaching that conclusion, the LERB quoted *Robertson v Edmonton (City) Police Service*, in which Justice Slatter said, “[T]he hearing before the Presiding Officer is not the complete process. There is a full *de novo* appeal right to the LERB provided for in section 20 of the Act... The hearing before the Presiding Officer is the last step in the ‘internal’ part of the process; the hearing by the LERB is the first step in the ‘public’ part.”⁷⁶

The LERB also found that the provision in section 20(1)(g) that allowed the LERB, at its discretion, to refuse to admit new evidence at the appeal if it had been available during the initial hearing implied that the LERB had the opposing discretionary power to admit such evidence.⁷⁷ The LERB preferred this approach because it would allow the complainant to call evidence before the LERB after not enjoying that right at the initial hearing stage. Ultimately, the LERB suggested that whether an appeal should receive a *de novo* hearing was dependent on the circumstances of the case. If the case involves contentious facts and credibility issues, a *de novo* hearing may be the most appropriate approach; if the parties agree to the facts and the disputed issue is narrow, a hearing on the record will likely suffice.⁷⁸ The LERB then held that the complainant could call

⁷⁴ 2006 ABLERB 021.

⁷⁵ *Boulanger*, at para 57.

⁷⁶ *Robertson v Edmonton (City) Police Service (#10)*, 2004 ABQB 519 at para 214, 39 Alta LR (4th) 263 [*Robertson*].

⁷⁷ *Boulanger*, at para 59.

⁷⁸ *Boulanger*, at para 64.

evidence during a *de novo* hearing that may not have been presented to the presiding officer.⁷⁹

C. Change to Standard of Review: The *Newton* and *Pelech* Decisions

A trial *de novo* on a correctness standard is no longer the expected approach to appeals to the LERB from a decision by the chief of police or presiding officer. *Newton* and *Pelech v Law Enforcement Review Board*,⁸⁰ two Alberta Court of Appeal decisions that were heard consecutively, effectively established that appeals to the LERB are not to be given a *de novo* hearing and should generally be reviewed for reasonableness.

1. *Newton v Criminal Trial Lawyers' Association*

In *Newton*, the LERB followed the reasoning in *Boulanger* and determined that it would hear the appeal *de novo* and the appellate, the Criminal Trial Lawyers' Association ("CTLA"), could call new evidence. Unlike *Boulanger*, however, the LERB did not require the CTLA to provide an explanation for why the evidence had not been called by the presenting officer or why the CTLA should be allowed to present it at the appeal.⁸¹ Staff Sgt. Newton appealed to the Alberta Court of Appeal, arguing that the LERB erred by applying a correctness standard of review and conducting the appeal hearing *de novo*, such that the decision of the presiding officer was effectively disregarded.⁸²

The Court of Appeal analyzed the *Dunsmuir* and *Pushpanathan* factors and concluded that the right standard of review for the Court to apply to the LERB's decision was the correctness standard.⁸³ The Court then went on to consider the standard of review that the LERB should have applied to the presiding officer's decision. The Court held that the standard of review that an administrative body should apply to a prior decision by another administrative body must be determined using the factors from

⁷⁹ *Newton*, at para 17.

⁸⁰ 2010 ABCA 400, 328 DLR (4th) 156 [*Pelech*].

⁸¹ *Newton*, at para 21.

⁸² *Newton*, at para 25.

⁸³ *Newton*, at para 40.

Dunsmuir and *Pushpanathan*.⁸⁴ Accordingly, those factors guided the Court's decision in this case.

The Court first considered whether *de novo* hearings should be the customary practice for appeals from decisions by presiding officers. The Court concluded that the nature of the hearings and the wording in the *Police Act* do not support the proposition that *de novo* hearings are required for all cases. The judgment pointed out that the *Police Act* does not specifically state that appeal hearings are to be conducted *de novo*. The judges also did not accept the LERB's interpretation of the power to admit fresh evidence, under section 20(1)(g) of the *Police Act*, as justification for *de novo* hearings. Instead, the Court found that this provision gives the LERB discretion to allow new evidence on appeal if it was not available at the time of the original hearing or there is good reason why it should be allowed on appeal if it was available and not presented at the original hearing.⁸⁵

The Court determined that the LERB had also misinterpreted section 20(1)(p). The Court found that this section allows parties to agree to give up an oral hearing and, instead, allow the LERB to base its decision on the record and written submissions from the parties. The Court rejected the suggestion that this section authorizes, or even contemplates, that every appeal would receive a *de novo* hearing or that a *de novo* hearing would be required unless the parties agree otherwise.⁸⁶ In addition, the Court determined that other provisions in the *Police Act* regarding such matters as the LERB's ability to subpoena witnesses, order the production of documents, and deviate from the rules of evidence were enabling provisions aimed at allowing the LERB to conduct an effective hearing when it is required. These provisions do not signal that every appeal should receive a *de novo* hearing.⁸⁷

Importantly, the Court held that the prospect of professional misconduct or obstruction of justice during the internal discipline process did not warrant a *de novo* hearing in every appeal. The LERB has the ability to hear additional evidence on appeal if

⁸⁴ *Newton*, at para 42.

⁸⁵ *Newton*, at para 45.

⁸⁶ *Newton*, at para 46.

⁸⁷ *Newton*, at para 47.

the appellant can make out a *prima facie*⁸⁸ case that there was misconduct or obstruction of justice at the disciplinary level, but this requires more than suggesting that the internal system of police discipline is inherently flawed. Even when a *prima facie* case has been established, however, it will not automatically give rise to a full *de novo* hearing on every issue that was decided by the presiding officer.⁸⁹

The Court did not consider whether the LERB generally has the authority to hold a *de novo* hearing for an appeal from the decision of the presiding officer if an analysis of the circumstances suggests that a *de novo* hearing is warranted. The Court only held that the LERB erred in concluding that, absent an agreement by the parties, an appeal hearing must always be conducted on a *de novo* basis. The judgment also reiterated that the LERB must require justification for each new piece of evidence that a party wants to present on appeal and admitting fresh evidence does not automatically result in the LERB disregarding all of the evidence presented at the initial hearing or findings of fact and inferences drawn by the presiding officer.⁹⁰

Overall, in relation to this first point, the judgment of the Court stated:

The main role of the Board is to review the record for error, and to provide civilian oversight of the process, while respecting the legitimate role and expertise of the presiding officer. The starting point is that the appeal is on the record, with an ability to admit new evidence when warranted by the issues on appeal.⁹¹

This approach is quite a departure from previous court and LERB decisions that maintained that the purpose of appeals to the LERB is to provide a public oversight function to complement the internal discipline process. This prior point of view may be best summed up by the LERB's conclusion in *Boulanger* that "the powers given to the Board in the *[Police] Act*, [demonstrate] the clear intention of the Legislature in moving

⁸⁸ On the face of it; at first glance.

⁸⁹ *Newton*, at para 48.

⁹⁰ *Newton*, at para 49.

⁹¹ *Newton*, at para 51.

toward and subsequently enhancing civilian oversight of the police discipline process...’’⁹²

After concluding that *de novo* hearings are not the default procedure for this type of appeal, the judges in *Newton* turned their minds to the implications of the right of appeal provided in the *Police Act*. The Court noted that the LERB had not considered the appropriate standard of review to be applied in this case. The LERB concluded that a *de novo* hearing was required and assumed that the correctness standard should be applied to the appeal. When given leave to re-argue *Plimmer*, some of the parties in the case cited the reasoning from the dissent in *Plimmer* that a *Dunsmuir* and *Pushpanathan* analysis is not required when an administrative body reviews the decision of another administrative body and the existence of a right of appeal signifies that a correctness standard should be applied.⁹³ The Court in *Newton* rejected the proposition that the presence of a right of appeal from the presiding officer to the LERB warranted a correctness standard of review. In particular, the judgment cited *Dr. Q*, a Supreme Court of Canada decision that made it clear that a right of appeal does not in itself necessitate a correctness standard.⁹⁴

The Court next analyzed the impact of the roles of the LERB and presiding officers and the mandate of the LERB on the availability of *de novo* hearings. The court examined the LERB's mandate to provide civilian oversight of “(i) the police disciplinary process, and (ii) acceptable standards of police conduct’’⁹⁵ but determined that not all cases engaged civilian oversight. Some cases will only require the LERB to use the other half of its mandate, which is to review decisions from presiding officers to determine whether the conclusions were fair and within an acceptable range of options.⁹⁶ In those cases, the LERB typically will defer to the presiding officer's decision by applying a standard of reasonableness.

⁹² *Boulanger*, at para 63.

⁹³ *Newton*, at paras 52-53

⁹⁴ *Newton*, at para 53, citing *Dr. Q v College of Physicians and Surgeons of British Columbia*, [2003] 1 SCR 226 at para 20, 223 DLR (4th) 599.

⁹⁵ *Newton*, at para 60.

⁹⁶ *Newton*, at para 60.

The LERB's oversight function will generally be called upon either when there is a question about the internal investigation process or the policies related to the acceptability of police actions. Even when the LERB is called upon to provide civilian oversight, the Court found that the LERB should not automatically apply a correctness standard of review or entirely disregard the findings of the presiding officer by conducting a *de novo* hearing.⁹⁷

In addition to the role of the LERB and presiding officer, the Court considered the role of the complainant in the discipline process. The Court noted that once the complainant initiates a complaint, that person is not an active participant in the investigation or prosecution of the matter. The complainant does not have a right to be actively involved in the complaint process, as section 45(7) of the *Police Act* only requires the chief of police to give a complainant a progress report every 45 days and to advise the complainant of the outcome of the hearing. The complainant also does not have standing at the initial hearing. During the investigation and the hearing before a presiding officer, the complainant may only act as a witness. The complainant, however, is given a right to appeal to the LERB after a decision is rendered. Accordingly, the complainant only becomes a party to the proceedings at the appellate level, when the matter is heard by the LERB.⁹⁸

The Court rejected the idea that the complainant should have an increased role to play at the LERB. The Court found that allowing the complainant to participate in a *de novo* hearing would essentially substitute the complainant for the presenting officer by enabling that person to retry the case, pursuing a different theory of the case and body of evidence on appeal.⁹⁹ According to the Court, this type of expanded role for the complainant during the appeal would be contrary to the *Police Act*, as the Legislature did not give the complainant full standing at the initial hearing though they could have done so if they had wanted.¹⁰⁰ Further, the Court determined that expanding the role of the complainant would also undermine the balance in the *Police Act* between civilian

⁹⁷ *Newton*, at para 62, 64.

⁹⁸ *Newton*, at paras 66-67.

⁹⁹ *Newton*, at para 68.

¹⁰⁰ *Newton*, at para 70.

oversight and internal discipline and expertise because the complainant would effectively be given the opportunity to take over the prosecution of the charges during a *de novo* hearing.¹⁰¹

In support of this point, the Court also asserted that the *Police Act* did not include limits on who could file a complaint. The Court further stated “The *Act* does not require that the complainant be ‘affected, or ‘aggrieved’ by the conduct of the police officer, or otherwise have standing under the common law tests. Total strangers can complain about any police conduct, demonstrating that a high value is placed on the public interest in policing.”¹⁰² The Court made it clear that strangers to the matter should not be allowed to take over the prosecution, despite the fact that they are allowed to make complaints. In reaching that conclusion, the Court noted that these complainants may be pushing different agendas or have motivations that are not consistent with public interest.¹⁰³ Consequently, the right to make complaints is generally balanced by the internal review.

The Court recognized that the LERB's reasoning related to appeals from complainants may be a valid consideration in determining the appropriate standard of review to apply. The LERB had reasoned that the complainant's lack of standing before the presiding officer ought to relieve the complainant of the burden of demonstrating an error by the presiding officer in order to obtain an appeal hearing on the standard of correctness. The Court, however, held that neither these factors nor the right of appeal are, in themselves, enough to warrant a correctness standard or *de novo* hearing. The complainant must be able to show a flaw or misconduct in the investigation or hearing itself in order to trigger the LERB's civilian oversight function.¹⁰⁴

The Court took issue with the unfairness to police officers that may result from increased complainant participation through *de novo* hearings. *De novo* hearings may result in the officer facing the same charges in two separate hearings and possibly being required to respond to different theories and evidence from the complainant. On the

¹⁰¹ *Newton*, at para 73.

¹⁰² *Newton*, at para 74.

¹⁰³ *Newton*, at para 74.

¹⁰⁴ *Newton*, at para 75.

other side of the same coin, the police officer may similar issues during an appeal, as the officer may be given a second chance to decide whether to testify.¹⁰⁵

Next, the Court reviewed the expertise of the administrative bodies and the nature of the question. According to the Court, the presiding officer has expertise in technical police matters and practices, as the presiding officer is generally a senior police officer. The LERB has expertise in police oversight, particularly on questions related to the integrity and transparency of the police discipline system.¹⁰⁶ The expertise that will be triggered depends on the nature of the question. The Court outlined the following three categories to guide the expertise that would be applicable in a given case: (1) factual disputes—the expertise of the presiding officer will general prevail; (2) standards of conduct issues—the expertise of both the presiding officer and LERB will be engaged, with the presiding officer responsible for questions of whether the police conduct was acceptable and the LERB determining whether the conduct was socially acceptable; (3) issues around respecting the integrity of the process (e.g., questions as to whether the investigation or complaint process was in some way corrupt)—LERB's expertise will prevail. After describing these categories, the Court noted that comparing the expertise of the presiding officer and LERB will depend on the circumstances and issues. In each case, the nature of the question must be analyzed to evaluate the expertise that should prevail and how much deference, if any, the LERB should give to the decision of the presiding officer.¹⁰⁷

The Court's final consideration for determining the standard of review that the LERB should have applied in *Newton* was the economy and integrity of the proceedings in relation to the *de novo* hearing that was held by the LERB. The Court found that effectively running two trials on the same issues through a *de novo* appeal hearing would undermine the hybrid system by overriding the presiding officer's decision and rendering it solely an academic pursuit.¹⁰⁸ The Court also found that it would be inconsistent to allow the complainant an extensive level of involvement at the appellate

¹⁰⁵ *Newton*, at paras 71-72.

¹⁰⁶ *Newton*, at paras 77-78.

¹⁰⁷ *Newton*, at paras 78-79.

¹⁰⁸ *Newton*, at para 81.

level, while denying that person carriage of the proceedings before the presiding officer. In addition to damaging the integrity of the complaint system, the judges maintained that repeating the hearing with increased complainant participation would only lead to delays and greater expenses.¹⁰⁹

In closing, the Court also clarified the mandate of the LERB, stating:

The role of the Board is primarily to sit on appeal from the presiding officer. The Board is not a tribunal of first instance, and cannot simply ignore the proceedings before the presiding officer, and the conclusions reached by him. The focus of the appeal to the Board should be on its dual mandate of civilian oversight, and the correction of unreasonable results.¹¹⁰

However, the oversight function will not arise in every case.¹¹¹

After considering all of these factors, the Court of Appeal in *Newton* ultimately held that the LERB does not have the authority to hold a *de novo* hearing in every case. There is also no requirement to hold a *de novo* hearing if the parties have not otherwise consented. If the parties can establish a sufficient reason or the issues on appeal suggest that it is appropriate, the LERB may admit fresh evidence. That power to hear fresh evidence will even extend to rehearing key evidence that a party presented to the presiding officer, as long as sufficient cause can be shown.¹¹² Otherwise, the LERB should conduct the hearing primarily on the record from the initial hearing before the presiding officer. Generally, the LERB will apply a standard of reasonableness to the appeal and approach the presiding officer's decision with deference.

Notably, the court found that when the LERB is contemplating issues around the acceptability of police behaviour and the integrity of the police discipline process, the LERB's review powers will often be broader.¹¹³ It appears, however, that one of the most prominent underpinnings of this decision by the Court of Appeal was the Court's

¹⁰⁹ *Newton*, at paras 80-81.

¹¹⁰ *Newton*, at para 82.

¹¹¹ *Newton*, at para 84.

¹¹² *Newton*, at para 83.

¹¹³ *Newton*, at para 84.

acceptance and trust in the current police investigation and discipline process.

The Court commented that:

The hybrid system of police discipline, where the investigation and discipline is initially done within the force, and external civilian oversight is provided at the Board level, recognizes a legitimate role for the presiding officers and the chief of police. Presiding officers must be senior police officers. They are obviously selected for their experience in policing, and in understanding the disciplinary requirements of a quasi-military institution. Failing to afford any deference to their decision undermines the importance and legitimacy of their perspective on the case before them. *The universal application Of a correctness standard Of review by the Board seems to assume that internal police discipline is inherently ineffective, or that civilian oversight Of police discipline is a value that trumps all others. Assuming that the primary process Of internal police discipline is inherently flawed is contrary to the overall intent Of the statute* [Emphasis added].¹¹⁴

2. *Pelech v Law Enforcement Review Board*

The Alberta Court of Appeal decision in *Pelech* also analyzed whether *de novo* hearings are commonly available on appeal to the LERB and the standard of review that the LERB should apply. In this case, the appellant, Detective Dave Pelech, appealed the decision of the LERB to reverse the chief of police’s dismissal of a public complaint of misconduct without a hearing. The appellant alleged that, in reaching that decision, the LERB failed to articulate and apply the appropriate standard of review. The appellant also claimed that the LERB erred by ordering a disciplinary hearing to be conducted against the appellant, particularly because there was no evidence of a breach of disciplinary policies.¹¹⁵

The complainant, the Criminal Trial Lawyers’ Association, appealed the chief’s decision that there was insufficient evidence to warrant a hearing on the grounds that the “investigation was inadequate and unreasonable”.¹¹⁶ The LERB conducted a *de novo* hearing and found that there was sufficient evidence to proceed with hearing and

¹¹⁴ *Newton*, at para 62.

¹¹⁵ *Pelech*, at para 18.

¹¹⁶ *Pelech*, at para 13.

directed the chief to do so. The LERB also ordered the chief to reinvestigate whether the t-shirts were worn to the general meeting, based on the finding that the investigation had been inadequate.¹¹⁷

The Court in *Pelech* followed the decision in *Newton*, which it had rendered immediately prior to hearing this case. The judges determined that they should follow the factors that *Newton* had set out as a guide to determining the applicable standard of review.¹¹⁸ The Court, however, only addressed the factors of respective roles of the LERB and chief, expertise and nature of the question, and economy and integrity of the proceedings in an in-depth manner.

In relation to the respective roles, the Court in *Pelech* reiterated the discussion in *Newton* about the hybrid model of police discipline in Alberta.¹¹⁹ The investigation and prosecution of police wrongdoing is initially conducted internally by the police service, under the supervision and direction of the chief. After that stage, appeals to the LERB, a civilian tribunal, are available. Under the *Police Act*, the chief is given primary authority to determine whether charges should be laid. Given these considerations, the Court concluded that the LERB's main role is to review prior decisions for error and provide civilian oversight when needed. These roles suggest that the LERB should give deference to the decisions of the chief of police by reviewing the chief's decisions for reasonableness.¹²⁰

On the nature of the question, the Court stated, "Under the hybrid system of police discipline in force in Alberta, decisions about whether particular conduct is discreditable, and whether there is sufficient evidence to expect a conviction, are within the expertise of the chief of police."¹²¹ Because the chief's expertise was engaged, the nature of the question in this case suggested deference. The Court, however, recognized

¹¹⁷ *Pelech*, at paras 15-17.

¹¹⁸ *Pelech*, at para 22.

¹¹⁹ *Newton*, at para 89.

¹²⁰ *Pelech*, at paras 23-26.

¹²¹ *Pelech*, at para 27.

that cases that require the LERB to provide civilian oversight might tip the scales away from deference.¹²²

Finally, the Court found that *de novo* hearing by the LERB on this type of matter would disrupt the integrity and economy of the proceedings. According to the Court, if the LERB was permitted to hold *de novo* hearings on whether a hearing before a presiding officer should be conducted, the LERB would usurp the chief's legitimate role of determining whether a hearing is appropriate.¹²³ It would also infringe the rights of the presiding officer to hold the initial hearing. In addition, allowing this type of hearing would create multiple levels of appeal, which would draw out the hearing process in a way that the Court did not think the Legislature would have incorporated into the *Police Act*.

The Court also found that the ability to appeal the decision to dismiss a complaint would provide the complainant with a much greater degree of participation than what is described in the *Police Act*.¹²⁴ Such an appeal may also prejudice the police officer, because the officer may be required to participate at a hearing in which the specific charges have not yet been laid.¹²⁵ The judgment makes it clear that the risk that a chief of police may, every so often, fail to direct that a hearing be conducted in relation to a disciplinary matter does not enable the LERB to conduct its own hearing in those cases through a *de novo* appeal.¹²⁶ The importance of protecting the role of the chief and the integrity of the system as a whole indicated to the Court that deference should be applied in this case.

In conclusion, the Court held that the LERB erred by conducting a *de novo* hearing and not giving deference to the chief's decision. The Court stated, "The role of the Board is primarily to sit on appeal from the Chief."¹²⁷ Consequently, the LERB should not intervene in the chief's decisions, unless the decision is unreasonable or the LERB's mandate to provide civilian oversight is triggered.

¹²² *Pelech*.

¹²³ *Pelech*, at para 28.

¹²⁴ *Pelech*.

¹²⁵ *Pelech*, at para 31.

¹²⁶ *Pelech*, at para 30.

¹²⁷ *Pelech*, at para 33.

D. Impact of *Newton* and *Pelech* on the Standard of Review used by the LERB

1. Early Interpretation

Before the Alberta Court of Appeal issued the *Newton* and *Pelech* decisions, the LERB primarily conducted appeals on a standard of correctness and would permit additional oral evidence to be given on appeal. Although the LERB decisions did not expressly discuss this standard of review or permissible evidence, it seems clear from the written judgments that the LERB's typical approach was a hearing *de novo*.¹²⁸

The *Newton* and *Pelech* decisions began to be applied consistently by the LERB in 2011. Initially, the LERB interpreted these Court of Appeal decisions as generally requiring a reasonableness standard and a review on the record, though the LERB could admit fresh evidence if a party made an application that successfully established that it would be appropriate in the circumstances. For instance, in decision number 002-2011, the LERB referred to *Pelech* to support the conclusion that it ought to review the chief's decision on the record to determine whether it was reasonable, but it also had the authority to admit new evidence in appropriate circumstances.¹²⁹ In another case, number 006-2011, the LERB stated that appeals to the LERB from decisions by the Edmonton Police Commission are conducted on the record and, therefore, the standard is reasonableness.¹³⁰

The LERB also appeared to recognize that *Newton* and *Pelech* restricted its review standard to reasonableness, unless the prior decision gives rise to a need for oversight. In a telling example, the LERB determined in case 008-2011 that its role is to sit on appeal from decisions by the chief, but it cannot interfere with the chief's decision unless it was unreasonable or the complaint process was compromised in a manner that triggers the LERB's mandate to provide civilian oversight. In that case, the LERB cited *Pelech*, stating, "The Board should only interfere with the decision of the chief of police to dismiss a complaint without a hearing where the chief's decision is unreasonable, or

¹²⁸ See, for example: 2002 ABLERB 006, 2003 ABLERB 002, 2004 ABLERB 011, 2005 ABLERB 005, 2006 ABLERB 006, 2007 ABLERB 002.

