



ARCHIVED - Archiving Content

Archived Content

Information identified as archived is provided for reference, research or recordkeeping purposes. It is not subject to the Government of Canada Web Standards and has not been altered or updated since it was archived. Please contact us to request a format other than those available.

ARCHIVÉE - Contenu archivé

Contenu archivé

L'information dont il est indiqué qu'elle est archivée est fournie à des fins de référence, de recherche ou de tenue de documents. Elle n'est pas assujettie aux normes Web du gouvernement du Canada et elle n'a pas été modifiée ou mise à jour depuis son archivage. Pour obtenir cette information dans un autre format, veuillez communiquer avec nous.

This document is archival in nature and is intended for those who wish to consult archival documents made available from the collection of Public Safety Canada.

Some of these documents are available in only one official language. Translation, to be provided by Public Safety Canada, is available upon request.

Le présent document a une valeur archivistique et fait partie des documents d'archives rendus disponibles par Sécurité publique Canada à ceux qui souhaitent consulter ces documents issus de sa collection.

Certains de ces documents ne sont disponibles que dans une langue officielle. Sécurité publique Canada fournira une traduction sur demande.

REPORT TO SOLICITOR GENERAL

REVIEW OF POLICE (DISCIPLINE) REGULATION

Submitted by:

**Terrence L. Robertson, Q.C.
Jill McIntyre**

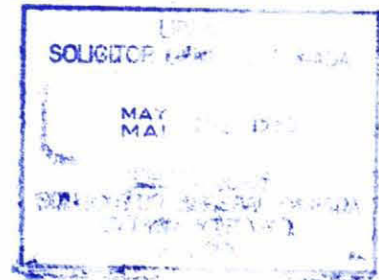
November 30, 1989

HV
8158
R63
1989

HV
8158
R63
1989

REPORT TO SOLICITOR GENERAL

REVIEW OF POLICE (DISCIPLINE) REGULATION



Copyright of this document does not belong to the Crown.
Proper authorization must be obtained from the author for
any intended use
Les droits d'auteur du présent document n'appartiennent
pas à l'État. Toute utilisation du contenu du présent
document doit être approuvée préalablement par l'auteur.

Submitted by:

**Terrence L. Robertson, Q.C.
Jill McIntyre**

November 30, 1989

REPORT TO SOLICITOR GENERAL
REVIEW OF POLICE (DISCIPLINE) REGULATION

OUTLINE

INTRODUCTION

PART ONE: Preliminary Matters

- (1) Background for Study
- (2) Structure of Report
- (3) History of Police Discipline Procedures
 - (a) Royal Canadian Mounted Police
 - (b) B.C. Provincial Police
 - (c) The Municipal Forces
 - (d) Municipal Forces in British Columbia

PART TWO: Discipline and Dismissal of Police Officers in British Columbia

- (1) The Police (Discipline) Regulation
 - (a) The Basic Structure
 - (b) Prohibited Conduct
 - (c) Citizen Complaints Procedures
 - (d) Investigation and "Minor" Breaches of Discipline
 - (e) The Internal Discipline Hearing
 - (f) Appeals
 - (g) Expungement of Service Record of Discipline
 - (h) Probationary Members
- (2) Case Law Relating to Police Discipline and Dismissal in British Columbia
 - (a) Police as Office Holders
 - (b) Collective Bargaining, Discipline and Dismissal
 - (c) The Technical Nature of Discipline Proceedings
 - (d) Citizen Complaints
 - (e) Charter of Rights and Apprehension of Bias
 - (f) Probationary Members
 - (g) Other Issues

PART THREE: Police Discipline and Dismissal in Other Jurisdictions

- (1) Collective Bargaining and Police Discipline
 - (a) Legislation
 - (b) Jurisdictional Questions
- (2) Discipline Codes
- (3) Initiation of Proceedings
 - (a) Citizen Complaints
 - (b) Informal Resolution
- (4) Investigation of Alleged Breaches
 - (a) Outside Investigators
 - (b) Right to Remain Silent

- (5) Hearing
 - (a) Adjudicatory Body
 - (b) Right to Counsel
 - (c) Compellability of the Officer
 - (d) Standard of Proof
 - (e) Autrefois Acquit
 - (f) Apprehension of Bias
- (6) Penalties
- (7) Appeal Provisions
- (8) Probationary Employees
- (9) Non-Culpable Dismissal

PART FOUR: Assessment and Need for Change

- (1) Advantages, Disadvantages and Problems of Current System
- (2) Confines of the Citizen Complaints System
- (3) Canvassing Interested Parties
 - (a) Method
 - (b) Discipline Issues
 - (c) Burden of Proof
 - (d) Autrefois Acquit
 - (e) Mode of Adjudication
 - (f) Appeal Process
 - (g) Penalties
 - (h) Expungement of Records
 - (i) Probationary Constables
 - (j) Non-Culpable Dismissal
 - (k) Other Issues
 - (l) Summary

PART FIVE: Summary and Recommendations

- (1) Rationale
 - (a) Collective Bargaining and Discipline/Dismissal
 - (b) Discipline Code
 - (c) Citizen Complaints
 - (d) Informal Disciplinary Action
 - (e) Investigation
 - (f) Right to Remain Silent
 - (g) Hearing
 - (h) Adjudicative Body
 - (i) Standard of Proof
 - (j) Autrefois Acquit
 - (k) Penalties
 - (l) Appeal Provisions
- (2) Recommendations
- (3) Final Comment

APPENDICES:

- A. Police Act, S.B.C. 1988, c.53
- B. Police (Discipline) Regulation, B.C. Reg. 330/75, as Amended by Reg. 142/89
- C. June 1 Letter to Interested Parties
- D. List of Interested Parties
- E. August 31 Letter to Interested Parties
- F. August 31 Preliminary Draft Recommendations
- G. Final Draft Recommendations
- H. Executive Summary

REPORT TO SOLICITOR GENERAL
REVIEW OF POLICE (DISCIPLINE) REGULATION

INTRODUCTION

"Legislation framed to meet conditions today may not be suitable to conditions tomorrow. The lifespan of any comprehensive set of provisions is relatively short - five years a decade perhaps. The industrial body politic becomes resistant to old techniques for the resolution of disputes just as infections of the human body become resistant to penicillin and the early sulfa drugs. One must constantly be on the look-out for new procedures, new techniques and new remedies."

Jacob Finkelman, Q.C.¹

"If it ain't broke, don't fix it".

Anonymous

It became apparent from the outset of this project that recommending changes to the regulations that govern the disciplining of municipal police officers would not be an easy task. The current system is a curious mix of criminal law, military law and labour relations, and it has worked, with varying degrees of success, for fifteen years. It is not a perfect system and seems foreign to anyone with a background in labour relations, but the community that works with it is comfortable with it. Our task was to identify those parts of the current system that were indeed "broke" and "fix them".

Any changes to the system must be evaluated from a multitude of points of view: That of the constable who is alleged to have "done something wrong"; that of the chief who must decide whether to discipline him and what form the discipline should take; that of their joint employer, the police board; that of the association to which the member belongs; and, finally, that of the community which has entrusted the police department and its members with its safety and wellbeing and empowered it and them to exercise substantial powers over its members under certain conditions.

This report outlines our extensive work in attempting to arrive at a workable model that recognizes the various interests and strikes the best possible compromise among them.

¹. Finkelman, Jacob, Employer-employee Relations in the Public Service of Canada: Proposals for Legislative Change Ottawa, Queens Printer, 1974 at 1-2, as quoted in Shamie, Stephen, "Dispute-Resolution Procedures under the Public Service Staff Relations Act: A Need for Change" 11 Queens Law J. [1986] 404.

PART ONE
PRELIMINARY MATTERS

(1) BACKGROUND FOR STUDY

The Police (Discipline) Regulation² was enacted in 1975 and has not been the subject of a comprehensive review since its enactment, although changes were made to Part 2 of the Regulation dealing with citizen complaints in May of this year.³ Various aspects of the regulation, including the disciplinary procedures contained in the regulation and confusion in regards to when and how a police officer can be discharged for reasons other than discipline have been the subject of consideration and criticism by police boards, courts, the police community and members of the public. Since 1975, there have been significant changes in police discipline procedures in other provinces and within the R.C.M.P. The final catalyst for a complete review came with the study of and consequent modifications to the citizen complaints procedures.⁴

The first step in the review was undertaken by a committee appointed by then Attorney General Brian Smith in 1987. This committee, chaired by Mary Saunders, Q.C. and consisting of nine other members from the police community or with knowledge of police discipline matters,⁵ made two reports to the Attorney General, one in January 1988 and one in January 1989.⁶ Consensus on some matters was reached but many fundamental issues were unresolved when the committee completed its work in April of 1989.

In April of 1989, Solicitor General Angus Ree appointed Mr. Terrence Robertson, Q.C., to examine the regulation, review the work of the above committee, consult with people and

². B.C. Reg. 330/75, as amended by B.C. Reg. 142/89.

³. B.C. Reg. 142/89.

⁴. These modifications are incorporated into the Police Act S.B.C. 1988 C. 53, amending and replacing R.S. 1979, C. 331. The most significant of the changes is the creation of the office of "Complaint Commissioner". The citizen complaint procedure is described in detail in a later part of the report.