¹²⁹ 2011 ABLERB 002 at para 13, citing *Pelech*, at para 21.

¹³⁰ 2011 ABLERB 006 at para 15.

where the Board concludes the investigation or proceedings before the chief of police were tainted."¹³¹

In these early decisions following *Newton* and *Pelech*, the LERB also interpreted *Newton* as enabling it to determine how much deference should be given to a decision by the chief or presiding officer in a particular case. As a prime example, the LERB, in decision number 004-2011, found that it must consider the standard of review to use when making a decision and remarked that "[t]his issue will be important to establish what degree of deference, if any, will be afforded to the decision of the Presiding Officer. This issue is to be determined on a case by case basis."¹³² Again, the LERB recognizes that the circumstances of a case will impact the level of deference to be awarded to the prior decision in decision number 010-2011. According to the LERB, the level of deference to be applied to a decision depends on the category from *Newton* (factual issues, standard of conduct issues, or issues that give rise to questions about the integrity of the process), as well as the relative expertise of the LERB and prior decision-maker.¹³³ In a similar finding, the LERB in case number 011-2011 referenced *Newton* as standing for the proposition that less deference is warranted when the appeal relates to the integrity of the process and whether the complaint process has been undermined or corrupted in some way.¹³⁴

2. Recent Interpretation

Over time, the interpretation of the Board's review powers has become increasingly restricted. In two 2013 Court of Appeal decisions regarding LERB decisions on standard of review, the Court severely limited the role of the LERB and its ability to deviate from a reasonableness standard. First, *Edmonton Police Service v Furlong*,¹³⁵ centred on an appeal from a sanction imposed by a presiding officer. At the initial appeal, the LERB interpreted comments made in *Newton* as meaning that cases involving civilian oversight and the acceptability of police conduct call for a more robust

¹³¹ 2011 ABLERB 008 at para 29, citing *Pelech*, at para 26.

¹³² 2011 ABLERB 004 at para 101.

¹³³ 2011 ABLERB 010 at paras 13-15.

¹³⁴ 2011 ABLERB 011 at para 17, citing *Newton*, at para 79.

¹³⁵ 2013 ABCA 121, 544 AR 191 [*Furlong*].

standard of review and less deference to the decision by the presiding officer.¹³⁶ The Court, however, rejected this interpretation. Instead, the Court concluded that “robust” was simply a “colourful adjective” and that the Court in *Newton* intended the LERB’s mandate to be more robust, not there should be a more robust standard of review.¹³⁷

The Court further determined that the LERB should apply reasonableness when considering an appeal from a decision of a presiding officer, regardless of whether its civilian oversight function is engaged. According to the judgment, civilian oversight is a separate but parallel jurisdiction to the review powers exercised by the LERB. Civilian oversight engages an entirely different process in which the LERB audits the police discipline system as a whole.¹³⁸ The Court recognized the appellant’s argument that every police discipline case involves “standard of police conduct” in some way¹³⁹ and stated, “If that consideration was allowed to override the general rule that the standard of review is reasonableness, the exception would overtake the rule.”¹⁴⁰ Instead, the LERB’s civilian oversight generally only arises when the case involves standards of police conduct at a policy level.¹⁴¹ Even when the oversight mandate is engaged, the LERB should still give deference to the presiding office in relation to issues that are within his or her area of expertise, “such as acceptable levels of conduct and the need for discipline within the force.”¹⁴² There must be balance between its independent civilian oversight mandate and deference to the presiding officer.

In *Calgary Police Service v Alberta (Law Enforcement Review Board)*,¹⁴³ a separate appeal argued the same day as *Furlong*, the Court of Appeal also considered the standard of review that should apply to a chief’s decision not proceed with charges. The Court cited *Pelech* to support the conclusion that the standard of review in this type

¹³⁶ *Furlong*, at paras 7-8, 14.

¹³⁷ *Furlong*, at para 17.

¹³⁸ *Furlong*, at para 18.

¹³⁹ *Furlong*, at para 20.

¹⁴⁰ *Furlong*.

¹⁴¹ *Furlong*, at para 24.

¹⁴² *Furlong*.

¹⁴³ *Calgary Police Service v Alberta (Law Enforcement Review Board)*, 2013 ABCA 124, 86 Alta LR (5th) 171 [*Cody*].

of case is reasonableness.¹⁴⁴ In addition, the Court referenced *Furlong's* reasoning and decision that there is no standard of "robust reasonableness" and the LERB's civilian oversight will not arise in every case where the standard of police conduct is at issue. The LERB may only apply its civilian oversight function when investigation or complaint process has been compromised in some way.¹⁴⁵

These two Alberta Court of Appeal cases imply that a review on a standard of correctness is not available to the LERB when it reviews individual decisions by a presiding officer or chief of police. The LERB can make policy-level decisions regarding standards of police conduct or review a case to determine whether the complaint or investigation process was tainted, but it must give deference to the decisions by presiding officers and the chief when it comes to findings related to a particular case. Accordingly, the LERB has very little authority to decide whether a cited police officer has been appropriately disciplined.

After these cases, it seems that the LERB has, in fact, confined its reviews to reasonableness, regardless of the issues in the case. In a 2015 case, the LERB remarked that since the *Newton* and *Pelech* decisions, "the Board's role is, in a vast majority of cases, constrained to a review on the record, applying the deferential reasonableness standard, to the decisions such as the Chief's." More recently, the LERB seems to have adopted the position that it should automatically apply the reasonableness standard, without first assessing the factors set out in *Newton* or other administrative law cases regarding the standard of review analysis. In several cases from 2017, the LERB simply states that it will or "must" apply the reasonableness standard of review.¹⁴⁶ No further explanation is provided beyond how the reasonableness standard should be applied. The LERB's assertion in *Beniuk v Edmonton (Police Service)* that "there is no reason at all for us to veer away from the reasonableness review standard that the court of appeal

¹⁴⁴ *Cody*, at para 17.

¹⁴⁵ *Cody*, at para 18.

¹⁴⁶ See, for example: *Braile v Calgary (Police Service)*, 2017 ABLERB 001 at para 10; *Beniuk v Edmonton (Police Service)*, 2017 ABLERB 002 at para 22; *Jackman v Edmonton (Police Service)*, 2017 ABLERB 004 at para 7.

has repeatedly affirmed we are to apply¹⁴⁷ affirms that the LERB has, in fact, interpreted the Court of Appeal decisions as mandating that the reasonableness standard be applied to all appeals.

IV. ISSUES ASSOCIATED WITH RESTRICTING LERB TO REASONABLENESS

The overarching issues associated with restricting the LERB to a reasonableness standard of review in all cases without further analysis of the circumstances is that this limitation undermines the LERB's civilian oversight mandate. The Justice and Solicitor General of Alberta and several early cases depict the LERB as providing an independent, impartial review of the internal police discipline process, as well as ensuring that the process includes a public and transparent component. According to that commentary, it seems that the LERB likely was intended to maintain accountability and public confidence in the police complaint process. If the LERB no longer has the power to carry out an extensive review of prior decisions by police chiefs and presiding officers and intervene when the investigation or decision was inadequate, it cannot fulfill this role.

A. No Public Component to Police Complaints

1. Introduction

The new interpretation of the *Police Act* lacks the public half of the complaint process, which was described in *Robertson*.¹⁴⁸ The complainant does not have standing to participate in the investigation and hearing stages of the complaint process. During the investigation or hearing, the complainant may be asked to give evidence, but he or she does not have the right to do so nor is the complainant able to call his or her own witnesses or cross-examine the cited officer. The complainant only becomes a party in the case if he or she appeals the initial decision by the chief or the presiding officer to the LERB.¹⁴⁹ Under the current interpretation of the review powers of the LERB, an

¹⁴⁷ 2017 ABLERB 002 at para 23.

¹⁴⁸ *Robertson*, at para 214.

¹⁴⁹ *Newton*, at para 67.

appeal is restricted to a review of the record. As a result, the complainant does not have an opportunity to more fully participate at the appellate level.

2. The *Police Act* Contemplated Public Participation

The Court in *Newton* asserted that the role of complainants should not be expanded at the appellate stage by giving them standing at a *de novo* hearing before the LERB. The Court held that this type of extended participation would be contrary to the *Police Act* because the complainant was not given standing at the initial hearing, even though that was within the Legislature's discretion. Further, *de novo* hearings would effectively allow complainants to retry cases, enabling them to deviate from the body of evidence or theory put forth by the presenting officer at the initial hearing. Finally, the Court in *Newton* asserted that the *Police Act* allows any person to make complaints about police officers without requiring that the person be affected or aggrieved by the conduct of that officer. As a result, a reasonableness review would prevent strangers from taking over the matter at appeal. The right of strangers to make complaints is balanced by an internal review.

Previous cases, however, have construed certain provisions of the *Police Act* and Hansard (which contains the debates of the Legislature) from the introduction of various amendments to the *Act* as exhibiting the Legislature's intention to provide the LERB with extensive review powers and complainants with an expanded role at the appellate level. In *Robertson*, a judicial review decision, the Alberta Court of Queen's Bench found that the extensive powers bestowed on the LERB through section 20 of the *Police Act* signalled that the LERB had the authority to conduct a *de novo* hearing **on appeal**.¹⁵⁰

In *Boulanger*, the LERB referenced several excerpts from Alberta Hansard in relation to the *Police Act* to support its conclusion that it had the ability to conduct a *de novo* hearing on appeal. For instance, the LERB cited portions of Alberta Hansard from 1988 that discussed Bill 28, which replaced the 1973 *Police Act*. In part, the purpose of the Bill was to clarify the role and responsibilities of the LERB. On that topic, the Hansard reads: "In addition to providing the local police commissions with the necessary

¹⁵⁰ *Robertson*, at para 214.

powers to supervise the police, the Law Enforcement Appeal Board will have an enhanced role in monitoring complaint handling and discipline."¹⁵¹

The debates also specifically discussed the balancing needed between allowing individuals to make complaints and protecting the rights of police officers, which was a primary concern to the Court in *Newton*. According to the Hansard,

A central principle of this Bill concerns complaints by citizens respecting the actions of police officers. Citizens should be able to register a complaint concerning either conduct of a police officer or the policies or procedures of the police service, with confidence that the complaint will be thoroughly and objectively investigated and resolved to the fullest extent possible. At the same time, it is necessary that the rights of police officers be protected and that principles of natural justice are applied...¹⁵²

I believe that the real challenge of policing in our age – and it's a challenge that is being addressed by many jurisdictions – is to, in fact, find a way to improve the degree of civilian input into the complaint process at the same time as maintaining a process which has the confidence of the police service itself. Because both public confidence and police confidence in this system are necessary to having a police service which does the job of policing effectively for our community. That, I must say, is a balance which is not easy to accomplish. ...The problem in this whole area is that it is very, very difficult over a long period of time for police services to totally police themselves and at the same time to maintain the confidence of the public. Other jurisdictions have discovered that. I support the need for civilian input into this complaint process to a meaningful degree.¹⁵³

More recently, two sets of amendments to the *Police Act* were passed in 2005. In relation to Bill 49 (one of these sets of amendments), the Solicitor General discussed a change to the rules of evidence as a means for improving the effectiveness and efficiency of the LERB in relation to the police discipline system. The Solicitor General stated, "An amendment of this bill that will directly affect Albertans concerns the

¹⁵¹ Alberta, Legislative Assembly, *official Report of Debates (Hansard)*, (14 June, 1988), cited *Boulanger*, at para 25 [Hansard 1988].

¹⁵² Hansard 1988.

¹⁵³ Hansard 1988.

change to the rules of evidence. Currently when Albertans complain to the LERB, they must follow the rules of evidence used in judicial proceedings. These rules are too stringent and unnecessary. The amendment would see the Board use the principles of natural justice, which follow an approach based on common sense. This change will help Albertans understand the process without having to obtain legal counsel."¹⁵⁴

Taken together, these excerpts support the conclusion that the Alberta Legislature intended the *Police Act* to authorize the LERB to conduct a second hearing at which the complainant would have a broader right to participate. The Legislature likely envisioned an appeal to the LERB as providing the significant civilian input that is needed to prevent the erosion of public confidence in the police system created by the police regulating themselves. At the same time, the initial internal discipline process was likely seen as safeguarding officers' rights in a way that would maintain police confidence. Perhaps more tellingly, the significant changes made to the rules of evidence in the 2005 amendments suggest that complainants have the right to extensive participation at an appeal. No longer requiring complainants to follow the rules of evidence that apply to judicial proceedings in order to improve public participation implies that complainants are able to call evidence on appeal. There would be no need to address the rules of evidence that apply to the public if the appeal was restricted to a review of the record, as complainants are not afforded standing at the initial hearing and, as a result, do not have the ability to present evidence.

The Court's second argument in *Newton* that public participation should be restricted to prevent strangers from taking over the adjudication of police complaints on appeal may stem from a misapprehension of the law. The *Police Act* provides that any member of the public, whether affected or not, may make a complaint about a service or policy of the police service.¹⁵⁵ There is, however, a direct and indirect impact limitation on who may make complaints about police conduct. Only individuals who were the recipients of the conduct that is called into question or their agents,

¹⁵⁴ Alberta, Legislative Assembly, *official Report of Debates (Hansard)*, (21 November 2005), cited *Boulanger*, *supra* note 1 at para 26 [Hansard 2005].

¹⁵⁵ *Police Act*, s 42.1(3).

individuals who were present at the time of and witnessed the incident, or individuals who were in a personal relationship with the recipient of the conduct at the time of the incident and suffered in same way as a result of the conduct may initiate a complaint about the police conduct.¹⁵⁶ Because the complainant must have been directly or indirectly affected by the conduct of the police officer, there is no risk that a stranger would be able to take over the disciplinary process through an appeal of the initial decision about the officer's behaviour.

3. Procedural Fairness

Under administrative law, the administrative decision-maker generally has an obligation to provide procedural fairness when making a decision that affects the rights, privileges and interests of an individual.¹⁵⁷ Procedural fairness is a flexible concept. The scope of the duty to be fair that applies in a given case can be determined using a number of factors. The first factor is the nature of the decision and the process for making it. If the process for making the decision is similar to judicial decisions, it is more likely that a trial-like procedure will be required to satisfy the duty to be fair. Second, the nature and provisions of the enabling statute¹⁵⁸ will help determine the extent of procedural fairness. The third factor is the importance of the decision to the person affected by it. Similarly, the fourth factor is the affected person's legitimate expectations. Finally, the administrative decision-maker itself may make a decision as to the appropriate procedure, particularly if the decision-maker has expertise in determining proper procedures or the procedure itself is discretionary.¹⁵⁹ An improper level of procedure will generally render the administrative body's decision invalid.¹⁶⁰ Although the scope of procedural fairness depends on the preceding factors, there are two common components of procedural fairness, or the duty to act fairly. The first is the right to be heard, which is known as the *audi alteram partem* or "listening to the other side" rule. The second component is a right to an impartial hearing, also referred to as

¹⁵⁶ *Police Act*, s 42.1(2).

¹⁵⁷ *Cardinal v Director of Kent Institution*, [1985] 2 SCR 643 at para 14, 24 DLR (4th) 44 [*Cardinal*].

¹⁵⁸ Enabling statute means the legislation from which the administrative body derives its authority.

¹⁵⁹ *Baker*, [1999] 2 SCR 817 at paras 23-27, 174 DLR (4th) [*Baker*].

¹⁶⁰ *Cardinal*, at para 23.

the *nemo iudex in sua causa* or "no-one should be a judge in his own cause" rule.¹⁶¹ The second component of procedural fairness will be discussed in the next section.

The right to be heard essentially means that a person has the right to know the case being made against him or her and be given an opportunity to respond to it before the administrative decision-maker reaches a conclusion.¹⁶² This component of procedural fairness also provides that anyone who is impacted by an administrative decision has a right to a hearing. The type of hearing to which someone is entitled depends on the circumstances of the case and the procedures set out in the enabling statute.¹⁶³ Not every case will require an oral hearing. Oral hearings are typically required when it is imperative to a fair process, such as when credibility is at issue or a high level of procedural fairness is appropriate in the circumstances.¹⁶⁴ When an oral hearing is permitted, the right to call and cross-examine witnesses is generally protected by procedural fairness.¹⁶⁵

Under the current police complaint system in Alberta, complainants are not given standing at the initial hearing and are subsequently denied an increased right to participate at the appeal. As a result, the LERB is likely breaching its duty to provide procedural fairness to these complainants during the decision-making process. For the first component of procedural fairness, the complainant does not have the ability to respond to the cited officer's case before a decision is made, as they are unable to call evidence at the initial hearing and the subsequent appeal to the LERB is restricted to a review of the record of that hearing. Written submissions to the LERB are likely insufficient to fully respond to the cited officer's case. The cited officer had the ability to question his or her own witnesses and cross-examine the presenting officer's witnesses at the hearing. Without an oral hearing at the LERB where the complainant is provided standing, complainants do not enjoy that same right to fully present their case through the use of witness testimony. In addition, credibility is often a factor in police complaint

¹⁶¹ *Re Therrien*, 2001 SCC 35 at para 82, [2001] 2 SCR 3.

¹⁶² *Kane v Board of Governors of UBC*, [1980] 1 SCR 1105 at 1106-1107, 110 DLR (3d) 311.

¹⁶³ *Baker*, at paras 27, 31.

¹⁶⁴ *Khan v University of Ottawa*, 34 OR (3d) 535, 148 DLR (4th) 577 (ONCA).

¹⁶⁵ *Innisfil Township v Vespra Township*, [1981] 2 SCR 145, 123 DLR (3d) 530.

cases, as, in many cases, decision-makers must determine whose version of events to believe. The importance of credibility suggests that that an oral hearing is required to satisfy procedural fairness. Accordingly, complainants should have access to an oral hearing at some stage of the complaint process.

4. Conclusion

Because the Alberta Legislature seems to have intended for complainants to play an active role at appeals to the LERB and there is a directly and indirectly affected requirement for complaints about police conduct, it seems that the benefits of public participation outweigh the objections raised by the Court of Appeal in *Newton*. As the cases and Hansard seem to indicate, allowing complainants to participate as parties at the appellate level through *de novo* hearings would likely maintain public confidence in the police complaint system through enhanced public input, while maintaining an initial internal disciplinary system that has the confidence of the police service. As the Alberta Legislature put it, "both public confidence and police confidence in this system are necessary to having a police service which does the job of policing effectively for our community."¹⁶⁶

Allowing complainants to actively participate in an oral hearing on appeal to the LERB would also help to safeguard the validity of the decisions regarding police complaints. Under administrative law, these decisions could be rendered invalid if complainants do not receive an appropriate amount of procedural fairness, including enjoying the right to be heard. *De novo* hearings on appeal to the LERB could provide an effective means for the complainants to fully respond to the cases presented against their complaints by police officers, while still maintaining an initial internal discipline process that promotes police confidence.

B. Internal System of Police Discipline

1. Introduction

The interpretation of *Newton* and *Pelech* as mandating a reasonableness standard of review to be applied by the LERB seems to have minimized the role of the

¹⁶⁶ Hansard 1988.

LERB. As a result, the complaint process may be viewed as a primarily internal system of investigation and discipline, which may give rise to a reasonable apprehension of bias. Even if the complaint system is not actually biased, the dynamic between the internal police complaint process and the LERB likely will undermine public confidence in police accountability and the resolution of complaints in an impartial manner.

2. Civilian Oversight by the LERB

Initially, the fundamental activity of the LERB was to oversee decisions by chiefs of police and presiding officers and to ensure that the investigation and outcome were fair. The LERB could consider facts and evidence anew at the appeal and scrutinize whether the prior decision-maker took an appropriate action. This role fit with the discussion at the Legislature at the time that the LERB was created. The Hansard suggests that legislators intended to create a body that was totally separate and apart from the police,¹⁶⁷ which would monitor the police complaint and discipline process.¹⁶⁸ The Alberta Justice and Solicitor General's depiction of the LERB on its website reflects this foundation of the LERB as an independent body that provides civilian oversight. The description of the LERB states: "The principal activity of the board is to hear appeals for both citizens and police officers separate and apart from the police service involved. The principal objective of the board is independent and impartial review."¹⁶⁹

The LERB's ability to conduct *de novo* hearings was also seen by the Alberta Court of Queen's Bench in *Robertson* as ensuring that presiding officers make appropriate decisions that were based on the evidence presented. In relation to a *de novo* appeal hearing before the LERB, the Court stated, "Thus the hypothetical presiding officer would be aware of the fact that his decision might well be reviewed by an independent board. If he ignores the evidence before him and simply parrots the opinion of the chief of police, he runs the risk of being overruled by the LERB, perhaps with adverse comments about the way he conducted the hearing. The Presence of the

¹⁶⁷ Alberta, Legislative Assembly, *official Report of Debates (Hansard)*, (2 April 1973), cited *Boulanger* at para 24.

¹⁶⁸ Hansard 1988.

¹⁶⁹ Alberta Justice.

LERB provides a balancing factor for this hypothetical presiding officer...¹⁷⁰ This comment makes it clear that a hearing *de novo* by the LERB is imperative for balancing the decisions of presiding officers, as the officer knows that the LERB can intervene to correct inappropriate decisions. Even if a hearing *de novo* did not serve the function of constraining presiding officers' decisions to the evidence, the reasonableness standard, particularly as it is described in *Furlong* and *Cody*, would not be broad enough to allow the LERB to make an independent decision that takes into account all relevant facts and evidence.

According to *Dunsmuir*, a reasonableness inquiry mostly analyzes whether there is justification, transparency and intelligibility within the decision-making process itself, as well as determines whether the decision is within one of the acceptable outcomes based on the facts and the law.¹⁷¹ Reasonableness is a deferential standard. In the case of police complaints, this means that the LERB must defer to the choices of the chief of police or presiding officer unless that decision is not within the acceptable range of options.¹⁷² When making the decision about what is reasonable, however, the LERB is restricted to a review of the record or, in other words, the written documentation of the evidence and decision at the initial hearing. Because the complainant does not have the ability to participate in the initial hearing and call his or her own evidence, the record is limited to the evidence presented by the cited officer and the presenting officer, who is generally another police officer.

Restricting the evidence that the LERB is able to consider to what was presented by police officers and mandating that the LERB defer to prior decisions by the chiefs of police or presiding officers (who are often retired police officers) profoundly impacts their independence from the police force. The current appeals process ensures that the LERB is generally only able to consider evidence that was presented by members of the police force when concluding whether another member or former member of the force made a reasonable decision. The LERB is not able to consider relevant evidence from the

¹⁷⁰ *Robertson*, at para 164.

¹⁷¹ *Dunsmuir*, at 196.

¹⁷² *Newton*, at para 95.

complainant, aside from his or her testimony if the complainant was called as a witness at the initial hearing. As a result, the LERB likely cannot make a fully informed, independent decision, because the evidence it relies upon is presented from the viewpoint of police officers. Whether or not the evidence is actually partial to police officers likely does not matter, as solely relying on police-led evidence may lead to a general perception that the LERB is not independent from the police in the way that the drafters of the *Police Act* intended.

In addition to this lack of independence under a reasonableness review, *Furlong* and *Cody* restrict the LERB's civilian oversight mandate to policy level issues related to police conduct.¹⁷³ Civilian oversight will not be engaged simply because police conduct was at issue in the case. Instead, there must be a question as to whether the investigation or complaint process was compromised in some way.¹⁷⁴ These cases described the civilian oversight mandate as "a separate but parallel jurisdiction" in which the LERB audits the complaint system as a whole rather than scrutinizing the individual decision in the case using a higher standard of review.¹⁷⁵ Even when the LERB's civilian oversight mandate is engaged, it must still give deference to the prior decision-maker on issues within that person's expertise.¹⁷⁶

This approach to civilian oversight likely prevents the LERB from intervening in case-specific decisions by chiefs of police or presiding officers.¹⁷⁷ Because its review is limited to police conduct at a policy level, the LERB likely is unable to provide an independent and impartial review of whether a specific incident of police behaviour was appropriate. The LERB will have to defer to the expertise of the chief or presiding officer on police conduct, regardless of whether the investigation or complaint process may have been compromised in some way.

¹⁷³ *Furlong*, at paras 29, 33.

¹⁷⁴ *Furlong*, at para 29; *Cody*, at para 18.

¹⁷⁵ *Furlong*, at para 28; *Cody*, at para 18.

¹⁷⁶ *Furlong*, at para 33.

¹⁷⁷ See section III.D.2.

3. Reasonable Apprehension of Bias

The second component of procedural fairness provides that there is a right to an impartial hearing. Under this second branch of procedural fairness, the rule against bias ensures that administrative decision-makers base their decisions and are seen as basing their decisions on only the relevant law and evidence presented. This rule applies to all administrative bodies that are required to comply with the duty to be fair.¹⁷⁸ The test for whether an administrative proceeding was biased asks whether “an informed person, viewing the matter realistically and practically – and having thought the matter through – would conclude” that there is a reasonable apprehension of bias.¹⁷⁹ The courts have taken a flexible approach to this test, recognizing that its application must be sensitive to the institutional context in which the administrative body operates.¹⁸⁰

Institutional bias is a form of bias in which the structures or procedures of an administrative decision-maker suggest that there is bias.¹⁸¹ Institutional bias arguments call into question the validity of the decision-making structures within legislation, not the legislation itself. The test for institutional bias is whether “a well-informed person, viewing the matter realistically and practically – and having thought the matter through – would have a reasonable apprehension of bias in a substantial number of cases [emphasis in original].”¹⁸²

Importantly for the police complaint context, two of the common types of cases in which institutional bias occur are when members of the administrative decision-maker are employed in ways that may be biased, and when a party to the proceeding also has an institutional role in the proceeding and that role is seen as creating a biased outcome. Multiple functions within a particular institution are typically allowed.¹⁸³ There may be issues, however, with a person who is part of the administrative decision-maker playing multiple roles in a given case. Recent cases focus on whether the

¹⁷⁸ *Baker*, at para 45.

¹⁷⁹ *Committee for Justice and Liberty et al v National Energy Board et*, [1978] 1 SCR 369 at 394, 68 DLR (3d) 716.

¹⁸⁰ *Old St. Boniface Residents Assn Inc v Winnipeg (City)*, [1990] 3 SCR 1170, 75 DLR (4th) 385.

¹⁸¹ *R v Lippe*, [1991] 2 SCR 114, 61 CCC (3d) 127.

¹⁸² 2747-3174 *Quebec Inc v Quebec (Regie des permis d'alcool)*, [1996] 3 SCR 919 at para 44, 140 DLR (4th) 577 [Quebec].

¹⁸³ Quebec.

overlapping roles of a person within a case give rise to a reasonable apprehension of bias and, if so, if the legislative scheme can function without this type of overlap and bias.¹⁸⁴ The second type of case is where a party to a proceeding also has an institutional position, which may allow him or her to influence the outcome of the case. A finding of institutional bias in these circumstances may be precluded by express authorization of that decision-making structure in the enabling legislation.¹⁸⁶

Structural independence is a category of bias that is related to institutional bias. Structural independence refers to a decision-making system that is set up in such a manner that it creates a question as to whether administrative decision-makers will be predisposed to decide cases in certain ways. These cases, for the most part, centre on whether there are sufficient structural protections to ensure that decision-makers are able to decide cases without being influenced by external considerations.¹⁸⁷ Part of that consideration is whether the decision-maker has administrative independence from the influence of others in the institution. The goal of this area of procedural fairness is to create a system that enables administrative decision-makers to make impartial decisions and assures both parties to a dispute and the general public that the decision and decision-making process was impartial.¹⁸⁸

To successfully establish a reasonable apprehension of bias, there must be evidence of bias.¹⁸⁹ Evidence of bias includes the record of the proceedings before the administrative body, as well as other permissible evidence. When a reasonable apprehension of bias can be established in relation to the decision-maker or institution, the decision in the case is rendered invalid.¹⁹⁰

The current police complaint process in which the initial investigations and hearings are generally conducted by police officers or former police officers and the

¹⁸⁴ *Duncan v Law Society of Alberta*, 49 Admin LR 142, 80 DLR (4th) 702 (ABCA).

¹⁸⁵ *Bell Canada*, [2003] 1 SCR 884, 227 DLR (4th) 193 [*Bell*].

¹⁸⁶ *CUPE v Ontario (Minister of Labour)*, [2003] 1 SCR 539, 226 DLR (4th) 193.

¹⁸⁷ *Bell*.

¹⁸⁸ *Ocean Port Hotel Ltd v British Columbia (General Manager, Liquor Control and Licensing Branch)*, [2001] 2 SCR 781 at para 23, 204 DLR (4th) 33.

¹⁸⁹ *Finch v Assn of Professional Engineers and Geoscientists of British Columbia* (1996), 38 Admin LR (2d) 116, 18 BCLR (3d) 361 (BCCA).

¹⁹⁰ *Newfoundland Telephone Co*, [1992] 1 SCR 623, 4 Admin LR (2d) 121.

LERB's oversight function is severely limited through the use of a reasonableness standard likely opens the door to allegations that this system meets the test for a reasonable apprehension of institutional bias. In the majority of cases, police officers or former police officers conduct the investigation and initial hearing, where the public complaint is resolved. Once the officers reach a conclusion, the LERB must give deference to that decision and is only able to intervene if it is unreasonable. In this way, police officers act as the main adjudicators for determining the resolution of a complaint. When the matter is resolved by current officers, those individuals also have a role within the larger institution of the police service and are colleagues of the cited officer. That working relationship may lead to the inference that the police officers are biased. Similarly, there may be a question as to whether the cited officer's position within the police service gives him or her an opportunity to influence the decision of the chief or presiding officer.

The dual roles of police officers as colleagues and, during police complaints, investigator, adjudicators, and parties may also lead to a perception that the system lacks structural independence. Again, the working relationship between chiefs of police, presiding officers in their role as police officers, and cited officers could lead to the perception that there is no administrative independence. In particular, if the presiding officer is a current officer, it may lead to the question of whether the chief has influenced his or her decision due to the hierarchy of the police service.

4. Public Distrust

Dispensing with a *de novo* hearing on appeal to the LERB may create public scepticism and mistrust of police complaint and disciplinary procedures. As previously discussed,¹⁹¹ a reasonableness standard of review likely compromises the LERB's ability to provide an independent and impartial review. Without that oversight, investigations and police discipline is effectively a solely internal police process. When a police service is responsible for its own complaint investigations and resolutions, an apprehension of

¹⁹¹ See Section IV.B.2.

bias or perception of unfairness may arise¹⁹² and trigger public mistrust of the entire system.¹⁹³

Currently, the safeguards in place to curb the powers of police officers during the complaint process have been distorted by the transition to a strictly reasonableness review or, at least, the persistent need for deference by the LERB. Before *Newton* and *Pelech* changed the approach to the standard of review, the LERB's ability to conduct *de novo* appeal hearing on a correctness standard was seen as enabling it to supervise the actions of the chiefs of police and presiding officers. The Court of Appeal in *Plimmer* interpreted the general powers in section 17 and 48 of the *Police Act* as establishing that the LERB should perform this type of supervisory role.¹⁹⁴ In particular, the Court found that the LERB's power to conduct inquiries of its own initiative, outlined in section 17(1)(a), indicated that the *Police Act* contemplated that the LERB would act as the final decision-maker when disagreements about the resolution of public complaints or appropriate discipline arose during the complaint process.¹⁹⁵ The Court then held that giving a public complainant the ability to appeal to the LERB but requiring deference to the prior decision unless the complainant could show that the conclusion was unreasonable would undermine public confidence in the LERB's ability to supervise the police service's response to public complaints.¹⁹⁶ The decision in this case suggests that deference is inconsistent with supervision. A broader right to review is required for the LERB to adequately perform its supervisory function and maintain public confidence in the two-tier complaint system.

Similarly, the Alberta Court of Queen's Bench in *Robertson* regarded the LERB's ability to hold *de novo* hearings as a balancing factor that prevented presiding officers from making biased decisions or being influenced by the opinions of police chiefs.¹⁹⁷ That balancing, however, depends on the LERB being able to analyze the decision by the

¹⁹² Susan Radke, *Citizen complaints against the police in Calgary*, Alberta Civil Liberties Research Centre (1991) at 30.

¹⁹³ Alberta Civil Liberties Research Centre, *Submission to the Citizen Complaint Review Committee* (28 May 1990) at 8.

¹⁹⁴ *Plimmer*, at para 65.

¹⁹⁵ *Plimmer*, at para 68.

¹⁹⁶ *Plimmer*, at para 70.

¹⁹⁷ *Robertson*, at para 164.

chief or presiding officer and intervene when necessary. The LERB does not have that right when deference is mandated.

The Court in *Plimmer* effectively summed up this issue of bolstering public perception through the use of checks and balances between the authority of police officers and the LERB. According to the judgment, Part 5 of the *Police Act* gives the chief of police broad powers to investigate a complaint and decide how to resolve the issue. For example, the provisions in Part 5 warrant the chief to determine whether he or she should impose a punishment and, if it does, whether there should be a disciplinary hearing. The LERB is the only body that oversees and may prevent possible abuse of these powers. As noted by the Court in *Plimmer*:

It is the Board's responsibility, therefore, to ensure that the process of investigating complaints remains transparent, and that public confidence in the ability of the police force to govern itself remains intact. It is implicit in this aspect of the Board's general powers that the statute requires the Board to review the disciplinary decisions of the chief of police, or his designate, using the standard of correctness.¹⁹⁸

Without apparent supervision of police power, there is an increased likelihood that the public will view the complaint process as lacking impartiality and transparency. There is evidence of that public opinion emerging in the media, with the consistent underlying theme of "who is policing the police?" From these articles, it is apparent that public confidence in police practices and complaints about that conduct is quickly becoming a pressing issue in Alberta. In recent years, police conduct and the investigations procedures carried out by police services and commissions in Alberta have been increasingly called into question.

Although there are numerous examples of police misconduct in the news, one of the most egregious recent cases that may present doubts about the efficacy of the current complaint system is the criminal charges brought against Sergeant Les Kaminski and Constable Brant Derrick, two Calgary police officers. The incident occurred during a traffic stop of Jason Arkininstall, a Hells Angels member, on August 31, 2008 in downtown

¹⁹⁸ *Plimmer*, at para 72.

Calgary.¹⁹⁹ While arresting Arkinstall, the two officers allegedly struck him with a baton twice, struck him on the back of the head with a hand, and threw Arkinstall into the police van head first and slammed the cage door on his legs and feet. This incident was witnessed by two bystanders and captured on video.²⁰⁰ At a subsequent trial of Arkinstall in 2011 related to whether he uttered a threat to the officers during the arrest, provincial court Judge Terry Semenuk acquitted Arkinstall. Judge Semenuk wrote in his decision that Arkinstall was “physically abused” by police officers during the arrest and that the evidence provided by Kaminski and Derrick was “unreliable and not credible.”²⁰¹

The Alberta Serious Incident Response Team (“ASIRT”) began an investigation into the actions of the officers in 2014 and subsequently charged Kaminski with perjury and assault with a weapon and Derrick with assault causing bodily harm.²⁰² Prior to ASIRT being referred the case by the Calgary Police Service in early 2014, the Police Service conducted a review of the case in light of the trial and determined that the service did not need to proceed with an investigation. The incident was only investigated after Arkinstall filed a police complaint in December 2013.²⁰³ Despite the eventual investigation, some groups expressed dismay at the delay in addressing this case and the way in which the Police Service handled the matter at the outset, particularly its initial decision not to pursue its own investigation.²⁰⁴ This case demonstrates that internal decisions made by the police as to whether it should investigate officer conduct may be met with public scepticism and distrust.

¹⁹⁹ Meghan Potkins, “Police commission to review role it played in oversight of Kaminski matter”, *Calgary Herald* (18 January 2017) online: Calgary Herald <<http://calgaryherald.com/news/local-news/police-union-says-it-will-stand-by-officers-accused-of-assault-in-2008-arrest>> [Potkins].

²⁰⁰ Robson Fletcher, “Calgary Police Association president Les Kaminski charged with perjury and assault”, *CBC News* (17 January 2017) online: CBC News <<http://www.cbc.ca/news/canada/calgary/les-kaminski-perjury-charges-other-officer-assault-1.3938377>> [Fletcher].

²⁰¹ *R v Arkinstall*, 2011 ABPC 23 at para 33; Meghan Potkins, “Police commission demands inquiry into Arkinstall arrest”, *Calgary Sun* (31 January 2017) online: Calgary Sun <<http://www.calgarysun.com/2017/01/31/police-commission-demands-inquiry-into-arkinstall-arrest>>.

²⁰² Fletcher.

²⁰³ Fletcher.

²⁰⁴ Potkins.

In a separate incident in July 2016, two Calgary police officers were relieved of duty and reassigned to desk work after being accused of using unnecessary force and seriously injuring a person during an arrest.²⁰⁵ This incident was one of several rough arrests that became public in Calgary during 2016. In response to the growing issue of questionable conduct by Calgary police officers, Doug King, a justice professor at Mount Royal University, stated that “[f]or a portion of Calgary’s population, their perception of the police has been damaged.”²⁰⁶ He went on to say, “Another incident like the one that we’ve seen (most recently) just kind of serves to reinforce the perception that some have that there is something amiss with the Calgary Police Service, right now... It’s serious, and I hope that the Calgary Police Service recognizes that erosion in public perception has started.”²⁰⁷

This type of public discontent may also be reflected in the growing number of police complaints. The Calgary Police Service received 1,496 complaints in 2016 about the conduct of officers, the majority of which were filed by the public. There were about 300 more complaints in 2016 than there were in 2015. The number of complaints in 2016 also far exceeded the average of 1,100 per year over the last five years.²⁰⁸ According to an editorial that discussed these statistics, it is impossible to determine why the number of complaints was so high in 2016. Inspector Keith Cain of the professional standards section of the Calgary Police Service, however, attributes to growing number of complaints as reflecting a renewed demand for increased transparency in the police service, as well as the introduction of online complaint forms.²⁰⁹

Not only is public scepticism growing, but ASIRT is beginning to voice concerns about police complaint and investigation practices. A letter sent from the director of ASIRT, Susan Hughson, to the Calgary police chief, Roger Chaffin, in January 2016 was

²⁰⁵ Damien Wood, “Justice expert says recent police incidents could erode public trust in force”, *Calgary Herald* (29 August 2016) <http://calgaryherald.com/news/local-news/justice-expert-says-injury-of-man-at-hands-of-police-and-other-recent-incidents-erode-public-confidence-in-police> [Wood].

²⁰⁶ Wood.

²⁰⁷ Wood.

²⁰⁸ “Editorial: CPS must tackle rising complaints”, *Calgary Herald* (3 May 2017) <http://calgaryherald.com/opinion/editorials/editorial-cps-must-tackle-rising-complaints> [CPS Complaints]

²⁰⁹ CPS Complaints.

acquired by CBC News in early 2017 through a freedom of information request. The letter criticized two Calgary Police Service Practices:

- [1] CPS accepting proffered statements – given on the condition it won't be held against the subject of the investigation – from officers who are under criminal investigation.
- [2] CPS disclosing evidence gathered against the subject officer to his or her lawyer while the investigation is still underway and before the Crown has decided whether to recommend changes.²¹⁰

Hughson noted that this practice would not be acceptable in investigations of persons who are not police officers and that it was unclear why the Police Service found it to be an acceptable practice for officers. She expressed her belief that these policies would not support accountability and stated: "I cannot imagine that it is a practice that would enhance public confidence in policing, indeed, it would only foster the perception that police protect their own and that they receive special treatment."²¹¹

5. Conclusion

The LERB was intended to supervise the actions of chiefs of police and presiding officers to ensure that these officers do not use their extensive powers inappropriately. As importantly, these safeguards also assured the public that the police complaint process would remain impartial despite the involvement of the police service in the investigation and hearing stage. The promotion of a reasonableness standard instead of a hearing *de novo* has interfered with these two important functions and likely has contributed to the growing deterioration of public trust in the police complaint system.

²¹⁰ Meghan Grant, "Police watchdog ASIRT accuses Calgary force of protecting its own with 'unprincipled' practices", *CRC News* (6 March 2017) <http://www.cbc.ca/news/canada/calgary/calgary-police-asirt-officers-investigation-chaffin-hughson-1.4005029> [Grant].

²¹¹ Grant.

V. CONCLUSION AND RECOMMENDATIONS

1. Conclusion

It is apparent that there are currently some significant issues with the police complaint system. These problems likely stem from the altered approach to appeals to the LERB, which started with the Alberta Court of Appeal decisions in *Newton* and *Pelech*. Interestingly, *Newton* and *Pelech* seemed to be trying to bring more transparency and continuity to LERB decisions by requiring the LERB to consistently apply the *Dunsmuir* standard of review analysis and explicitly outline those considerations in written reasons. Unfortunately, *Newton* and *Pelech* may have gone a step too far toward restricting the authority of the LERB. A series of LERB and Alberta Court of Appeal cases that have interpreted the *Newton* and *Pelech* decisions have increasingly stripped the LERB of its substantive powers to review and amend prior decisions by police chiefs and presiding officers.

Starting with *Newton*, these decisions appear not to have given enough weight to the possibility that the complaint structure could lead to a real or perceived apprehension of bias. *Newton* determined that the suggestion that the internal system of complaints is inherently flawed is not enough to warrant a hearing *de novo* or even the admittance of additional evidence. The appellant must be able to make out a *prima facie* case of misconduct or obstruction of justice at the disciplinary level in order to be able to adduce fresh evidence, especially if the evidence was available at the prior stage. Even when the appellant can successfully establish a *prima facie* case of misconduct or obstruction of justice, that person is not automatically entitled to a hearing *de novo* on every issue.²¹²

Subsequent cases seem to also have failed to consider the potential for bias under an internal complaint system and further restricted the powers of the LERB. Specifically, *Furlong* and *Cody* effectively precluded the LERB from reviewing decisions about an individual cited officer's conduct. These Alberta Court of Appeal cases also restricted the LERB to a reasonableness standard of review, only allowing it to intervene

²¹² *Newton*, at para 48.

in the decision of a police chief or presiding officer if the issue is policy related and outside of the realm of reasonable. Without the power to review or intervene in decisions related to a particular officer's conduct, the LERB does not have sufficient power to monitor the disciplinary actions of police chiefs and presiding officers.

That lack of oversight combined with an inability for complainants to actively participate in the complaint process at any stage has created a police complaint system that is open to questions of bias and misuse of police power. Without the transparency and evident checks on police powers that the LERB was intended to provide, the public seems to be growing increasingly distrustful of police conduct and the effectiveness of resolving issues with police behaviour through the complaint process. Current news in Alberta clearly reflects this degrading public perception and the pressing need for change to the police complaint process in order to restore trust in the performance and regulation of police duties. The following recommendations set out a long-term and short-term strategy for amending the *Police Act* in a manner that improves the balance between police powers and the authority of the LERB, as well as increases public transparency and participation within the complaint system.

2. Long-Term Recommendation: Further Research into the Efficacy of the Police Complaint System

In the long-term, to analyze potential significant changes to the police complaint system, create a panel similar to the Commission for Public Complaints Against the RCMP Review Team ("CPC") to further research these issues. To be fully effective, this panel should have the support of the Alberta Government, which will give it authority to access police complaint files and investigations, review police policies, and conduct extensive consultations with stakeholders and the public.

Similar to the CPC Police Investigating Police²¹³ report, the panel should conduct an in-depth analysis of whether the current police complaint system effectively resolves public complaints in a manner that supports transparency, impartiality, and public and

²¹³ Commission for Public Complaints Against the RCMP, *Police Investigating Police – Final Public Report* (Ottawa: Civilian Review and Complaints Commission for the RCMP, 2014) online: <<https://www.crcc-ccetp.gc.ca/en/police-investigating-police-final-public-report#access>>.

police confidence. The Alberta research panel should consider adopting a similar methodology to the CPC report. The panel would first establish selection criteria, such as a timeframe and type of complaint to be analyzed, and then would select a sample of complaint files that match these criteria. The panel would also select markers to assess the efficacy and impartiality of the complaint system, such as actual or perceived conflict of interest, independence of investigation and hearing team, and timeliness of resolution. In addition, the review panel likely should assess these markers for investigation and hearings that were conducted by the cited officer's police service and cases in which much of the complaint process was conducted by a separate police service and compare the findings.

The panel should pay particular attention to whether the initial internal review does, in fact, bolster police confidence in the complaint and discipline system. A recently emerging issue of sexual harassment within the Calgary Police Service and the handling of those incidents suggest that members of the Police Service do not have confidence that the internal system will fairly and confidentially respond to issues. One of the complainants, Jen Ward, in the sexual harassment case, resigned during a Calgary Police Commission meeting on January 31, 2017. Ward detailed a culture of bullying and harassment. She had previously complained about this issue to the former police chief, Rick Hanson, in 2013. After that complaint, Ward received Police Service emails through a *Freedom Of Information and Protection Of Privacy Act* request. These emails revealed that some members of the executive team within the Calgary Police Service had spoken about her negatively and stated that she should not be trusted.²¹⁴

Recently, 13 members of the Calgary Police Service have filed formal complaints about harassment and bullying and are contemplating pursuing further legal action.²¹⁵ The possibility of extensive legal action against the Police Service and the initial response to Ward's 2013 complaint, as well as her resignation, indicate that there may

²¹⁴ Meghan Potkins, "Veteran Calgary police officer publicly quits over bullying, harassment", *Calgary Herald* (1 February 2017) online: <<http://calgaryherald.com/news/local-news/veteran-female-officer-publicly-quits-over-bullying-harassment-issues>>.

²¹⁵ Meghan Potkins, "Flood of workplace bullying, harassment complaints filed against Calgary Police Service", *Calgary Herald* (21 February 2017) online: <<http://calgaryherald.com/news/local-news/flood-of-bullying-harassment-complaints-filed-against-calgary-police-service>>.

be a lack of faith in the willingness and ability of the Police Service to resolve complaints through the internal process. Consequently, more research should be completed to assess whether the two-tier complaint system is truly fulfilling the goal of maintaining police and public confidence in the police complaint and discipline system.

3. Short-Term Recommendation: Codify De Novo Appeal Hearings to the LERB in the Police Act

Amending the Alberta *Police Act* to codify the LERB's ability to hold *de novo* hearings on appeal would serve as a more easily implemented solution that will correct many of the significant issues in the police complaint system until further research can be completed. *Newton* and *Pelech* raised some salient points that effectively highlighted that the LERB should not be required to hold a *de novo* hearing in every case. For example, a *de novo* hearing may not be warranted if charges have not yet been laid against the cited officer, or when a case is highly fact specific and there are no witnesses beyond the complainant and cited officer. Given that there may be instances where a *de novo* hearing is not appropriate, the clause that enables the LERB to conduct this type of hearing should be discretionary. The *Police Act* should set out factors that will guide the analysis of whether a *de novo* hearing ought to be used, but allow the LERB to reach the ultimate conclusion in respect to whether it will implement a *de novo* hearing in a particular case.

There is a similar provision in the Alberta *Provincial Court Act*, which may provide some guidance for creating a discretionary *de novo* hearing clause in the *Police Act*. Section 51 of the *Provincial Court Act* reads: "An appeal is to be heard as an appeal on the record unless, on application by a party, the Court of Queen's Bench orders the appeal to be heard as a trial *de novo*."²¹⁶ The *Provincial Court Act*, however, does not provide further guidance on what type of applications for a trial *de novo* ought to be successful. In *Toraita Construction (1988) Ltd v Hankewich Homes Ltd*, the Alberta Court of Queen's Bench set out some general factors that should be considered by Court of Queen's Bench judges when faced with the question of whether to exercise their

²¹⁶ RSA 2000, c P-31.

discretion under section 51. In that case, the Court emphasized that appeals should normally be conducted on the record, but that the state of the record will have a major impact on whether a *de novo* hearing will be permitted.²¹⁷ For example, if the decision was rendered at a pre-trial conference and there is no written record of the proceedings, an appeal should be conducted by way of a trial *de novo*.²¹⁸

The Court in *Toraita* also considered the increased time and cost involved in a trial *de novo*, as compared to an appeal on the record. Given the cost and time associated with a trial *de novo*, the Court found that it was acceptable to create a system in which different modes of appeal apply to various types of cases. For instance, the case concluded that it does not create unfairness to institute a more streamlined system for civil claims that are of a relatively low value.²¹⁹ This statement essentially means that an appeal on the record may be used for low value cases.

Another factor to consider, according to the Court in *Toraita*, was the impact that a new trial would have on the ability to lead fresh evidence, including the ability to deviate from the typical rules of evidence. The judge may consider whether the applicant would be able to call a witness that was available to provide evidence at the previous trial.²²⁰ The Alberta Court of Queen's Bench returned to this evidentiary factor in *Yakiwczuk v Chmilar*.²²¹ That case determined that if a party is seeking a trial *de novo* in order to admit new evidence, the fresh evidence rule applies. The rule asks "was the 'fresh' evidence not discoverable and will the 'fresh' evidence be significant, and on a significant issue, and is it in the interests of justice that it be heard."²²² If the evidence that the applicant seeks to admit at a trial *de novo* complies with this rule, then a new

²¹⁷ *Toraita Construction (1988) Ltd v Hankewich Homes Ltd* (1992), 4 Alta LR (3d) 90 at para 20, 1992 CanLII 6152 (ABQB) [*Toraita*].

²¹⁸ *Liu v West Edmonton Mall Property* (2000), 279 AR 305, 2000 CanLII 28225 (ABQB).

²¹⁹ *Toraita*, at paras 21-22.

²²⁰ *Toraita*, at para 23.

²²¹ [1997] AJ No 1203, 27 CPC (4th) 267 (QB)

²²² Jonnette Watson Hamilton, "Provincial Court Small Claims Appeals: When is an appeal by way of trial *de novo* appropriate?", Case Comment on *Rezources Inc v Gift Lake Development* (2008) ABlawg online: <<http://ablawg.ca/2008/05/26/provincial-court-small-claims-appeals-when-is-an-appeal-by-way-of-trial-de-novo-appropriate/>>, citing *Yakiwczuk*, *supra* note 210 at para 5 [Hamilton].

trial may be awarded. If the new evidence does not comply with the fresh evidence rule, however, the appeal should be restricted to the record.²²³

Overall, the decision as to whether a trial *de novo* is appropriate depends on the judge making a fair decision that is based on all of the relevant facts and circumstances associated with the case.²²⁴ A judge may consider additional factors that are specific to the particular case at bar.

The factors set out in *Toraita* may help to inform the type of factors that should be included in the *Police Act* to guide the LERB's decision as to whether a hearing *de novo* is appropriate in the circumstances. For example, the severity of the police conduct or complexity of a particular case may indicate that a hearing *de novo* is required despite the increased time and cost. Whether the prior decision-maker provided reasons for his or her conclusion may also impact whether a hearing *de novo* will be conducted on appeal. Finally, the LERB could be required to consider the fresh evidence rule to determine whether an appellant is entitled to a hearing *de novo*. These factors will help to ensure that there is continuity between LERB appeals, while not overly restricting the LERB's discretion.

²²³ *Hamilton*.

²²⁴ *Toraita*, at paras 24, 26.

Appendix

Police Act, RSA 2000, c P-17

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) "Board" means the Law Enforcement Review Board;
- (b) "Chair" means the Chair of the Board;
- (c) "commission" means a police commission established under [section 25](#) or [28](#);
- (d) "complainant" means a person who makes a complaint under [section 42.1](#);
- (d.1) "complaint" means a complaint under [section 42.1](#);
- (e) "council" means
 - (i) the council of a city, town, village, summer village, specialized municipality, municipal district or Metis settlement;
 - (ii) in the case of a hamlet, the council of the municipal district in which the hamlet is situated;
 - (iii) in the case of an improvement district, the Minister responsible for the [Municipal Government Act](#);
 - (iv) in the case of a special area, the Minister responsible for the [Special Areas Act](#);
- (f) "Director" means the Director of Law Enforcement appointed under [section 8](#);
- (g) "Minister" means the Minister designated under [section 16](#) of the [Government Organization Act](#) as the Minister responsible for this Act;
- (h) "municipal police service" means a police service established under [section 27](#);
- (i) "municipality" means a city, town, village, summer village, specialized municipality or municipal district and includes a Metis settlement;
- (j) "peace officer" means a person employed for the purposes of preserving and maintaining the public peace;
- (k) "police officer" means an individual who
 - (i) is appointed under [section 36](#) as a police officer or a chief of police,
 - (ii) is a member of the Royal Canadian Mounted Police,
- (ii.1) is appointed under [section 5](#) as a police officer, or
 - (iii) is a member of the provincial police service;
- (l) "police service" means
 - (i) a regional police service;
 - (ii) a municipal police service;
 - (iii) the provincial police service;
 - (iv) a police service established under an agreement made pursuant to [section 5](#);
- (m) "policing committee" means a policing committee established under [section 23](#);
- (n) "provincial police service" means the Royal Canadian Mounted Police where an agreement is entered into under [section 21\(1\)](#);
- (o) repealed 2010 c21 s2;
- (p) "regional police service" means a police service established under [section 24](#).
- (q) repealed 2006 cP-3.5 s38.

RSA 2000 cP-17 s1;2005 c31 s2;2006 cP-3.5 s38; 2010 c21 s2

Part 1

Administration

Responsibility of Ministers

2(1) The Minister is charged with the administration of this Act.

(2) Notwithstanding anything in this Act, all police services and peace officers shall act under the direction of the Minister of Justice and Solicitor General in respect of matters concerning the administration of justice.

RSA 2000 cP-17 s2;2005 c31 s3;2013 c10 s34

Responsibility of Government for policing

3 The Government of Alberta is responsible for ensuring that adequate and effective policing is maintained throughout Alberta.

RSA 2000 cP-17 s3;2005 c31 s4

Minister's responsibility for policing standards 3.1

The Minister may, subject to the regulations,

- (a) establish standards for
 - (i) police services,
 - (ii) police commissions, and
 - (iii) policing committees,
- and
- (b) ensure that standards are met.

2005 c31 s5;2005 c43 s2

Responsibility for providing policing services

4(1) As part of providing provincial policing services generally,

(a) every municipal district and Metis settlement and, subject to subsection (6), a specialized municipality, and

(b) every town, village and summer village that has a population that is not greater than 5000,

shall, subject to subsection (3), receive general policing services provided by the provincial police service at no direct cost to the town, village, summer village, municipal district or Metis settlement.

(2) Notwithstanding subsection (1), a municipality referred to in subsection (1) may, for the purpose of providing policing services specifically for the municipality, do one of the following:

- (a) engage the provincial police service as a municipal police service under [section 22\(1\)](#);
- (b) enter into an agreement for the provision of municipal policing services under [section 22\(3\)](#);
- (c) establish a regional police service under [section 24](#);
- (d) establish a municipal police service under [section 27](#).

(3) Subsection (1) does not apply to a municipality while it is receiving municipal policing services pursuant to subsection (2).

(4) Repealed 2005 c31 s6.

(5) A city, town, village or summer village that has a population that is greater than 5000 shall, for the purpose of providing policing services specifically for the municipality, do one of the following:

- (a) enter into an agreement for the provision of municipal policing services under [section 22\(2\)](#) or [\(3\)](#);
- (b) establish a regional police service under [section 24](#);
- (c) establish a municipal police service under [section 27](#).

(6) A specialized municipality is responsible for the policing of an urban service area with a population greater than 5000 within that specialized municipality in accordance with subsection (5).

RSA 2000 cP-17 s4;2005 c31 s6

Exceptions

5(1) The Minister may

(a) exempt any part of Alberta from the operation of all or any provision of this Act, and

(b) make any arrangements or agreements the Minister considers proper for the policing of that part of Alberta exempted under clause (a), including appointing police officers.

(2) and (3) Repealed 2005 c31 s7.

(4) When a town, village or summer village attains a population that is greater than 5000, that municipality shall assume responsibility for providing its policing services under [section 4\(5\)](#) on April 1 in the 2nd year following the year

(a) in which it was determined that the municipality had attained a population that is greater than 5000, or

(b) in the case where an order is made under subsection (5), in which the Minister is satisfied that the population of the municipality will continue to remain in excess of 5000.

(5) Notwithstanding subsection (4), if the Minister is of the opinion that the population of a municipality referred to in subsection (4) will not remain in excess of 5000, the Minister may by order exempt that municipality from the operation of subsection (4) until the Minister is satisfied that the population of the municipality will continue to remain in excess of 5000.

RSA 2000 cP-17 s5;2005 c31 s7

Determination of population

6 For the purposes of this Act, the population of a city, town, village or summer village shall be determined in accordance with the regulations under the [Municipal Government Act](#).

1988 cP-12.01 s6;1994 cM-26.1 s642(51)

Hamlets, improvement districts and special areas

7 This Act and the regulations apply to

(a) a hamlet as if it were a village, and

(b) an improvement district or special area as if it were a municipal district.

1988 cP-12.01 s7

Director of Law Enforcement

8(1) In accordance with the [Public Service Act](#), there shall be appointed a Director of Law Enforcement.

(2) The duties of the Director include the following:

(a) monitoring police services to ensure that adequate and effective policing is maintained both municipally and provincially;

[\(a.1\)](#) monitoring the handling by chiefs of police and commissions of complaints;

(b) developing and promoting crime prevention and restorative justice programs;

(c) developing and promoting programs to enhance professional practices, standards and training for police services, commissions and policing committees;

(d) assisting in the co-ordination of policing services;

(e) consulting with and advising councils, commissions, policing committees, chiefs of police and authorized employers of peace officers appointed under the [Peace Officer Act](#) on matters relating to police and policing;

(f) developing, maintaining and managing programs and statistical records and conducting research studies in respect of offences and enforcement practices.

RSA 2000 cP-17 s8;2005 c31 s8;2006 cP-3.5 s38; 2010 c21 s3

Part 2

Law Enforcement Review Board

Law Enforcement Review Board

9(1) The Lieutenant Governor in Council shall establish a board to be known as the "Law Enforcement Review Board" composed of not fewer than 3 members appointed by the Lieutenant Governor in Council.

(2) At least one member of the board shall be an active member of The Law Society of Alberta.

(3) A member of the Board must be appointed for a term of not more than 3 years and, subject to the [Alberta Public Agencies Governance Act](#) and any applicable regulations under that Act, is eligible for reappointment.

(4) Notwithstanding that the term of office of a member of the Board may have expired, the member continues to hold office until

(a) the member is reappointed,

(b) a successor is appointed, or

(c) a period of 6 months has elapsed, whichever occurs first.

(5) The members of the Board shall be paid

- (a) fees or remuneration, and
- (b) expenses for subsistence and travelling while absent from their ordinary places of residence in the course of their duties as members of the Board,

as prescribed by the Lieutenant Governor in Council in accordance with any applicable regulations under the [Alberta Public Agencies Governance Act](#).

(6) If regulations under the [Alberta Public Agencies Governance Act](#) apply in respect of fees, remuneration or expenses to be paid to members of the Board, those regulations prevail, to the extent of any conflict or inconsistency, over any regulations prescribing fees, remuneration or expenses under subsection (5).

RSA 2000 cP-17 s9;2009 cA-31.5 s65

Board Chair

10(1) The Lieutenant Governor in Council shall designate one of the members of the Board who is an active member of The Law Society of Alberta as Chair of the Board.

(1.1) The Chair may designate a member of the Board to be acting Chair when the Chair is absent.

(1.2) An acting Chair has all the functions, powers and duties of the Chair, unless the designation provides otherwise.

(2) If the Chair is unable to act as Chair for any reason and is unable to designate a member as acting Chair under subsection (1.1), the member in attendance with the longest period of service on the Board shall act in the place of the Chair.

(3) For the purposes of subsection (2), if 2 or more persons have an equal period of service on the Board, the member in attendance named earliest in the order appointing the members shall act in the place of the Chair.

RSA 2000 cP-17 s10;2005 c43 s3

Vacancies on Board

11(1) When any member of the Board

(a) is absent from Alberta, or

(b) in the opinion of the Lieutenant Governor in Council, is by reason of illness or any other cause incapable of performing the member's duties,

the Lieutenant Governor in Council may by order appoint a person to act in the place of the absent or incapacitated member, on the terms and at the remuneration prescribed by the Lieutenant Governor in Council.

(2) The person appointed under subsection (1) has all the rights and powers of a member of the Board and may, during the period of time for which the person is appointed, discharge the duties of a member of the Board.

1988 cP-12.01 s11

Signing of documents

12 An order or other document setting out a decision, recommendation or direction of the Board may be signed by the Chair or acting Chair and shall be admitted in evidence as proof, in the absence of evidence to the contrary,

(a) that the decision, recommendation or direction is that of the Board, and

(b) that the person signing the order or other document was authorized to do so at the time of the signing,

without proof of the signature or appointment of the person signing as Chair or acting Chair.

1988 cP-12.01 s12

Board secretary

13(1) The Minister may appoint a secretary to the Board, who shall

(a) keep a record of all proceedings conducted before the Board;

(b) have the custody and care of the records and documents of the Board;

(c) act as a registrar of all notices of appeal and complaints received by the Board;

(d) prepare reports required by the Minister or the Chair of the Board.

(2) A member of the Board may act as secretary in the absence of the secretary.

(3) If the secretary is not an employee of the Government,

- (a) the Lieutenant Governor in Council shall prescribe the fees or remuneration to be paid to the secretary, and
- (b) the secretary shall be paid expenses as prescribed by regulation for subsistence and travelling while absent from the secretary's ordinary place of residence in the course of the secretary's duties as the secretary to the Board.

1988 cP-12.01 s13;1994 cG-8.5 s54

Annual report

14 After the end of each calendar year the Board shall file with the Minister a report showing the number and nature of the appeals and inquiries that it held, summaries of the findings made and any other matter that the Minister directs.

1988 cP-12.01 s14;1994 cG-8.5 s54

Legal counsel

15 On the request of the Board or the Chair, the Minister of Justice and Solicitor General may appoint a lawyer to assist the Board in respect of an appeal or an inquiry.

RSA 2000 cP-17 s15;2013 c10 s34

Powers of Board

16 The Board and each member of the Board have

- (a) all the powers of a commissioner appointed under the [Public Inquiries Act](#), and
- (b) the powers given to the Board under the regulations.

1988 cP-12.01 s16

Jurisdiction of the Board

17(1) The Board

- (a) may, on its own motion, conduct inquiries respecting complaints,
 - (a.1) shall conduct reviews of decisions of a commission referred to the Board under [section 43\(12\)\(b\)\(i\)](#),
 - (b) shall conduct appeals referred to the Board under [section 48](#) in accordance with [section 19.2](#),
 - (c) shall at the request of the Minister conduct inquiries in respect of any matter respecting policing or police services, and
 - (d) shall conduct appeals under [section 21](#) of the [Peace Officer Act](#).
- (2) If the Board is of the opinion that the actions of a police officer who is the subject of an appeal or an inquiry may constitute an offence under an Act of the Parliament of Canada or the Legislature of Alberta, the Board shall refer the matter to the Minister of Justice and Solicitor General.
- (3) Notwithstanding that the actions of the police officer have been referred to the Minister of Justice and Solicitor General under subsection (2), if the Board is of the opinion that those actions also constitute a contravention of the regulations governing the discipline or the performance of duty of police officers, the matter, as it relates to that contravention, may be proceeded with by the Board unless the Minister of Justice and Solicitor General directs otherwise.

RSA 2000 cP-17 s17;2005 c31 s9;2006 cP-3.5 s38; 2010 c21 s4;2013 c10 s34

Appeal to Court of Appeal

18 The decision of the Board in respect of a matter appealed to it under [section 48](#) may,

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

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

RSA 2000 cP-17 s18;2008 c23 s2;2014 c13 s36

Conduct of Board business

19(1) The Board shall hold meetings as it considers necessary.

(2) The Board may hold sittings and conduct appeals or inquiries at any place in Alberta.

(3) The Chair, or the secretary to the Board at the direction of the Chair, may

- (a) arrange for matters to be set down before the Board;
- (b) adjourn matters set down before the Board;
- (c) perform the administrative functions that are necessary to enable the Board to carry

out its duties under this Act or the [Peace Officer Act](#).

(4) Repealed 2005 c43 s4.

RSA 2000 cP-17 s19;2005 c43 s4;2006 cP-3.5 s38

Panels

19.1(1) The Chair may designate any 2 or more members of the Board, which may include the Chair, to sit as a panel of the Board and may direct that panel to conduct any appeal, inquiry or review that the Board may conduct.

(2) A quorum of a panel is 2 members.

(3) Notwithstanding subsections (1) and (2), where the Chair considers it appropriate to do so, the Chair may designate one member of the Board, which may include the Chair, to sit as a panel of the Board to deal with preliminary or procedural matters incidental to an appeal, inquiry or review.

(4) A decision made or action taken by a panel is a decision or action of the Board.

(5) A panel of the Board may exercise and perform all the powers and duties of the Board under this Act or any other enactment with respect to the matter it is directed to deal with.

(6) For the purposes of subsection (5), any reference to the Board in this Act or any other enactment is a reference to a panel of the Board.

(7) If the Chair is not a member of a panel, the Chair must designate one of the members of the panel to preside over the panel.

(8) When an appeal, inquiry or review is conducted by a panel and one or more members of the panel for any reason do not attend on any day or part of a day, the remaining members present may, if they constitute a quorum, exercise and perform all the powers and duties of the panel with respect to that appeal, inquiry or review.

(9) Two or more panels may sit simultaneously or at different times.

2005 c43 s5

Review and hearing

19.2(1) Prior to scheduling an appeal for a hearing, the Board shall, within 30 days of receipt of written notice of the appeal, review the written notice of appeal and the record of the hearing and may

(a) dismiss the matter if in the opinion of the Board the appeal is frivolous, vexatious or made in bad faith, or

(b) notwithstanding [section 20\(2\)\(b\)](#), make a decision in respect of the appeal based on the review of the record and consideration of the factors set out in the regulations respecting appeals, without conducting a hearing.

(2) Where the Board is unable to dismiss or conclude an appeal in accordance with subsection (1), the Board may schedule a hearing of the appeal.

(3) The Board may give directions to the affected parties in respect of a review or a hearing and may extend or modify its directions on reasonable request by a party.

2010 c21 s5

Dismissal by Board

19.3 The Board may dismiss an appeal if a direction given by the Board under [section 19.2\(3\)](#) has not been complied with by a party or if a party has not responded to the Board's direction.

2010 c21 s5

Matters governing hearings, inquiries and appeals

20(1) For the purpose of conducting an appeal or an inquiry before the Board, the following applies:

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

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

(c) the Board has, with respect to the holding of an appeal or an inquiry, the same power as is vested in the Court of Queen's Bench for the trial of civil actions

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

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

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

- (d) the Board may require
 - (i) the chief of police in respect of an investigation or a hearing conducted under [section 45](#), or
 - (ii) the person charged with the conduct of an investigation or a hearing under [section 45](#) or [46](#),
 - to produce to the Board, prior to an appeal or an inquiry, copies of all investigation reports, statements, correspondence or other documents or things relating to the matter;
- (e) if a person fails to attend, to answer questions or to produce an item as required under clause (c) or (d), the Board may
 - (i) with respect to that person, exercise its power of contempt as provided under the [Public Inquiries Act](#), or
 - (ii) where it is unable to exercise the power of contempt referred to in subclause (i), apply to the Court of Queen's Bench for an order committing that person for contempt in the same manner as if that person were in breach of an order or judgment of that Court;
 - (e.1) if a complainant fails to attend, to answer questions or to produce an item as required under clause (c) or (d) or refuses to participate or to follow processes or conducts himself or herself in an inappropriate manner, the Board may dismiss the matter;
 - (e.2) if a witness fails to attend or to answer questions or refuses to participate or to follow processes or conducts himself or herself in an inappropriate manner, the Board may dismiss the witness and continue with the matter;
- (f) the Board may accept any evidence that the Board considers to be relevant to the determination of the issues and is not bound by the rules of law respecting evidence applicable to judicial proceedings;
- (g) in the case where the Board is conducting an appeal, the Board may
 - (i) receive new evidence that was not available, or
 - (ii) refuse to receive new evidence if, in the opinion of the Board, that evidence was available but not presented,
 - when the matter was initially heard or considered;
- (h) repealed 2005 c43 s6;
- (i) all oral evidence received shall be taken down in writing or recorded by electronic means;
- (j) all the evidence taken down in writing or recorded by electronic means and all documentary evidence and things received in evidence at an appeal or an inquiry form the record of the proceeding;
- (k) the Board may
 - (i) from time to time adjourn matters that are before the Board, and
 - (ii) in respect of an appeal, before or after the expiration of the time for service of a notice of appeal, extend the time for service for a further period not exceeding 30 days;
- (l) an appeal or an inquiry shall be held in public;
- (m) notwithstanding clause (l), an appeal or an inquiry, or any portion of it, may be held in private if, in the opinion of the Board, it is in the public interest to do so;
- (n) a person who is likely to be affected by an appeal or an inquiry is entitled
 - (i) subject to clause (p), to appear before the Board,
 - (ii) to make representations to the Board, and
 - (iii) to be represented by a lawyer or an agent;
- (o) a witness, other than one employed for a police service, attending a proceeding before the Board is entitled to the same fees and allowances as a witness summoned to attend at the Provincial Court unless otherwise provided for by a regulation made under this Act;
- (p) notwithstanding clause (n), in conducting an appeal the Board may with the consent of the parties to the proceeding decline to hold a hearing in respect of the appeal and base its decision on
 - (i) the record of the proceeding being appealed from, and
 - (ii) the written submissions of the parties to the appeal.

(1.1) On an application for review under [section 43\(12\)\(b\)\(i\)](#) of a decision of a commission, the Board shall without a hearing review the record of the proceedings under [section 43\(8\), \(9\)](#) or [\(10\)](#) and the reasons for the commission's decision and may

- (a) affirm the decision of the commission, or
- (b) refer the complaint back to the commission or the chief with directions that the

complaint be dealt with in accordance with Part 5.

(1.2) If at any time after a written notice of appeal has been filed with the Board in accordance with [section 48](#) the parties agree to a resolution of the matter, the Board may issue an order respecting the agreement.

(1.3) An order issued under subsection (1.2) concludes the appeal process.

(2) Where the Board concludes an appeal

(a) in the case of an appeal commenced under [section 48](#) from a matter in respect of which a hearing was held, the Board may

- (i) allow the appeal,
- (ii) dismiss the appeal,
- (iii) vary the decision being appealed,
- (iv) direct that the matter, subject to any directions that the Board may give, be

reheard under [section 45](#) or [46](#), as the case may be,

- (v) affirm or vary the punishment imposed, or
- (vi) take any other action that the Board considers proper in the circumstances,

and

(b) in the case of an appeal commenced under [section 48](#) from a matter in respect of which a hearing has not been held, the Board may

- (i) affirm the decision made under [section 47](#),
- (ii) direct that a hearing be conducted under [section 45\(3\)](#) or [46\(4\)](#), as the case may

be,

(iii) direct

(A) the chief of police, in the case of a complaint made in respect of a police officer, or

(B) the commission, in the case of a complaint made in respect of a chief of police, to lay a charge under the regulations governing the discipline or the performance of duty of police officers,

(iv) direct

(A) the chief of police, in the case of a complaint made in respect of a police officer, or

(B) the commission, in the case of a complaint made in respect of the chief of police,

to have the matter investigated again,

(iv.1) take any action required by the [Peace Officer Act](#), or

(v) take any other action that the Board considers proper in the circumstances.

(2.1) A decision of the Board under subsection (2) must be made in writing within 60 days after the Board concludes the appeal. (2.2) Notwithstanding subsection (2.1), the Board may extend the 60-day time period set out in subsection (2.1) on written notice in accordance with subsection (3) to all of the parties whether or not the period has expired.

(3) When the Board conducts an appeal or an inquiry, the following must be informed in writing of the findings of the Board:

- (a) the appellant, in the case of an appeal commenced under [section 48\(1\)](#);
- (b) the complainant and the police officer against whom the complaint is made, in the case of an appeal commenced under [section 48\(2\)](#);
- (c) the commission;
- (d) the Minister.

(4) If the Board is of the opinion that a party or counsel to a party to an appeal or an inquiry has acted in a frivolous or vexatious manner, or where the Board considers an award of costs warranted in the circumstances, the Board may

(a) award costs against a party or counsel to a party in an amount considered appropriate by the Board, and

(b) direct that the costs referred to in clause (a) be paid

(i) to any other party to the appeal or inquiry,

(ii) to the Crown in right of Alberta, or

(iii) partly to any other party to the appeal or inquiry and partly to the Crown in right of Alberta.

RSA 2000 cP-17 s20;2005 c31 s10;2005 c43 s6;2006 cP-3.5 s38;2010 c21 s6

Application

20.1 The amendments to [sections 19](#) and [20](#) made by the *Police Amendment Act, 2005 (No. 2)* apply only to inquiries and appeals that commence after the coming into force of that Act.

2005 c43 s7

Part 3

Police Services and Commissions

Provincial police service

21(1) The Lieutenant Governor in Council may, from time to time, authorize the Minister on behalf of the Government of Alberta to enter into an agreement with the Government of Canada for the Royal Canadian Mounted Police to provide a provincial police service.

(2) When an agreement referred to in subsection (1) is in force, the Royal Canadian Mounted Police are responsible for the policing of all or any part of Alberta as provided for in the agreement.

(3) The Royal Canadian Mounted Police with respect to their duties as the provincial police service shall, subject to the terms of the agreement referred to in subsection (1), be under the general direction of the Minister in matters respecting the operations, policies and functions of the provincial police service other than those matters referred to in [section 2\(2\)](#).

1988 cP-12.01 s21;1994 cG-8.5 s54

Municipal policing by another police service

22(1) The Government of Alberta may enter into an agreement with the council of a municipality referred to in [section 4\(2\)](#) for the provision of policing services specifically for the municipality by the provincial police service subject to the sharing of costs as determined by the Minister.

(2) Notwithstanding subsection (1), where the Minister considers it necessary, the Minister may authorize a municipality that has a population that is greater than 5000 to enter into an agreement with the Government of Alberta for the provision of policing services specifically for the municipality by the provincial police service subject to the sharing of costs as determined by the Minister.

(3) Subject to the prior approval of the Minister, the council of a municipality may enter into an agreement with

(a) the Government of Canada for the employment of the Royal Canadian Mounted Police, or

(b) the council of another municipality,
for the provision of policing services to the municipality.

(4) If a municipality has entered into a policing agreement under subsection (1), (2) or (3), it shall not, without the prior approval of the Minister, withdraw from or alter the type of policing service that it is receiving.

(5) Repealed 2005 c31 s11.

RSA 2000 cP-17 s22;2005 c31 s11

Policing committees

23(1) In this section, "officer in charge" means the officer in charge of the unit of the police service that is providing policing services to a municipality under [section 22](#).

- (2) A council that has entered into an agreement under [section 22](#) may establish a policing committee.
- (3) A council that establishes a policing committee shall, subject to the regulations,
 - (a) prescribe the rules governing the operation of the policing committee, and
 - (b) appoint the members of the policing committee.
- (4) A policing committee shall consist of not fewer than 3 nor more than 12 members.
- (5) If
 - (a) 4 or fewer members are appointed under subsection (3), one of them may be a member of the council or an employee of the municipality, or
 - (b) 5 or more members are appointed under subsection (3), 2 of them may be members of the council or employees of the municipality.
- (6) The council may provide for the payment of reasonable remuneration or of a gratuity or allowance to members of the policing committee.
- (7) The term of office of a person appointed to a policing committee is
 - (a) 3 years, or
 - (b) a term of less than 3 years, but not less than 2 years, as may be fixed by bylaw.
- (8) Notwithstanding subsection (7), a majority of the members appointed to a newly established policing committee shall be appointed for 3 years, and the remaining members shall be appointed for 2 years.
- (9) The members of a policing committee shall, at the first meeting of the policing committee in each year, elect from among their members a chair and one or more vice-chairs.
- (10) A member who is a member of the council or an employee of the municipality is not eligible to be elected as chair or vice-chair of the committee.
- (11) A member of a policing committee is eligible for reappointment if the reappointment does not result in more than 10 consecutive years of service by that member.
- (12)** If a person who is a member of a council is a member of the policing committee, that person's appointment to the policing committee terminates on that person's ceasing to be a member of the council.
- (13) The appointment of a member to the policing committee may not be revoked by the council except for cause.
- (14)** A policing committee shall, with respect to the municipality for which it is established,
 - (a) oversee the administration of the agreement made under [section 22](#),
 - (b) assist in selecting the officer in charge,
 - (c) represent the interests of the council to the officer in charge,
 - (d) in consultation with the officer in charge, develop a yearly plan of priorities and strategies for municipal policing,
 - (e) issue instructions to the officer in charge respecting the implementation and operation of the yearly plan,
 - (f) represent the interests and concerns of the public to the officer in charge,
 - (g) assist the officer in charge in resolving complaints, and
 - (h) appoint a Public Complaint Director.
- (15) All persons appointed to a policing committee shall take the oath set out in Schedule 2.

RSA 2000 cP-17 s23;2005 c31 s12;2010 c21 s7

Regional police services

- 24(1) Subject to the prior approval of the Minister, the councils of 2 or more municipalities may enter into an agreement to be policed by one regional police service.
- (2) The Government of Alberta may be a party to an agreement referred to in subsection (1) if the region to be policed under the agreement includes an area not contained within the limits of a municipality that is subject to the agreement.
- (3) If the council of a municipality has entered into an agreement under this section, it shall not withdraw from the agreement without the prior approval of the Minister.

1988 cP-12.01 s24;1994 cG-8.5 s54

Regional police commissions

- 25(1) The parties to an agreement entered into under [section 24](#) shall, in accordance with the agreement and subject to the regulations, establish a regional police commission.

(2) The appointment of a member to a regional police commission may be revoked only for cause and in accordance with the agreement entered into under [section 24](#).

(3) All persons appointed to a regional police commission shall take the oath set out in Schedule 1. 1988 cP-12.01 s25 **Responsibility of a regional police commission**

26 A regional police commission shall, on behalf of the parties to an agreement entered into under [section 24](#), establish and maintain an adequate and effective regional police service under the general supervision of the regional police commission.

1988 cP-12.01 s26

Municipal police services

27(1) A municipality that has assumed responsibility for establishing a municipal police service under [section 4\(2\)\(d\)](#) or [\(5\)\(c\)](#) shall establish and maintain an adequate and effective municipal police service under the general supervision of a municipal police commission.

(2) A municipality maintaining a municipal police service shall not withdraw from providing that service except with the prior approval of the Minister.

RSA 2000 cP-17 s27;2005 c31 s13

Commissions

28(1) A council, other than one that is party to an agreement entered into under [section 22](#) or [24](#), that

(a) has a municipal police service, or

(b) has the approval of the Minister to establish a municipal police service,

shall establish a police commission.

(2) A council that has established a commission shall, subject to the regulations,

(a) prescribe the rules governing the operations of the commission, and

(b) appoint the members of the commission.

(3) A commission shall consist of not fewer than 3 nor more than 12 members.

(4) If

(a) 4 or fewer members are appointed under subsection (2), one of them may be a member of the council or an employee of the municipality, or

(b) 5 or more members are appointed under subsection (2), 2 of them may be members of the council or employees of the municipality.

(5) The council may provide for the payment of reasonable remuneration or of a gratuity or allowance to members of the commission.

(6) The term of office of a person appointed to a commission is

(a) 3 years, or

(b) a term of less than 3 years, but not less than 2 years, as may be fixed by bylaw.

(7) Notwithstanding subsection (6), a majority of the members appointed to a newly established commission shall be appointed for 3 years, and the remaining members shall be appointed for 2 years.

(8) A member of a commission is eligible for reappointment if the reappointment does not result in more than 10 consecutive years of service by that member.

(9) If a person who is a member of a council is a member of the commission, that person's appointment to the commission terminates on that person's ceasing to be a member of the council.

(10) The members of the commission shall, at the first meeting of the commission in each year, elect from among their members a chair and one or more vice-chairs.

(11) A member who is a member of the council or an employee of the municipality is not eligible to be elected as chair or vice-chair of the commission.

(12) The appointment of a member to a commission may not be revoked by the council except for cause.

(13) All persons appointed to a commission shall take the oath set out in Schedule 1.

RSA 2000 cP-17 s28;2005 c31 s14;2010 c21 s8

Public Complaint Director

28.1(1) Each commission and policing committee shall designate a person as a Public Complaint Director.

(2) The Public Complaint Director may be

(a) a member of the commission or policing committee other than a member of the council,

- (b) an employee of the commission or policing committee,
- (c) an employee of the municipality,
- (d) another person, other than a member of the council, who in the opinion of the commission or policing committee is qualified to serve in that capacity, or
- (e) a former police officer if the position of Public Complaint Director is not in the same municipality where the former police officer was employed.

(2.1) The Public Complaint Director shall not be a currently serving police officer.

(3) The Public Complaint Director shall

- (a) receive complaints against police officers from the public and refer them to the chief of police under [section 43\(1\)](#),
- (b) act as a liaison between the commission, policing committee, the chief of police, the officer in charge of a police service and the complainant as applicable,
- (c) perform the duties assigned by the commission or policing committee in regard to complaints,
- (d) review the investigation conducted in respect of a complaint during the course of the investigation and at the conclusion of the investigation,
- (e) offer an alternative dispute resolution process where, in the Public Complaint Director's opinion, that may be an appropriate manner in which to resolve the complaint,
- (f) if an alternative dispute resolution process is offered under clause (e), review the manner in which the alternative dispute resolution process is delivered, and
- (g) provide reports to the commission or policing committee, as required by the commission or policing committee.

2005 c31 s15;2010 c21 s9

Regional Public Complaint Director

28.2(1) Notwithstanding [section 28.1](#), the policing committees of 2 or more municipalities may, by unanimous agreement of the municipalities, designate a person as a Regional Public Complaint Director for those policing committees.

(2) A person who is eligible to be a Public Complaint Director under section 28.1(2) or (2.1) is also eligible to be a Regional Public Complaint Director but may not serve as both a Public Complaint Director and Regional Public Complaint Director concurrently.

(3) A Regional Public Complaint Director has the same powers as a Public Complaint Director has under [section 28.1\(3\)](#).

2010 c21 s10

Provincial Public Complaint Director

28.3(1) The Minister may designate an employee of the Government under the Minister's administration as a Provincial Public Complaint Director.

(2) The Provincial Public Complaint Director has the following functions:

- (a) receive complaints from the public;
- (b) refer complaints to the chief of police, the officer in charge of a police service, the Public Complaint Director or the Regional Public Complaint Director, as appropriate;
- (c) if no Public Complaint Director or Regional Public Complaint Director has been designated for the municipality in which a complaint arose, perform the functions of a Public Complaint Director or Regional Public Complaint Director in respect of the complaint;
- (d) provide education and training resources to the Public Complaint Director and Regional Public Complaint Director;
- (e) gather information and statistical data respecting the types of complaints made, the number of complaints made and any other information respecting complaints as required;
- (f) present reports to the Minister as required.

2010 c21 s10

Police budgets and plans

29(1) Every commission, in consultation with the chief of police, shall cause to be prepared

- (a) estimates of all money required for the fiscal year to

(i) pay the remuneration of the police officers and other persons employed for the police service, and

(ii) provide and pay for the maintenance of accommodation, equipment and operating costs of the police service, and

(b) a yearly plan specifying the level of police service and programs to be provided in respect of the municipality, and shall submit those estimates and plans to the council.

(2) In developing a budget, the council may obtain any information from the commission that may be necessary to enable it to assess the efficiency and the financing requirements of the police service.

(3) The council is responsible for establishing the total budget for the purposes of the police service, and the commission is responsible for allocating the funds provided for under the budget.

1988 cP-12.01 s29

Ministerial intervention

30(1) When, in the opinion of the Minister, a municipality that is responsible for providing and maintaining policing services is not

(a) providing or maintaining adequate and effective policing services, or

(b) complying with this Act or the regulations,

the Minister may notify the council of that fact and request the council to take the action the Minister considers necessary to correct the situation.

(2) If the council does not comply with a request made under subsection (1), the Minister may

(a) appoint police officers for that municipality and prescribe their remuneration,

(b) request the provincial police service to provide policing services to the municipality on an interim basis, or

(c) do any other thing necessary to create an adequate and effective police service within the municipality.

(3) Where

(a) the Minister appoints police officers for a municipality under subsection (2)(a), and

(b) the municipality has a police service,

the Minister may prescribe that the remuneration of the police officers appointed under subsection (2)(a) be in accordance with any collective agreement that has been entered into in respect of that police service.

(4) The remuneration of police officers appointed by the Minister under subsection (2) and any other costs incurred under subsection (2) shall be paid by the municipality.

(5) If a municipality is in default of payment under subsection (4), the amount shall be paid by the Government and may be recovered by the Government by deducting the amount from any grant payable to the municipality or by an action in debt.

1988 cP-12.01 s30;1994 cG-8.5 s54

Commission's responsibility

31(1) Where a commission has been established, the commission shall, in the carrying out of its responsibilities, oversee the police service and for that purpose shall do the following:

(a) allocate the funds that are provided by the council;

(b) establish policies providing for efficient and effective policing;

(c) issue instructions, as necessary, to the chief of police in respect of the policies referred to in clause (b);

(d) ensure that sufficient persons are employed for the police service for the purposes of carrying out the functions of the police service.

(2) Every police officer

(a) is, after the establishment of a commission, subject to the jurisdiction of the commission, and

(b) shall obey the directions of the commission.

(3) Notwithstanding subsections (1) and (2), a commission shall not issue an instruction to a police officer other than to the chief of police.

- (4) Where an employee other than a police officer is employed for the police service, the commission may release the employee from the police service subject to the provisions of any collective agreement that applies to that employee.
- (5) Where a commission has been established, the council shall not, except as permitted under this Act or the [Police Officers Collective Bargaining Act](#),
- (a) perform any function or exercise any power in respect of the police service that the commission is empowered to perform or exercise, or
 - (b) issue any instructions to a police officer.
- (6) The council is,
- (a) for the purposes of the [Police Officers Collective Bargaining Act](#), the employer of police officers, and
 - (b) for the purposes of the [Labour Relations Code](#), the employer of persons other than police officers, who are employed for the police service.
- (7) The council is liable for any legal liability that is incurred by the commission.

1988 cP-12.01 s31

Commission inquiry

- 32(1) A commission may conduct an inquiry into any matter respecting the police service or the actions of any police officer or other person employed for the police service.
- (2) A commission may designate from among its members a committee of one or more persons to conduct an inquiry under this section.
- (3) Subject to subsection (5)(a), where more than one person is to conduct an inquiry under this section, the commission shall designate one of its members to act as the chair of the inquiry.
- (4) Where a commission intends to conduct an inquiry under this section, it shall before commencing the inquiry advise the Minister of its intention to conduct the inquiry.
- (5) The Lieutenant Governor in Council may by order appoint a person
- (a) to act as the chair of the inquiry, or
 - (b) to conduct the inquiry on behalf of the commission.
- (6) Where the Lieutenant Governor in Council makes an order under subsection (5)(b), the person so appointed shall, in the place of the commission or any committee of the commission, conduct the inquiry under this section on behalf of the commission.
- (7) The persons conducting an inquiry under this section have, for the purpose of conducting that inquiry, all the powers of a commissioner under the [Public Inquiries Act](#).
- (8) Where, from the evidence before the inquiry, the chair of the inquiry is of the opinion that there is sufficient evidence that the actions of a specific police officer constitute or may constitute a contravention of the regulations governing the discipline or the performance of duty of police officers, the chair shall report that matter to the commission.
- (9) On receiving a report under subsection (8), the commission shall proceed to have the actions of the specific police officer dealt with under Part 5.
- (10) Notwithstanding that a report is made under subsection (8), the persons conducting the inquiry may proceed with the inquiry but shall not make any recommendations concerning the disposition under Part 5 of the matter in respect of which the report was made.
- (11) When an inquiry is completed, the chair of the inquiry shall provide a written report of the findings of the inquiry and any recommendations
- (a) to the commission, and
 - (b) to the Minister.
- (12) The Board shall not commence an inquiry under [section 17\(1\)\(a\)](#) with respect to a matter that is the subject of an inquiry being conducted under this section until the inquiry under this section is completed.
- (13) Where the Board is conducting an inquiry under [section 17\(1\)\(a\)](#), a commission shall not commence an inquiry under this section with respect to a matter that is the subject of the Board's inquiry until the Board's inquiry is completed.
- (14) The expenses of an inquiry conducted under this section must, unless otherwise provided for by an order of the Lieutenant Governor in Council, be paid for by the council.

1988 cP-12.01 s32;1994 cG-8.5 s54

Police officers serving outside their municipality

33(1) The Minister may at any time with the consent of the chair of a commission of a police service that is established under [section 24](#) or [27](#) direct a police officer of that police service to serve in any part of Alberta that is outside the boundaries of the area for which the commission is responsible.

(2) The commission shall be reimbursed by the Minister for the remuneration and expenses of any police officer providing services pursuant to a direction made under subsection (1).

1988 cP-12.01 s33;1994 cG-8.5 s54

Part 4

Police Officers

Qualifications re police officers

34 To be eligible to be appointed as a police officer, other than a chief of police, a person must be a Canadian citizen or lawfully admitted to Canada for permanent residence and meet the other qualifications specified by the regulations and the commission.

RSA 2000 cP-17 s34;2006 cP-3.5 s38

Qualifications re chiefs of police

35 To be eligible to be appointed as a chief of police of a police service established under [section 24](#) or [27](#), a person must be a Canadian citizen and meet the other qualifications specified by the regulations and the commission.

1988 cP-12.01 s35

Appointments of chiefs of police and police officers

36(1) The commission shall, for a police service,

- (a) appoint the chief of police, subject to subsection (1.1), and
- (b) appoint police officers.

(1.1) The initial appointment of any individual as chief of police must be ratified by council.

(2) Notwithstanding subsection (1), the commission may delegate the power to appoint police officers other than a chief of police to the chief of police.

(3) Each police officer appointed under this section shall, before commencing his or her duties, take the oath set out in Schedule 3.

(4) Subject to the regulations, the commission may establish a probationary period of service for a person who is

- (a) appointed to the police service as a police officer, or
- (b) appointed to or promoted to a position or a higher rank within the police service. RSA 2000 cP-17 s36;2005 31 s16

Dismissals and lay-offs of police officers

37(1) Police officers may, subject to Part 5, be dismissed by the chief of police for disciplinary reasons in accordance with the regulations.

(2) Notwithstanding the provisions of a collective agreement, the commission may terminate the services of a police officer for reasons other than disciplinary reasons.

(3) Where a collective agreement provides a process for terminating the services of a police officer for reasons other than disciplinary reasons, that process shall be used for terminating the services of a police officer under subsection (2).

(4) [Sections 45 to 48](#) do not apply in respect of a police officer released from the police service under subsection (2).

1988 cP-12.01 s37

Authority, duties and jurisdiction of police officers

38(1) Every police officer is a peace officer and has the authority, responsibility and duty

- (a) to perform all duties that are necessary
 - (i) to carry out the police officer's functions as a peace officer,
 - (ii) to encourage and assist the community in preventing crime,
 - (iii) to encourage and foster a co-operative relationship between the police service and the members of the community, and
- (iv) to apprehend persons who may lawfully be taken into custody,

and

(b) to execute all warrants and perform all related duties and services.

(2) A police officer has jurisdiction throughout Alberta.

(3) Notwithstanding subsection (2), where a commission is established in respect of a police service, the commission may restrict the territorial jurisdiction of any police officer of that police service.

(4) Where the territorial jurisdiction of a police officer is restricted under subsection (3), that police officer may, notwithstanding that restriction, carry out the police officer's functions and exercise the police officer's powers beyond that jurisdiction if the police officer is in immediate pursuit of a person who the police officer has reasonable and probable grounds to believe has committed an offence against any law that the police officer is empowered to enforce.

1988 cP-12.01 s38

Liability re municipal police services

39(1) For the purposes of this section, "employee" means any civilian employee or any peace officer appointed under the [Peace Officer Act](#) employed for a police service established under [section 24](#) or [27](#).

(2) The chief of police is liable in respect of a tort committed by a police officer or other employee as a master is liable for a tort committed by the master's servant in the course of the servant's employment, if

(a) the police officer or employee was under the direction and control of the chief at the time that the tort was committed, and

(b) the tort was committed in the performance or purported performance of the duties of the police officer or employee.

(3) The chief of police shall be treated for all purposes as a joint tort-feasor in respect of a tort referred to in subsection (2).

(4) The chief of police is liable for a tort committed by the chief in the performance or purported performance of the duties of the chief.

(5) The council, and not the chief of police, shall pay the following in respect of any action brought against the chief under this section:

(a) any damages and costs awarded against the chief;

(b) any costs incurred by the chief in respect of the action insofar as those costs are not recovered by the chief in the action;

(c) any sum payable under a settlement that is entered into by the council in respect of the action.

(6) Where damages and costs, or either of them, are awarded against a chief of police of a regional police service, each party to the agreement under which the regional police service is established is jointly and severally liable for any damages, costs or settlement referred to in subsection (5).

(7) For the purposes of this section, if the office of the chief of police is vacant, the police officer responsible for the direction and control of the police service shall be considered to be the chief of police.

(8) Where a civil legal action is brought against a police officer arising out of the performance of the police officer's duties, the municipality may in respect of that action indemnify the police officer, in whole or in part, for the following:

(a) any damages and costs, or either of them, awarded against the police officer;

(b) any costs incurred and not recovered by the police officer;

(c) any sum payable under a settlement.

RSA 2000 cP-17 s39;2006 cP-3.5 s38

Liability re other persons

40(1) For the purposes of this section, "employee" means any civilian employee or any peace officer appointed under the [Peace Officer Act](#) employed by a municipality to provide services for a police service that is providing policing services to the municipality under an agreement referred to in [section 22](#). (2) A municipality is liable in respect of a tort committed by an employee as a master is liable for a tort committed by the master's servant in the course of the servant's employment if the tort was committed in the performance or purported performance of the duties of the employee.

RSA 2000 cP-17 s40;2006 cP-3.5 s38

Duties of chiefs of police

41(1) The chief of police of a police service established under [section 24](#) or [27](#) is responsible for the following:

- (a) the preservation and maintenance of the public peace and the prevention of crime within the municipality;
- (b) the maintenance of discipline and the performance of duty within the police service, subject to the regulations governing the discipline and the performance of duty of police officers;
- (c) the day to day administration of the police service;
- (d) the application of professional police procedures;
- (e) the enforcement of policies made by the commission with respect to the police service.

(2) For the purposes of subsection (1), the chief of police shall issue orders and make directives as the chief of police considers necessary.

(3) The chief of police is accountable to the commission for the following:

- (a) the operation of the police service;
- (b) the manner in which the chief of police carries out the responsibilities under subsection (1);
- (c) the administration of the finances and operations of the police service in keeping with the yearly plan or any amendments to it that the commission may make;
- (d) the reporting to the commission of any information concerning the activities of the police service that the commission may request, other than information concerning individual investigations or intelligence files;
- (e) the reporting to the commission of any complaint made against the police service or its members, the progress of any investigation or informal resolution process regarding the complaint, the reasons for any delays and the manner in which the complaint is resolved.

(4) A commission shall not issue an instruction under [section 31\(1\)\(c\)](#) that is inconsistent with the duties and responsibilities conferred on the chief of police under this section.

RSA 2000 cP-17 s41;2005 c31 s17

42 Repealed 2006 cP-3.5 s38.

Part 5

Complaints and Discipline

Complaints

42.1(1) Subject to subsection (2), a person may make a complaint respecting the conduct of a police officer.

(2) The following persons may make a complaint referred to in subsection (1):

- (a) a person to whom the conduct complained of was directed;
- (b) a person who was present at the time the incident occurred and witnessed the conduct complained of;
- (c) an agent of a person referred to in clause (a);
- (d) a person who
 - (i) was in a personal relationship with the person referred to in clause (a) at the time the incident occurred, and
 - (ii) suffered a loss, damage, distress, danger or inconvenience as a result of the conduct complained of.

(3) Any person may make a complaint in respect of a policy or service of a police service.

(4) A complaint must be made in writing and must include the following information:

- (a) the full name of the complainant;
- (b) the complainant's contact information, including the complainant's
 - (i) address,
 - (ii) telephone number,
 - (iii) cellular telephone number, if **available, and**

- (iv) electronic mail address, if available;
 - (c) if the complaint is made by an agent of the complainant, the agent's full name and contact information;
 - (d) if the complaint is in respect of the conduct of a police officer,
 - (i) the date of the alleged conduct, if known,
 - (ii) the identification of the police officer, if known, and
 - (iii) a description of the incident that gave rise to the alleged conduct;
 - (e) if the complaint is in respect of a policy or service of a police service, sufficient information to identify the policy or service complained of;
 - (f) any other information requested by the chief of police, the officer in charge of a police service, the Public Complaint Director, the Regional Public Complaint Director or the Provincial Public Complaint Director;
 - (g) any other information prescribed in the regulations.
- (5) A complaint may be transmitted by electronic mail.
- (6) A complaint is considered to be made on the date it is received by the chief of police, the officer in charge of a police service, the Public Complaint Director, the Regional Public Complaint Director or the Provincial Public Complaint Director, as the case may be.

2010 c21 s11

Bringing of complaints

- 43(1) All complaints with respect to a police service or a police officer, other than the chief of police, shall be referred to the chief.
- (2) All complaints with respect to the chief of police must be referred to the chair of the commission.
- (3) Repealed 2010 c21 s12.
- (4) On receipt of a complaint under subsection (1), the chief of police shall determine whether the complaint or a portion of the complaint is a complaint as to
- (a) the policies of or the services provided by the police service, or
 - (b) the actions of a police officer.
- (5) A complaint or that portion of the complaint that is a complaint
- (a) as to the policies of or services provided by the police service shall be disposed of in accordance with [section 44](#), and
 - (b) as to the actions of a police officer shall be disposed of in accordance with [sections 45 to 48](#).
- (6) Where the chief of police initiates a complaint with respect to a police officer, the chief shall deal with it in the same manner as if it were made by another person and referred to the chief under subsection (1).
- (7) If, at any time before or during an investigation into a complaint under subsection (1), it appears to the chief of police that the complaint is clearly frivolous, vexatious or made in bad faith, the chief may recommend in writing to the commission that the complaint be dismissed.
- (8) On consideration of the recommendation of the chief of police under subsection (7), and after reviewing the written complaint and making any inquiries the commission considers necessary, the commission may dismiss the complaint or direct the chief to deal with the complaint in accordance with this Part.
- (9) If, at any time before or during an investigation into a complaint under subsection (2) or [section 46\(1\)](#), it appears to the commission that the complaint is clearly frivolous, vexatious or made in bad faith, the commission may dismiss the complaint.
- (9.1)** If a complainant under subsection (2) or [section 46\(1\)](#) refuses or fails to participate in an investigation, the commission may dismiss the complaint.
- (10) Where a complaint is referred to the commission under [section 44\(1\)](#) and it appears to the commission at any time that the complaint is clearly frivolous, vexatious or made in bad faith, the commission may dismiss the complaint.
- (10.1) If a complainant under [section 44\(1\)](#) refuses or fails to participate in an investigation, the commission may dismiss the complaint.

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

- (a) the conduct complained of occurred, or
- (b) the complainant first knew or ought to have known that the conduct complained of had occurred, whichever occurs later.

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

- (a) the decision and the reasons for the decision, and
- (b) the right of the complainant, within 30 days of receiving the notice, to request
 - (i) the Board, with regard to a complaint or portion of a complaint as to the actions of a police officer or a chief of police, or
 - (ii) the commission, with regard to a complaint or portion of a complaint as to the policies of or services provided by a police service, to review the decision.

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

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

RSA 2000 cP-17 s43;2005 c31 s18;2010 c21 s12

Informal resolution of complaint

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

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

2005 c31 s19; 2010 c21 s13

Complaints re policies and services

44(1) Where a complaint is a complaint as to the policies of or services provided by a police service, the chief of police shall review the matter, and

- (a) take whatever action the chief considers appropriate, if any, or
- (b) refer the matter to the commission for it to take whatever action it considers appropriate.

(2) On the disposition of a matter by the chief of police or the commission under subsection (1), the chief shall advise the complainant in writing

- (a) as to the disposition of the matter in respect of which the complaint was made, and
- (b) of the complainant's right to appeal the matter to the commission if the complainant is not satisfied with the disposition of the matter.

(3) Where a complaint is disposed of under subsection (1), the complainant may, within 30 days from the day the complainant was advised of the disposition of the complaint, appeal the disposition of the complaint to the commission.

(4) Where the disposition of a complaint is appealed to the commission under subsection (3), the commission shall

- (a) review the matter, and
- (b) take whatever action it considers appropriate, if any.

(5) Notwithstanding subsection (4), a commission may appoint a committee consisting of not fewer than 3 members of that commission to conduct appeals made to the commission under subsection (3).

- (6) Where a committee of the commission finishes conducting an appeal under this section, it shall make a recommendation to the commission with respect to the disposition of the appeal.
- (7) On reviewing the recommendation made under subsection (6), the commission shall take whatever action it considers appropriate, if any.
- (8) The commission or, where a committee of the commission is conducting an appeal, the committee, may conduct a hearing into the matter being appealed.
- (9) On disposing of an appeal, the commission shall advise the complainant in writing as to the disposition of the appeal.
- (10) The chief of police shall make a report in writing to the commission of all complaints made as to the policies of or services provided by the police service and the disposition by the chief of the complaints.
- (11) The chief of police, in the case of a complaint under this section, must advise the complainant in writing at least once every 45 days as to the status of the complaint.
- (12) A copy of the document sent to the complainant under subsection (11) must be provided to the commission.

RSA 2000 cP-17 s44;2005 c31 s20

Complaints re police officers

45(0.1) For the purposes of this section and [sections 46](#) and [46.1](#), "police service" includes the Royal Canadian Mounted Police and a regional, provincial or municipal police service established under an enactment of another province or territory.

- (1) Where a complaint is a complaint as to the actions of a police officer other than the chief of police, subject to [sections 43](#) and [43.1](#), the chief shall cause the complaint to be investigated.
- (2) If, after causing the complaint to be investigated, the chief of police is of the opinion that the actions of a police officer may constitute
- (a) an offence under an Act of the Parliament of Canada or the Legislature of Alberta, the chief shall refer the matter to the Minister of Justice and Solicitor General, or
 - (b) a contravention of the regulations governing the discipline or the performance of duty of police officers, the chief shall cause the matter to be proceeded with under subsection (3).
- (3) Where the chief of police is of the opinion that the actions of a police officer constitute a contravention of the regulations governing the discipline or the performance of duty of police officers, the chief of police, or a person designated by the chief of police who, pursuant to the regulations, is eligible to serve as the presiding officer at a hearing, shall conduct a hearing into the matter as it relates to that contravention.
- (4) Notwithstanding subsection (3), if the chief of police is of the opinion that the alleged contravention of the regulations governing the discipline or the performance of duty of police officers is not of a serious nature, the chief may, subject to the regulations, dispose of the matter without conducting a hearing.
- (4.1) Where the chief of police disposes of a matter under subsection (4), the decision of the chief of police is final.
- (5) If a police officer is the subject of an investigation or hearing, the chief of police or the commission may request the chair of the commission to make arrangements for another police service to provide the necessary police officers to conduct the investigation, present the case or preside at the hearing, or perform any combination of those functions, as the case may be, if in the opinion of the chief of police or of the commission,
- (a) there is not a police officer in the chief's police service who has sufficient rank and experience to carry out the functions, or
 - (b) it would be in the public interest to have one or more police officers of another police service carry out the functions.
- (6) Where a police officer of another police service carries out any functions pursuant to arrangements made by the chair of the commission under subsection (5), that police officer has, for the purposes of carrying out those functions under subsections (1) to (4), the same powers as a chief of police.
- (7) If a complaint is being investigated under this section, the chief of police must advise the complainant in writing at least once every 45 days as to the progress of the investigation.
- (8) A copy of the document sent to the complainant under subsection (7) must be provided to the commission.

RSA 2000 cP-17 s45;2005 c31 s21;2010 c21 s14;2013 c10 s34;2015 c12 s4

Complaints re chiefs of police

46(1) Where the chair of a commission receives a complaint as to the actions of the chief of police, subject to [sections 43](#) and [43.1](#), the chair shall refer the complaint to the commission.

(2) If, after reviewing the complaint, the commission is of the opinion that the actions of the chief of police may constitute

(a) an offence under an Act of the Parliament of Canada or the Legislature of Alberta, or

(b) a contravention of the regulations governing the discipline or the performance of duty of police officers,

the chair of the commission shall request the Minister to request or direct another police service to investigate the complaint.

(2.1) If the Minister receives a request from the chair of the commission under subsection (2), the Minister may request or direct that another police service investigate the complaint.

(2.2) Where a chief of police or a police officer of another police service carries out an investigation pursuant to a request or direction made under subsection (2.1), that chief or police officer has, for the purposes of carrying out the investigation, the same powers as a chief of police.

(3) If the chief of police or the police officer in charge of the police service requested or directed under subsection (2.1) to carry out the investigation is of the opinion that the actions of the chief that are the subject of the investigation constitute

(a) an offence under an Act of the Parliament of Canada or the Legislature of Alberta, that chief or police officer shall

(i) refer the matter to the Minister of Justice and Solicitor General, and

(ii) advise the commission of that chief's or police officer's findings, unless the Minister of Justice and Solicitor General otherwise directs,

or

(b) a contravention of the regulations governing the discipline or the performance of duty of police officers, that chief or police officer shall refer the matter to the commission.

(4) Where a matter is referred to the commission under subsection (3)(b), the commission shall conduct a hearing into the matter as it relates to the contravention of the regulations governing the discipline or the performance of duty of police officers.

(5) Notwithstanding subsection (4), if the commission is of the opinion that the contravention of the regulations governing the discipline or the performance of duty of police officers is not of a serious nature, it may, subject to the regulations, dispose of the matter without conducting a hearing.

(6) The commission may appoint a lawyer to present to the commission the matter that is the subject of the complaint.

(7) If a complaint is being investigated under this section, the chair of the commission must advise the complainant in writing at least once every 45 days as to the progress of the investigation.

(8) A copy of the document sent to the complainant under subsection (7) must be provided to the Minister.

RSA 2000 cP-17 s46;2005 c31 s22;2013 c10 s34

Serious incidents and complaints

46.1(1) The chief of police shall as soon as practicable notify the commission and the Minister where

(a) an incident occurs involving serious injury to or the death of any person that may have resulted from the actions of a police officer, or

(b) a complaint is made alleging that

(i) serious injury to or the death of any person may have resulted from the actions of a police officer, or

(ii) there is any matter of a serious or sensitive nature related to the actions of a police officer.

(2) The Minister, when notified under subsection (1) of an incident or complaint or on the Minister's own initiative where the Minister becomes aware of an incident or complaint described in subsection (1), may do any one or more of the following:

- (a) request or direct that another police service provide a police officer to assist and advise the police service investigating the incident or complaint;
- (b) request or direct another police service to conduct an investigation into the incident or complaint, which may include taking over an ongoing investigation at any stage;
- (c) appoint one or more members of the public as overseers to observe, monitor or review an investigation to ensure the integrity of the process of the investigation;
- (d) in accordance with [section 46.2](#), direct the head of an integrated investigative unit to conduct an investigation into the incident or complaint, which may include taking over an ongoing investigation at any stage.

(3) A chief of police or police officer acting under subsection (2)(a), (b) or (d) or a person appointed under subsection (2)(c) shall report as required to the Minister.

(4) If the chief of police or police officer in charge of the police service conducting an investigation under subsection (2)(b) or (d) is of the opinion that the actions of the police officer that are the subject of the investigation constitute

(a) an offence under an Act of the Parliament of Canada or the Legislature of Alberta, the chief or police officer shall

- (i) refer the matter to the Minister of Justice and Solicitor General, and
- (ii) advise the commission and the chief of police of the police service under investigation of the chief's or police officer's findings, unless the Minister of Justice and Solicitor General otherwise directs,

(b) a contravention of the regulations governing the discipline or performance of duty of police officers, the chief or police officer shall refer the matter to the chief of the police service under investigation where it concerns the actions of a police officer, or to the commission where it concerns the actions of the chief of police, to be dealt with in accordance with this Part,

(c) a matter of the policies of or services provided by the police service under investigation, the chief or police officer shall refer the matter to the commission.

(5) The Minister may authorize and provide for the payment of remuneration and expenses to a person appointed under subsection (2)(c).

(6) A chief of police or police officer of another police service who is assisting with an investigation under subsection (2)(a) or conducting an investigation under subsection (2)(b) or (d) has, for the purposes of assisting with or conducting that investigation, the same powers and duties as a chief of police.

(7) A chief of police or police officer of another police service referred to in subsection (6) must advise a complainant, if any, in writing at least once every 45 days as to the status of the complaint.

(8) A copy of the document sent to a complainant under subsection (7) must be provided to the commission.

(9) Where a chief of police or police officer of another police service carries out any functions pursuant to a request or direction made under subsection (2), that police officer may also be requested to present the case or preside at the hearing of the complaint, and if so requested, that police officer has, for the purpose of carrying out those additional functions, the same powers as a chief of police.

(10) The Minister may delegate in writing the Minister's powers, functions and responsibilities under this section to the Director of Law Enforcement.

(11) The costs and expenses that result from

(a) a request or direction made by the Minister under subsection (2)(a), (b) or (d) shall be borne by the police service that is the subject of the investigation, unless otherwise directed by the Minister, and

(b) an appointment by the Minister under subsection (2)(c) shall be borne by the Government of Alberta.

2005 c31 s23;2005 c43 s8;2007 c6 s2;2013 c10 s34

Integrated investigative unit

46.2(1) The Minister may by order establish an integrated investigative unit and authorize it to act as another police service for the purposes of conducting an investigation under [section 46.1](#).

(2) The Minister may

- (a) designate a person as head of the integrated investigative unit, and

(b) appoint peace officers appointed under the [Peace Officer Act](#) as investigators under the authority of the head of the integrated investigative unit.

(3) Subject to the terms of the Minister's authorization under subsection (1), the head of the integrated investigative unit is deemed to be a chief of police, and any person acting as an investigator is deemed to be a police officer, for the purposes of [section 46.1\(3\), \(4\), \(6\), \(7\) and \(8\)](#).

(4) Where the head of the integrated investigative unit is conducting an investigation under [section 46.1\(2\)\(d\)](#) and becomes aware of a further incident that warrants investigating, the head of the integrated investigative unit may, on his or her own initiative, conduct an investigation into that further incident, which may include taking over an ongoing investigation at any stage.

(5) Where the head of the integrated investigative unit intends to conduct an investigation into a further incident in accordance with subsection (4), the head of the integrated investigative unit shall notify the Director as soon as possible.

2007 c6 ss3,6;2010 c21 s15

Conduct of hearing

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

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

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

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

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

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

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

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

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

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

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

(f) repealed 2005 c43 s9;

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

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

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

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

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

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

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

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

(2) Notwithstanding that the actions of a police officer have been referred to the Minister of Justice and Solicitor General under [section 45\(2\)\(a\)](#) or [46\(3\)\(a\)](#), if the person who referred the matter to the Minister

of Justice and Solicitor General is of the opinion that those actions also constitute a contravention of the regulations governing the discipline or the performance of duty of police officers, the matter as it relates to that contravention shall be proceeded with under [section 45\(3\)](#) or [46\(4\)](#), as the case may be, unless the Minister of Justice and Solicitor General otherwise directs.

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

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

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

(b) the commission, in the case of a complaint under [section 46](#), may dismiss the matter or, subject to the regulations, take any action against the person in respect of whom the complaint is made that

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

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

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

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

(b) the commission, in the case of a complaint under [section 46](#), shall in

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

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

(d) where a hearing is not held, of the disposition of the complaint and the grounds on which the disposition was made, and of the right of appeal provided for under this Act.

RSA 2000 cP-17 s47;2005 c43 s9;2010 c21 s16; 2013 c10 s34

Application

47.1 The amendments to [section 47](#) made by the *Police Amendment Act, 2005 (No. 2)* apply only to hearings that commence after the coming into force of that Act.

2005 c43 s10

Appeals to the Board

48(1) Where a chief of police or another police officer in respect of whom a complaint is made feels aggrieved by the findings or any action taken against the chief or police officer under [section 47\(4\)](#), the chief or police officer may, within 30 days from the day the chief or police officer was advised under [section 47\(5\)](#) of the findings and any action taken, appeal the matter to the Board by filing with the secretary to the Board a written notice of appeal setting out the grounds on which the appeal is based.

(2) If a complaint has been made, the complainant may, within 30 days from the day the complainant was advised under [section 47\(5\)](#) of the determination of the complaint, appeal the matter to the Board by filing with the secretary to the Board a written notice of appeal setting out the grounds on which the appeal is based.

RSA 2000 cP-17 s48;2010 c21 s17

Complaints re RCMP

49 Notwithstanding [sections 43](#) to [48](#) and subject to any agreement entered into between the Government of Canada and the Government of Alberta or a municipality, as the case may be, any complaints in Alberta with respect to members of the Royal Canadian Mounted Police shall be resolved in accordance with the laws governing complaints and discipline within the Royal Canadian Mounted Police.

1988 cP-12.01 s49;1995 c23 s17

50 Repealed 2006 cP-3.5 s38.

Use of evidence

51 Where a police officer or peace officer appointed under the [Peace Officer Act](#) gives evidence during

- (a) a hearing under this Act, or
- (b) an appeal under this Act arising out of a hearing referred to in clause (a), that evidence, or an explanatory report made to an investigator on a voluntary or involuntary basis by a police officer in respect of whom an investigation is being carried out, if it tends to incriminate him or her, subject him or her to punishment or establish his or her liability, shall not be used or received against the police officer or peace officer appointed under the [Peace Officer Act](#) in any civil proceeding or in any proceeding under any other Act, except in a prosecution for or proceedings in respect of perjury or the giving of contradictory evidence.

RSA2000 cP-17 s51;2005 c31 s24;2006 cP-3.5 s38;2010 c21 s18

Report of complaints

52 A police service shall, in respect of a complaint made under [section 44](#), [45](#) or [46.1](#), and the commission shall, in respect of a complaint made under [section 46](#), at the end of the month in which the complaint is made or within a longer period of time as prescribed by the Director of Law Enforcement, advise the Director of the complaint and, after the disposition of the complaint, advise the Director as to how the complaint was disposed of and provide any other information respecting the investigation requested by the Director in a manner acceptable to and within a time period specified by the Director.

RSA2000 cP-17 s52;2005 c31 s25;2006 cP-3.5 s38; 2010 c21 s19;2015 c12 s4

Validation of hearings under Part 5

52.1 Despite any decision of a court to the contrary made before or after the coming into force of this section,

- (a) a hearing conducted under this Part,
- (b) a decision made pursuant to a hearing conducted under this Part, and
- (c) everything done in respect of a hearing conducted under this Part

by a former police officer or a former member of the judiciary, including a former judge of the Court of Queen's Bench or the Provincial Court, on or after May 1, 2011 and before the coming into force of this section, is not invalid by reason of the presiding officer conducting the hearing being a former police officer or a former member of the judiciary, including a former judge of the Court of Queen's Bench or the Provincial Court.

2015 c12 s4

Part 6

General

Lock-ups

53(1) A municipality that

- (a) has established a police service under [section 27](#), or
- (b) receives policing services under an agreement made pursuant to [section 22](#).

shall make provision for an adequate lock-up facility.

(2) If a municipality maintains a lock-up facility under subsection (1), that lock-up facility shall be under the direction and control of the police service unless the Minister by order directs otherwise.

(3) If a peace officer appointed under the [Peace Officer Act](#) or a person employed by a municipality to enforce bylaws requires the use of a lock-up facility, the peace officer appointed under the [Peace Officer Act](#) or person shall use the lock-up facility operated by a police service or in accordance with an order of the Minister under subsection (2).

(4) Where a regional police service is established, the agreement entered into under [section 24](#) shall include provision for a lock-up facility to meet the needs of each of the participating municipalities.

RSA2000 cP-17 s53;2006 cP-3.5 s38;2007 c6 s4

Impersonating a police officer

54(1) No person shall, unless the person is appointed as a police officer under this Act or pursuant to an Act of the Parliament of Canada,

- (a) hold out that the person is a police officer, or
- (b) display the word "police" either alone, as part of a word or in conjunction with any other words, on a uniform, an insignia, a vehicle marking or another sign or symbol where the display of

the word "police" might mislead the public or a member of the public into believing that the person displaying the word or causing the word to be displayed

- (i) is a member of a police service, or
- (ii) is empowered to exercise the powers of a police officer or powers that are similar

to the powers of a police officer.

(2) If the Minister or the Minister's designate is of the opinion that the uniform, insignia, vehicle markings or other signs or symbols employed by a person or organization are so similar to those used by a police service that the public or a member of the public might be misled, the Minister or the Minister's designate may, by order in writing served on that person or organization, require the person or organization to desist from the use of that uniform or insignia or those markings, signs or symbols.

1988 cP-12.01 s54;1994 cG-8.5 s54

Uniforms and insignia

55 A member of a municipal police service or a regional police service shall wear only the uniform and insignia approved by the commission.

1988 cP-12.01 s55

Application to Court

56(1) Whether or not a person is prosecuted under this Act, if the Minister or the Minister's designate is of the opinion that a person is or was contravening [section 54\(1\)](#) or an order made under [section 54\(2\)](#), the Minister or the Minister's designate may apply to the Court of Queen's Bench for an order directing that person to cease and desist from contravening [section 54\(1\)](#) or the order made under [section 54\(2\)](#), as the case may be.

(2) Repealed 2009 c53 s135.

(3) On the filing of an application with the clerk of the Court, the Court may, if it considers it necessary in the circumstances, make an interim order granting any relief that the Court considers appropriate pending the determination of the application.

(4) An interim order under subsection (3) may be made ex parte if the Court considers it appropriate in the circumstances.

(5) On hearing an application the Court may, if it is of the opinion that the person is or was contravening [section 54\(1\)](#) or an order made under [section 54\(2\)](#), grant an order, subject to any terms and conditions the Court considers appropriate in the circumstances, doing one or more of the following:

(a) directing the person to cease and desist from contravening [section 54\(1\)](#) or the order made under [section 54\(2\)](#), as the case may be;

(b) giving directions that the Court considers necessary in order to ensure that [section 54\(1\)](#) or an order made under [section 54\(2\)](#), as the case may be, will be complied with;

(c) awarding costs in respect of the matter.

RSA 2000 cP-17 s56;2009 c53 s135

General penalty

57 Any person who contravenes [section 54\(1\)](#) or fails to comply with an order made under [section 54\(2\)](#) is guilty of an offence and liable to a fine not greater than \$10 000 or to a term of imprisonment not exceeding 6 months or to both fine and imprisonment.

1988 cP-12.01 s57

Service of documents

58 In addition to any method of service permitted by law, any notice or document respecting matters coming under this Act may be served

(a) by personal service, or

(b) by registered mail sent

(i) to the Chair or secretary to the Board, in the case of a notice or document sent to the Board, or

(ii) to the latest address of the person on whom the notice or document is to be served as shown on the records of the person issuing the notice or document, in a case other than that referred to in subclause (i). 1988

cP-12.01 s58

Bylaws and resolutions

59(1) For the purposes of this Act, a council, other than the Minister responsible for the [Municipal Government Act](#) or the [Special Areas Act](#), may exercise and perform its powers and duties under this Act by bylaw.

(2) Notwithstanding subsection (1), a council may exercise its powers under [section 28\(2\)\(b\)](#) by resolution.

1988 cP-12.01 s59

Police Officers Collective Bargaining Act

60 None of the matters referred to in [sections 16, 20, 31, 37\(1\), 41](#) and [43 to 48](#) shall be the subject of a collective agreement referred to in the [Police Officers Collective Bargaining Act](#).

1988 cP-12.01 s60

Commissioned officers

60.1(1) Each year a commission under the Great Seal of the Province shall be issued to each police officer who, in the year in which the commission is issued, was first appointed to any one of the following ranks:

- (a) inspector;
- (b) superintendent;
- (c) deputy chief of police;
- (d) chief of police.

(2) In the case of a police officer who on the day this section comes into force holds a rank referred to in subsection (1), the Lieutenant Governor in Council, on the recommendation of the Minister, shall authorize the issue of a commission under the Great Seal of the Province to the police officer if,

(a) in the case of a police officer other than a chief of police, the Minister receives written confirmation from the chief of police of the police service in which the police officer serves that the police officer holds that rank;

(b) in the case of a chief of police, the Minister receives written confirmation from the commission of the police service in which the chief of police serves that the chief of police holds that rank.

(3) The Lieutenant Governor in Council may authorize the revocation of a commission issued under subsection (1) or (2) if the Lieutenant Governor in Council considers it appropriate to do so.

2013 c23 s10;2016 c23 s5

Lieutenant Governor in Council regulations

61(1) The Lieutenant Governor in Council may make regulations

(a) prescribing rates of fees, remuneration and subsistence and travel allowances payable under this Act or the regulations;

(b) governing fees and expenses for witnesses attending a proceeding under this Act, including specifying to whom and the circumstances in which such fees and expenses may be paid and prescribing rates of fees and expenses payable to witnesses who qualify under the regulations;

(c) governing, subject to this Act, the training of police commissions and municipal policing committees, and the responsibility and duties of police commissions and municipal policing committees;

(d) governing, subject to this Act, the establishment and operation of police services;

(e) governing probationary periods of service for police officers, chiefs of police and civilian employees of a police service;

(f) governing, subject to this Act, the appointment, employment, qualifications, training, duties, discipline and performance of duty of police officers;

(g) governing investigations, including investigations by another police service or an integrated investigative unit of police officers;

(g.01) governing the conduct of hearings generally, including which persons may serve as a presiding officer at a hearing under Part 5;

(g.1) governing the establishment and operation of integrated investigative units;

(h) governing, subject to this Act, action that may be taken against police officers;

(i) repealed 2006 cP-3.5 s38;

(j) governing, subject to this Act,

(i) regional police services, and

(ii) policing services provided pursuant to an agreement made under [section 22\(3\)](#);

- (k) governing lock-up facilities;
- (l) subject to [section 16\(a\)](#), governing the powers of the Board under this Act or the [Peace Officer Act](#).

(2) A regulation made under this section may be general or specific in its application.

(3) Subsection (1)(e) to (h) do not apply to the Royal Canadian Mounted Police.

RSA 2000 cP-17 s61;2005 c43 s11;2006 cP-3.5 s38;2007 c6 s5;2015 c12 s4

Ministerial regulations

62(1) The Minister may make regulations

(a) governing for the purposes of [section 22](#) the sharing of costs of provincial policing services;

(b) prescribing colour and style of uniforms, accoutrements and insignia for police officers;

(c) governing clothing and equipment furnished to or used by police officers;

(d) governing firearms with respect to police officers;

(e) governing the providing of information to the Director of Law Enforcement under [section 52](#) and the release of that information by the Director;

(f) prescribing the information and statistical data to be kept and reported to the Minister by commissions, policing committees and police services;

(g) governing the establishment of standards for police services, police commissions and policing committees;

(h) prescribing factors to be considered by the Board in deciding whether an appeal may be concluded under [section 19.2\(1\)\(b\)](#) without conducting a hearing;

(i) for the purposes of [section 42.1\(4\)\(g\)](#), prescribing information that must be included in a complaint.

(2) Where the Minister enters into an arrangement or an agreement referred to in [section 5\(1\)](#), the Minister may make regulations

(a) exempting the arrangement or the agreement from any provision of this Act or the regulations;

(b) exempting policing services that are provided under the arrangement or the agreement from any provision of this Act or the regulations;

(c) modifying any provision of this Act or the regulations for the purpose of applying the provision to

(i) the arrangement or the agreement, or

(ii) the policing services provided under the arrangement or the agreement;

(d) governing any matter not referred to in clauses (a) to (c) respecting

(i) the arrangement or the agreement, or

(ii) the policing services provided under the arrangement or the agreement.

(3) A regulation made under this section may be general or specific in its application.

RSA 2000 cP-17 s62;2005 c31 s26;2005 c43 s12;2006 cP-3.5 s38;2010 c21 s20

Transitional

63(1) In this section, "former Act" means the *Police Act*, RSA 1980 cP-12.

(2) Any person who, immediately before July 27, 1988, was

(a) a police officer in a municipal police force under the former Act continues as a police officer in the municipal police service under this Act,

(b) a peace officer in a municipal police force under the former Act continues as a peace officer in the municipal police service under this Act,

(c) a chief of police of a municipal police force under the former Act continues as the chief of police of the municipal police service under this Act.

(3) Any reference to a municipal police force in any order, regulation or statute is deemed to be also a reference to a municipal police service.

1988 cP-12.01 s67

Schedules Omitted

Police Service Regulation, Alta Reg 356/1990

(Consolidated up to 114/2014)

Definitions

1 In this Regulation,

- (a) "Act" means the [Police Act](#);
- (b) "cited officer" means a police officer charged with contravening [section 5](#);
- (b.1) "person in charge of the investigation" means the officer in charge of an investigating police service under section 46.1(2) of the Act or the head of an integrated investigative unit under section 46.2 of the Act, as the case may be;
- (c) "police officer standards of competency" means, with respect to the carrying out of the duties of a police officer, those basic standards of skill and knowledge referred to in [section 3\(1\)](#);
- (d) "presenting officer" means a police officer or lawyer referred to in [section 14](#);
- (e) "presiding officer" means a person referred to in [section 13](#) conducting a hearing under Part 5 of the Act;
- (f) "record" includes
 - (i) any book, record, document, account, statement, report, return or other memorandum of information whether in writing or in electronic form or represented or reproduced by any other means, and
 - (ii) the results of the recording of details of electronic data processing systems and programs to illustrate what the systems and programs do and how they operate;
- (g) "senior officer" means a police officer who
 - (i) holds a rank of not less than inspector, or
 - (ii) is designated by the chief of police as a senior officer for the purposes of this Regulation.

[AR 356/90](#) s1;136/2008;44/2011

Applicability

2 For the purposes of Part 5 of the Act, this Regulation governs the discipline and performance of duty of police officers.

[AR 356/90](#) s2

Competency

3(1) In order for a person to be appointed as a police officer under section 36 of the Act, the person must, with respect to the carrying out of the duties of a police officer, meet those basic standards of skill and knowledge that are acceptable to the Minister of Justice and Solicitor General.

(2) to (4) Repealed AR 22/2014 s2.

[AR 356/90](#) s3;170/2012;22/2014

Probationary periods

4(1) A person who

- (a) is appointed as a police officer shall, subject to clause (c), serve as a police officer for a probationary period of 18 months before his employment as a police officer is confirmed,
- (b) is a police officer in a police service and is promoted to a higher rank within the police service shall, subject to clause (c), serve in that higher rank for a probationary period of 6 months before his employment in that rank is confirmed, or
- (c) is appointed as or promoted to chief of police shall serve as the chief of police for a probationary period of 12 months before his employment as chief of police is confirmed.

(2) During the time that a police officer, other than the chief of police, is serving a probationary period, the police officer must be provided with periodic reviews of his performance by the chief of police.

(3) Notwithstanding subsection (1), where a person is appointed as a police officer other than as chief of police, the chief of police may, at any time prior to the expiration of that police officer's probationary period,

(a) cancel the probationary period and confirm the employment of the police officer, or

(b) recommend to the commission that the commission terminate the services of the police officer under section 37(2) of the Act.

(4) Where the chief of police under subsection (3)(b) recommends that the services of a police officer should be terminated, the chief of police shall

(a) inform the police officer in writing of the reasons for making the recommendation, and

(b) give the police officer an opportunity to respond to the recommendation.

(5) Notwithstanding subsection (1), where a police officer is promoted to a position of higher rank, the chief of police may at any time prior to the expiration of the police officer's probationary period

(a) cancel the probationary period and confirm the promotion of the police officer, or

(b) upon

(i) informing the police officer in writing of the reasons for doing so, and

(ii) giving the police officer an opportunity to respond,

return the police officer to his former rank or position.

(6) Notwithstanding subsection (1), where a person is appointed to or promoted to the position of chief of police, the commission may at any time prior to the expiration of the police officer's probationary period

(a) cancel the probationary period and confirm the employment as or the promotion to the position of the chief of police,

(b) in the case of a police officer within the police service who was promoted to the position of chief of police,

(i) return the police officer to his former rank or position, or

(ii) terminate the services of the police officer under section 37(2) of the Act,

or

(c) in the case of a person who was appointed to the position of chief of police, terminate the services of that person under section 37(2) of the Act.

(7) Notwithstanding subsection (1)(a) and (b), where,

(a) due to the unanticipated absences of a police officer who is on probation, or

(b) because a police officer who is on probation is the subject of an ongoing disciplinary hearing or criminal investigation,

the chief of police has been unable during the probationary period to assess the progress of the police officer, the chief of police may request the police commission to extend the probationary period for up to 6 months, and the commission may in its discretion grant the extension.

(8) The police commission may, at the request of the chief of police and for the reasons set out in subsection (7)(a) and (b), extend the probationary period for further periods of up to 6 months each to allow the chief of police to assess the progress of the police officer who is on probation.

[AR 356/90](#) s4;136/2008

Misconduct of a police officer

5(1) A police officer shall not engage in any action that constitutes one or more of the following:

(a) breach of confidence;

(b) consumption or use of liquor or drugs in a manner that is prejudicial to duty;

(c) corrupt practice;

(d) deceit;

(e) discreditable conduct;

(f) improper use of firearms;

(g) insubordination;

(h) neglect of duty;

(i) unlawful or unnecessary exercise of authority.

(2) For the purposes of subsection (1),

(a) "breach of confidence" consists of one or more of the following:

(i) divulging any matter that it is his duty to keep in confidence;

(ii) giving notice, directly or indirectly, to any person against whom any warrant or summons has been or is about to be issued, except in the lawful execution of the warrant or service of the summons;

(iii) without proper authorization from a superior police officer or in contravention of any rules of the police service of which he is a member, communicating to the news media or to any unauthorized person any matter connected with the police service;

(iv) without proper authorization from a superior police officer showing to

(A) any person who is not a member of the police service, or

(B) any unauthorized member of the police service,

any record that is the property of or in the custody of the police service;

(v) signing or circulating a petition or statement in respect of a matter concerning the police service, except through the proper official channel or correspondence or established grievance procedure;

(b) "consumption or use of liquor or drugs in a manner that is prejudicial to duty" consists of one or more of the following:

(i) consuming liquor while on duty unless otherwise authorized to do so by a superior police officer;

(ii) consuming or otherwise using drugs that are prohibited by law from being in his possession;

(iii) reporting for duty, being on duty or standing by for duty while unfit to do so by reason of the use of alcohol or a drug;

(iv) demanding, persuading or attempting to persuade another person to give, purchase or obtain any liquor for a police officer who is on duty;

(c) "corrupt practice" consists of one or more of the following:

(i) failing to account for or to make a prompt and true return of money or property that the police officer received in his capacity as a police officer;

(ii) directly or indirectly soliciting or receiving a payment, gift, pass, subscription, testimonial or favour without the consent of the chief of police;

(iii) placing himself under a financial, contractual or other obligation to a person in respect of whom the police officer could reasonably expect he may be required to report or give evidence;

(iv) without adequate reason, using his position as a police officer for his personal or another person's advantage;

(d) "deceit" consists of one or more of the following:

(i) wilfully or negligently making or signing a false, misleading or inaccurate statement or entry in an official document or record;

(ii) wilfully or negligently making or signing a false, misleading or inaccurate statement pertaining to the police officer's official duties;

(iii) without a lawful excuse,

(A) destroying, mutilating or concealing an official document or record, or

(B) altering or erasing an entry in an official document or record;

(e) "discreditable conduct" consists of one or more of the following:

(i) contravening

(A) an Act of the Parliament of Canada,

(B) an Act of the Legislature of Alberta, or

(C) any regulation made under an Act of either the Parliament of Canada or the Legislature of Alberta,

where the contravention is of such a character that it would be prejudicial to discipline or likely to bring discredit on the reputation of the police service;

(ii) using oppressive or tyrannical conduct towards a subordinate;

- (iii) using profane, abusive or insulting language to any member of a police service or to any member of the general public;
 - (iv) wilfully or negligently making a false complaint or statement against any member of a police service;
 - (v) withholding or suppressing a complaint against or a report made in respect of a peace officer or a police service;
 - (vi) abetting in or knowingly being an accessory to a contravention of this section by another peace officer;
 - (vii) differentially applying the law or exercising authority on the basis of race, colour, religion, sex, physical disability, mental disability, marital status, age, ancestry or place of origin;
 - (viii) doing anything prejudicial to discipline or likely to bring discredit on the reputation of the police service;
- (f) "improper use of firearms" consists of one or more of the following:
- (i) when on duty, having in his possession any firearm other than one that is issued to the police officer by the police service;
 - (ii) when on duty, other than when on a firearm training exercise, discharging a firearm, whether intentionally or by accident, and not reporting the discharge of the firearm as soon as practicable to his superior officer;
 - (iii) failing to exercise sound judgment and restraint in respect of the use and care of a firearm;
- (g) "insubordination" consists of one or both of the following:
- (i) being insubordinate to a superior police officer by word or action;
 - (ii) omitting or neglecting, without adequate reason, to carry out a lawful order, directive, rule or policy of the commission, the chief of police or other person who has the authority to issue or make that order, directive, rule or policy;
- (h) "neglect of duty" consists of one or more of the following:
- (i) neglecting, without a lawful excuse, to promptly and diligently perform his duties as a police officer;
 - (ii) failing to work in accordance with orders or leaving an area, detail or other place of duty without due permission or sufficient cause;
 - (iii) permitting a prisoner to escape on account of the police officer being careless or negligent;
 - (iv) failing, when knowing where an offender is to be found, to report him or to make reasonable efforts to bring him to justice;
 - (v) failing to report a matter that it is his duty to report;
 - (vi) failing to report anything that he knows concerning a criminal or other charge;
 - (vii) failing to disclose any evidence that he, or any other person to his knowledge, can give for or against any prisoner or defendant;
- (i) "unlawful or unnecessary exercise of authority" consists of one or both of the following:
- (i) exercising his authority as a police officer when it is unlawful or unnecessary to do so;
 - (ii) applying inappropriate force in circumstances in which force is used.

[AR 356/90 s5](#)

Counselling

6(1) Where a supervisor or a superior officer is of the opinion that an action of a police officer is not of a sufficient nature so as to require the action to be dealt with in accordance with section 45 of the Act, the supervisor or officer of superior rank may nevertheless counsel the police officer, orally or in writing, with respect to the performance of duty of and the action taken by the police officer.

(2) A written record of any counselling carried out under this section may be kept on the police officer's personnel file but may not be introduced as evidence in any proceeding under the Act.

(3) Nothing in this section shall be construed so as to prohibit the information maintained in any records kept under this section from being used for the purposes of making reviews of performance under [section 4\(2\)](#).

[AR 356/90](#) s6

Time limits

7(1) A police officer shall not be charged with contravening [section 5](#) at any time after 6 months from the day that a complaint is made in accordance with section 43 of the Act.

(2) Subject to section 47(2) and (3) of the Act, where a hearing is to be held under the Act, the hearing shall be commenced no later than 3 months from the day that a police officer is charged with contravening [section 5](#).

(3) Where a hearing is commenced under the Act it shall, subject to section 47(1)(i) of the Act, be completed within a reasonable time and without undue delay.

(4) Notwithstanding that time limits are prescribed under this section, the commission may, if it is of the opinion that circumstances warrant it, extend any one or more of those time limits.

(5) The time limits set out in subsections (1) and (2) do not apply in respect of a matter where the Law Enforcement Review Board has ordered under section 20(2) of the Act that a hearing or rehearing of the matter be conducted.

[AR 356/90](#) s7;136/2008;44/2011

Relief from duty

8(1) The chief of police may relieve from duty any police officer whom the chief of police, on reasonable grounds, suspects has contravened [section 5](#).

(2) A senior officer may exercise the power of the chief of police to relieve a police officer from duty under subsection (1) where the senior officer exercising that power is senior in rank to the police officer being relieved from duty.

(3) The exercise of the power to relieve a police officer from duty under subsection (2) must be confirmed by the chief of police or his designate within 48 hours from the time of the exercise of that power if the police officer relieved from duty is to remain relieved from duty beyond that 48-hour period.

(4) Every police officer relieved from duty shall, at the time of being relieved from duty, be informed of the reasons for his being relieved from duty.

(5) Where a police officer is relieved from duty and he is informed orally of the reasons for his being relieved from duty, the person who relieved the police officer from duty shall, within 24 hours from the time the police officer is relieved from duty, provide to that police officer written reasons for his being relieved from duty.

(6) If, within 7 days from the day that a police officer is relieved from duty, the police officer is not charged with a contravention of [section 5](#), the police officer shall be returned to duty.

(7) Notwithstanding subsection (6), the chief of police may, for cause, extend the period of time that a police officer is relieved from duty.

(8) While relieved from duty, the police officer shall not

(a) exercise any power or authority vested in him as a police officer, or

(b) wear or use any article of uniform or equipment issued to him by the police service.

(9) A police officer who has been relieved from duty pursuant to this section shall be returned to duty

(a) on completion of any investigation, where the chief of police is satisfied that no further disciplinary action is required to be taken under the Act against the police officer, or

(b) on the disposition of any charge, unless that disposition results in suspension, resignation or dismissal of the police officer.

(10) Where the chief of police is of the opinion that exceptional circumstances exist respecting the alleged contravention of [section 5](#) by a police officer, the chief of police may relieve the police officer from duty without pay.

(11) If the chief of police relieves a police officer from duty without pay, the chief of police must have that direction confirmed by the commission within 30 days from the day that the police officer is relieved from duty without pay.

(12) Where a police officer is relieved from duty without pay and

(a) the commission does not confirm that the police officer be relieved from duty without pay, or

(b) the police officer is not charged with a contravention of [section 5](#), all pay and benefits withheld from the police officer shall forthwith be returned to him.

(13) Where a police officer is relieved from duty for a 30-day period, the chief of police shall, at the conclusion of the 30-day period and at the conclusion of any subsequent 30-day periods, report to the commission as to the status of the matter.

[AR 356/90](#) s8

Relief from duty re criminal matters, etc.

9 Where a police officer is relieved from duty on the basis of being charged with or convicted for a contravention of an Act of the Legislature of Alberta or the Parliament of Canada and,

(a) in respect of the charge,

(i) the charge is not proceeded with, or

(ii) the police officer is not found guilty of the charge or of an included offence,

or

(b) in respect of the conviction that is appealed, the police officer is found not guilty of the charge or of an included offence,

the police officer shall

(c) immediately be reinstated to duty, and

(d) be entitled to receive all pay, benefits and other rights and privileges to which he would have been entitled if he had not been relieved from duty or suspended.

[AR 356/90](#) s9

Statements

10(1) Where an investigation is carried out in respect of a complaint as to the actions of a police officer, the police officer shall be advised as to the details of the complaint and be provided with a copy of all statements made by the complainant.

(2) A police officer in respect of whom an investigation is being carried out may, on a voluntary basis, provide the investigator with an explanatory report in the police officer's own words setting out his version of the subject-matter of the complaint.

(3) Where

(a) a police officer in respect of whom an investigation is being carried out is directed by the investigator to provide an explanatory report referred to in subsection (2) setting out the police officer's version of the subject-matter of the complaint, and

(b) pursuant to that direction the police officer provides an explanatory report, that explanatory report shall be regarded as an involuntary statement and shall not be admissible in evidence in any proceedings carried out under the Act, except to prove that the statement is false.

(4) Where

(a) a police officer who might reasonably have knowledge of matters pertaining to a complaint or report is directed by the investigator to provide an explanatory report referred to in subsection (2) setting out his knowledge of any matters pertaining to the matter under investigation, and

(b) pursuant to that direction the police officer provides an explanatory report, that explanatory report shall be regarded as an involuntary statement and shall not be admissible in evidence in any proceedings carried out under the Act against him, except to prove that the statement is false.

(5) A police officer who is directed by an investigator under subsection (3)(a) or (4)(a) to provide an explanatory report shall do so within 14 days of being notified of the direction.

(6) A statement made under subsection (3) or (4) may be used by the chief of police for the purposes of section 45(3) or (4) of the Act and by the chief of police or the police officer in charge of the investigating police service for the purposes of section 46.1(4) of the Act.

[AR 356/90](#) s10;136/2008

Interview

10.1(1) The chief of police, when investigating under section 45 of the Act a complaint as to the actions of a police officer, may direct the police officer whose actions may have resulted in the complaint to attend at an interview and answer questions.

(2) Subject to subsection (3), a police officer directed under subsection (1) to attend at an interview shall do so

(a) immediately, or

(b) where there are appropriate grounds for the delay, no later than 24 hours

after the request was made.

(3) The chief of police may request that an interview take place at a later time than that set out in subsection (2)(b).

(4) Where practicable, the interview shall be recorded by audio recording or video recording.

(5) A police officer directed under subsection (1) to attend at an interview shall be provided with a copy of any recording of the interview made pursuant to subsection (4).

AR 136/2008 s6;44/2011;22/2014

Investigations by another police service or an integrated investigative unit

10.2 Where the Minister under section 46.1(2) of the Act has requested or directed another police service, or the head of an integrated investigative unit, to conduct an investigation into a serious incident or complaint, the chief of police shall ensure that, pending the other police service or integrated investigative unit taking charge of the scene of the serious incident or complaint, the scene is secured by the police service in a manner consistent with the policies and usual practice of the police service for serious incidents and complaints.

AR 136/2008 s6

Segregation of police officers

10.3(1) Where the Minister under section 46.1(2) of the Act has requested or directed another police service, or the head of an integrated investigative unit, to conduct an investigation into a serious incident or complaint, the chief of police shall, to the extent that is practicable, segregate all the police officers involved in the incident or complaint from each other until the investigating police service or the integrated investigative unit has finished interviewing all the officers involved.

(2) A police officer referred to in subsection (1) shall not communicate with any other police officer who was involved in the incident or complaint concerning the details of the incident or complaint until after the investigating police service or the integrated investigative unit has finished interviewing all the officers involved.

AR 136/2008 s6

Police officer's notes

10.4(1) In this section and [sections 10.5](#) and [10.6](#),

(a) "subject officer" means a police officer who is the subject of a complaint or whose actions may have resulted in a serious or sensitive incident;

(b) "witness officer" means a police officer who is a witness to or has material information relating to the events complained of or to the serious or sensitive incident.

(2) A witness officer shall complete in full the officer's notes in respect of the serious incident or the actions complained of in accordance with the procedures of the police service and, subject to subsection (5) and [section 10](#), shall provide the notes to the chief of police within 24 hours after a request for the notes is made by the investigating police service or the integrated investigative unit to the chief of police.

(3) Subject to subsection (5) and [section 10](#), the chief of police shall provide copies of a witness officer's notes to the investigating police service or the integrated investigative unit on request and no later than 24 hours after the request was made.

(4) The person in charge of the investigation referred to in [section 10.2](#) may extend the time within which copies of a witness officer's notes must be provided to the investigating police service or the integrated investigative unit by the chief of police.

(5) A subject officer shall complete in full the officer's notes in respect of the incident or the actions complained of.

(6) A subject officer is not required to provide the officer's notes to the investigating police service or the integrated investigative unit, and no other person may provide the officer's notes to the investigating police service or the integrated investigative unit without the express permission of the subject officer. AR 136/2008 s6

Interview

10.5(1) The person in charge of the investigation referred to in [section 10.2](#), or a person acting under the authority of that person, may direct that a witness officer attend at an interview and answer questions.

(2) Subject to subsection (3), a police officer directed under subsection (1) to attend at an interview shall do so

(a) immediately, or

(b) where there are appropriate grounds for the delay, no later than 24 hours after the request was made.

(3) The person in charge of the investigation, or a person acting under the authority of that person, may request that an interview take place at a later time than that set out in subsection (2)(b).

(4) Where practicable, the interview shall be recorded by audio recording or video recording.

(5) A police officer directed under subsection (1) to attend at an interview shall be provided with a copy of any recording of the interview made pursuant to subsection (4).

AR 136/2008 s6;44/2011;22/2014

Status of police officer

10.6(1) The person in charge of the investigation referred to in [section 10.2](#) shall,

(a) before directing an interview with a police officer under [section 10.5](#) or requesting copies of the police officer's notes under [section 10.4](#),

(i) determine whether the police officer is a subject officer or a witness officer,

and

(ii) advise the police officer in writing concerning the determination whether the police officer is a subject officer or a witness officer,

and

(b) as soon as practicable, advise the chief of police in writing concerning the determination whether the police officer is a subject officer or a witness officer.

(2) The person in charge of the investigation shall advise the chief of police and the police officer in writing if, at any time after advising the chief of police and the officer under subsection (1) of the officer's status, the officer in charge decides that an officer formerly considered to be a subject officer is now considered to be a witness officer or an officer formerly considered to be a witness officer is now considered to be a subject officer.

(3) If, after interviewing a police officer who was considered to be a witness officer when the interview was requested or after obtaining a copy of the notes of a police officer who was considered to be a witness officer when the notes were requested, the person in charge of the investigation decides that the police officer is a subject officer, the person in charge shall

(a) advise the chief of police and the officer in writing that the officer is now considered to be a subject officer,

(b) give the police officer the original and all copies of the record of the interview, if any, and

(c) give the chief of police the original and all copies of the police officer's notes.

AR 136/2008 s6;22/2014;114/2014

Charging of police officer

11(1) Where a police officer is to be charged with contravening [section 5](#), the charge shall be in writing and shall

(a) identify the specific offence under [section 5](#) that the police officer is charged with,

and

(b) state the date, time and place that the police officer is to appear before a hearing into the offence.

(2) A charge prepared in accordance with subsection (1) may be in the form set out in the Schedule.

(3) A charge prepared under this section shall have attached to it

- (a) a statement setting out the particulars of the actions of the police officer that constitute the contravention of [section 5](#), and
 - (b) a list of witnesses and a statement of the evidence to be introduced as evidence in the hearing.
- (4) A copy of the charge and attachments shall be served on the cited officer at least 10 days before the commencement of the hearing.

[AR 356/90](#) s11

New evidence

12 Notwithstanding [section 11\(3\)\(b\)](#) of this Regulation and subject to section 47(1)(e) and (f) of the Act, where evidence is obtained after service on the cited officer of the statement of evidence, that evidence may be introduced in the hearing if the presiding officer is satisfied that

- (a) the evidence was not available at the time of service on the cited officer of the statement of evidence, and
 - (b) the cited officer was given notice of the new evidence as soon as practicable. [AR 356/90](#) s12
- Presiding officer

13(1) Any of the following persons may serve as the presiding officer at a hearing:

- (a) subject to subsection (1.1), a currently serving or former police officer;
- (b) a former member of the judiciary, including judges of the Court of Queen's Bench and the Provincial Court.

(1.1) A police officer serving as a presiding officer pursuant to subsection (1)(a) must be senior in rank to the cited officer.

(2) A person who meets the requirements of subsection (1) but who has direct knowledge of the investigation of the complaint is not eligible to be appointed to preside at a hearing arising from that investigation.

[AR 356/90](#) s13;44/2011

Presenting officer

14 Where a hearing is to be held under section 45(3) of the Act, the chief of police may appoint a police officer or engage a lawyer to present the case and the evidence against the cited officer.

[AR 356/90](#) s14

Procuring witnesses

15 The presenting officer and the cited officer shall provide the presiding officer with the names of witnesses they intend to call to give evidence at the hearing and the presiding officer shall summon those witnesses to attend the hearing.

[AR 356/90](#) s15

Holding of hearing

16(1) Where a hearing or a portion of a hearing is to be conducted under Part 5 of the Act,

- (a) in the case of a complaint referred to in section 45 of the Act, the chief of police shall direct that the hearing or a portion of it be conducted in public or private whichever he determines to be in the public interest, and

- (b) in the case of a complaint referred to in section 46 of the Act, the person who is to preside over the hearing shall direct that the hearing or a portion of it be conducted in public or private whichever he determines to be in the public interest.

(2) When a hearing is held in private, the hearing may be attended only by those persons involved in the proceedings.

(2.1) Notwithstanding subsection (2), a representative of the commission may attend a hearing or any portion of a hearing that is held in private.

(3) Notwithstanding subsection (2), when a hearing is held in private and a minor is called to testify at a hearing, a parent or representative of the minor may be present when the minor is testifying.

(4) Notwithstanding that a hearing is held in private, the chief of police may authorize a police officer to attend a hearing as an observer for the purpose of becoming familiar with the procedures.

(5) Where a hearing or a portion of a hearing is held in public, the written decision or the portion of it arising from the public hearing shall be made publicly available.

[AR 356/90](#) s16;136/2008;44/2011

Punishment

17(1) Where at a hearing it is determined that a cited officer is guilty of contravening [section 5](#), the presiding officer shall impose on the cited officer one or more of the following punishments:

- (a) a reprimand;
- [\(a.1\)](#) a course of treatment or participation in a rehabilitation program;
- (b) forfeiture of hours of work accumulated through overtime, not to exceed 40 hours;
- (c) suspension from duty without pay for a period not to exceed 80 hours of work;
- (d) reduction of seniority within a rank;
- (e) reduction in rank;
- (f) dismissal from the police service.

(2) Where the punishment to be imposed on the cited officer is dismissal, the presiding officer may, if he is of the opinion that the circumstances warrant it, permit the cited officer to resign from the police service within the time specified by the presiding officer instead of being dismissed.

(3) In addition to any penalty applied pursuant to subsection (1)(a) to (f), the cited officer may also be directed to undertake special training or professional counselling.

(4) Notwithstanding subsection (1), where the presiding officer

- (a) is not the chief of police, and
- (b) makes a finding that the cited officer is guilty of a contravention under [section 5](#), the

presiding officer may, before determining the punishment to be imposed on the cited officer, consult with the chief of police with respect to the punishment to be imposed.

[AR 356/90](#) s17;136/2008;44/2011

Application of punishment

18(1) Where the punishment imposed on a cited officer is reduction in rank, the presiding officer shall indicate the numerical position the police officer is to occupy in the seniority roll concerned.

(2) Where a cited officer is to be dismissed or permitted to resign from the police service under [section 17](#),

- (a) that action shall be held in abeyance, and
- (b) the cited officer shall be placed under suspension without pay,

until the period of appeal to the Law Enforcement Review Board has lapsed or until the appeal has been concluded.

[AR 356/90](#) s18;136/2008

Revocation of commission

18.1(1) In this section, "commission" means a commission issued under [section 60.1](#) of the *Police Act* to a senior officer or chief of police.

(2) A chief of police in the case of a senior officer, or a police commission in the case of a chief of police, may recommend to the Minister in writing that a commission previously issued to the senior officer or chief of police should be revoked on any one or all of the following grounds:

(a) the senior officer or chief of police has been convicted of an offence under the [Criminal Code](#) (Canada);

(b) the senior officer or chief of police has been found guilty of serious misconduct referred to in [section 19\(1.1\)](#);

(c) the senior officer or chief of police is alleged to have committed conduct that would, in the event of a hearing under [section 19\(1.1\)](#), likely result in a finding of guilt; however, the police officer or chief of police retired, resigned or a loss of jurisdiction occurred;

(d) one of the following has requested that the commission be revoked for any other sufficient reason:

- (i) the senior officer or chief of police to whom the commission was issued;
- (ii) a chief of police in the case of a senior officer's commission;
- (iii) a police commission in the case of a commission issued to a chief of police.

AR 22/2014 s6

Minor contraventions

19(1) Where a matter is disposed of under section 45(4) of the Act without conducting a hearing, the chief of police

- (a) may
 - (i) dismiss the matter,
 - (ii) issue an official warning, or
 - (iii) take any other action that in the opinion of the chief of police is appropriate in the circumstances,or
- (b) with the agreement of the cited officer, may
 - (i) issue a reprimand,
 - (ii) order the forfeiture of hours of work accumulated through overtime, not to exceed 40 hours, or
 - (iii) suspend the police officer from duty without pay for a period not to exceed 80 hours of work.

(1.1) For the purpose of determining whether a matter may be disposed of in accordance with subsection (1), the chief of police shall consider the following factors:

- (a) whether the conduct of the cited officer
 - (i) may constitute an offence under the [Criminal Code](#) (Canada),
 - (ii) may constitute a breach of the [Canadian Charter of Rights and Freedoms](#), or
 - (iii) consisted of an act of deceit;
 - (b) whether the cited officer's behaviour is non-cooperative or obstructive;
 - (c) the cited officer's disciplinary record.
- (2) Repealed AR 44/2011 s9.
(3) Repealed AR 136/2008 s9.

[AR 356/90](#) s19;136/2008;44/2011

Return of back pay, etc.

20 Where a police officer is charged with a contravention of [section 5](#) and

- (a) the charge is withdrawn,
 - (b) the police officer is found not guilty of the charge, or
 - (c) the police officer is found guilty but on appeal is found not guilty of the charge,
- any punishment imposed on the police officer shall be rescinded and any pay, benefits or time forfeited or lost by reason of the suspension shall be returned to the cited officer.

[AR 356/90](#) s20

Record of proceedings

21 Where requested in writing by the cited officer, the chief of police shall provide the cited officer with a copy of the record of proceedings from and any document and reports used in the cited officer's hearing.

[AR 356/90](#) s21;44/2011

Records of discipline

22 When, and only when,

- (a) a period of 5 years has elapsed from the day that punishment is imposed on a police officer for a contravention of [section 5](#), or
- (b) a period of not less than one and not more than 3 years, as specified in writing by the chief of police, in respect of a police officer, or the commission, in respect of the chief, has elapsed from the day that an action is taken in respect of a police officer under [section 19\(1\)](#), if during that time no other entries concerning a contravention of this Regulation have been made on the police officer's record of discipline, any record of the punishment, the contravention or the action taken shall

- (c) be removed from the police officer's record of discipline and destroyed, and
- (d) not be used or referred to in any future proceedings respecting that police officer. [AR 356/90](#) s22;136/2008;44/2011 **Application to chief of police**

23 This Regulation applies to a chief of police in the same manner as it applies to a police officer except that any duty or responsibility that is placed on the chief of police under this Regulation shall be carried out by the commission.

[AR 356/90](#) s23

Factors to be considered by Board

23.1(1) In this section, "Board" means the Law Enforcement Review Board.

(2) The following factors are to be considered by the Board in deciding whether an appeal may be concluded in accordance with section 19.2(1)(b) of the Act:

(a) whether the record before the chief of police was tainted, flawed or grossly inadequate;

(b) the complainant's conduct during the investigation, including whether the complainant actively participated in the investigation;

(c) whether the appeal raises issues of acceptability of police conduct or the integrity of the discipline process.

AR 44/2011 s12

Review of disciplinary matters

24(1) At the request of the commission, the chief of police shall permit the commission or a person appointed by the commission to monitor complaints to review any document or record relating to a complaint or a disciplinary proceeding arising out of a complaint.

(2) The commission or a person appointed by the commission to monitor complaints may attend any disciplinary proceeding that arises out of a complaint and is conducted under Part 5 of the Act.

[AR 356/90](#) s24;136/2008

Delegation

25 The commission may authorize the chief of police to carry out any duty or function of the commission under this Regulation other than the duties or functions of the commission set out in [sections 4\(6\), 7\(4\), 8\(11\), \(12\) and \(13\), 23 and 24](#).

[AR 356/90](#) s25

Transitional

26(1) [Sections 17\(1\) and 22](#), as amended by [sections 8 and 10](#) of the *Police Service Amendment Regulation*, apply to investigations and disciplinary proceedings in respect of complaints made in accordance with the Act on or after the coming into force of the *Police Service Amendment Regulation*.

(2) [Sections 10 and 19\(1\) and \(2\)](#), as amended by [sections 5 and 9](#) of the *Police Service Amendment Regulation*, apply to investigations and proceedings under the Act in respect of complaints made in accordance with the Act whether commenced but not concluded before or commenced on or after the coming into force of the *Police Service Amendment Regulation*.

[AR 356/90](#) s26;136/2008

Expiry

26.1 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be reissued in its present or an amended form following a review, this Regulation expires on January 31, 2021.

AR 53/2003 s1;31/2007;136/2008;22/2014

Repeal

27 The following regulations are repealed:

(a) *The Municipal Police Disciplinary Regulations* (Alta. Reg. 179/74);

(b) the *Municipal Police Forces Probationary Regulation* (Alta. Reg. 211/83). [AR 356/90](#) s27

Schedule

Police Act

Notice and Record of Disciplinary Proceedings

NOTICE

Police Service: _____ Date: _____

To: _____

You are alleged to have contravened the *Police Service Regulation* that governs the discipline and performance of duty of police officers by engaging in:

(quote relevant clause of [section 5\(1\)](#) of the *Police Service Regulation*)
as defined by [section 5\(2\)](#) (insert relevant clause and subclause of [section 5\(2\)](#) of the *Police Service Regulation*).

Details of Allegation:

(insert date, time, place and description of actions that constitute the allegation). You are required to appear before a disciplinary hearing at (place) on (date) at (time) to answer to this matter.

(signature of chief or designate)

Note: Submit the names of witnesses you wish to call to (presiding officer).

Attachments: List of Witnesses _____

Statements of Complainant _____

Date served on cited officer: _____

(signature of person serving form)

RECORD OF PROCEEDINGS

Date _____ Action/Disposition _____
(insert plea entered, adjournments (with dates), findings, punishment)

(signature of presiding officer)

[AR 356/90](#) Sched.