⁵. The other committee members were: Chief Constable P.J. Marriott, B.C. Association of Chiefs of Police; Chief Constable Bob Stewart, Vancouver City Police; Don Farquhar, Victoria Police Board, Kathleen Keating, Vancouver Police Board, Cpl. Paul Battershill, B.C. Federation of Police Officers, Insp. Peter Martin, Central Saanich Police Department, Bill Beamish, B.C. Police Commission and Morris Shaw, Ministry of Solicitor General.

⁶. Copies of these reports may be found in the appendix to this paper.

organizations knowledgeable in the workings of the present discipline system and:

1. Identify and comment on outstanding issues in respect of the Police (Discipline) Regulation;
2. Develop procedures for the non-culpable discharge of municipal constables and disciplinary procedures for probationary constables;
3. Develop specific legislative recommendations to amend and update the Police (Discipline) Regulation and procedures for the non-culpable discharge of municipal constables and the discipline and discharge of probationary constables;
4. prepare a report with recommendations for the Solicitor General encompassing the above.⁷

Two matters must be emphasised prior to beginning the report. First, the terms of reference did not include the review of the citizen complaint procedures. Our understanding of the citizen complaint procedures is that neither the police board nor the police commission are bound, when holding a public inquiry into a citizen complaint, to follow the procedures set out in the Police (Discipline) Regulation, and we are concerned that much of the community affected by the citizen complaints procedures and the police discipline regulation does not seem to appreciate that fact. Many of our submissions concerned themselves, directly or indirectly, with various ramifications of citizen complaints on the internal discipline process although we believe that the participants were aware that our mandate did not include a review of the citizen complaints procedures. We mention this at the outset because it would have been ideal had the citizen complaints process and the internal discipline regulations been reviewed at the same time, since they should be inseparably linked and complementary to one another. Some of the models of police discipline which we explored briefly had to be rejected because they would have affected the citizen complaint procedure. As we complete our work on the project, however, we now know how difficult a consensus for change is to achieve in the police community and we understand why such a process may have been impossible if both the citizen complaints procedures and the internal discipline procedures were reviewed at the same time. We have reservations on certain aspects of the citizen complaint procedures but we put these aside and worked, as was our mandate, within the confines of those procedures, which limited the number of options for change available to us. We anticipate strong adverse reaction to many of the recommended changes from the various police associations, who may feel that the proposed

⁷. Project outline prepared by Ministry of Solicitor General, undated, on file at office of Terrence L. Robertson, Q.C.

regulations will take away the "protections" that they believe protect them from unfounded citizen complaints. However, because the public inquiry process contains no such "protections", we simply made the regulations consistent with that process. Throughout the project it was understood that we were not to consider recommending any changes to the citizen complaint procedures.

Second, this project goes beyond the current application of the Police (Discipline) Regulation,⁸ which deals only with the discipline of municipal police officers. Changes to the law are needed to provide for non-culpable discharge of those officers and for discharge of probationary members for unsuitability, although those issues do not entail discipline. This study encompasses the two quite separate issues of discipline, on the one hand, and non-culpable discharge, including discharge of probationary employees for unsuitability, on the other.

The work process undertaken at the direction of Terrence Robertson, the results of which are reported herein, comprised four distinct segments. The first, and on-going, encompassed a review of legislation, literature and case law pertaining to the British Columbia Police Act and Police (Discipline) Regulation and a review of literature, legislation and case law from other jurisdictions.

The second segment of the project was designed to allow input from all parties who would be affected by changes to the Regulation. It was necessary that the persons and organizations most affected by changes be canvassed prior to any changes being recommended. This canvassing was undertaken by way of letter, a copy of which can be found in the appendix to this paper. A list of the parties to whom the letter was sent is also included in the appendix.⁹ This letter sought input on all aspects of discipline and specifically in relation to discharge of probationary members, non-culpable discharge and the formality of discipline procedures. Based on the submissions received and on several informal meetings held with parties who had requested them, a draft proposal for changing the Regulation was prepared and circulated on August 30, 1989 to all the "interested parties" who had received the first letter.¹⁰

⁸. From this point forward, where the word "Regulation" is used, it refers to the Police (Discipline) Regulation, B.C. Reg. 330/75, as amended by B.C. Reg. 142/89.

⁹. A copy of the letter will be found in Appendix C., and a list of the parties to whom the letter was sent is found in Appendix D.

¹⁰. A copy of this draft is included as Appendix E.

The receipt and assimilation of feedback on the proposed changes comprised the third segment of the project.

The fourth and final stage involved a complete synopsis and analysis of all the information gathered, the making of final recommendations for changes to the regulation and the preparation of this report.

(2) STRUCTURE OF REPORT

This report encompasses the full scope of the examination made, submissions received and our analysis of both. It is broken into five parts. The first consists of an introduction, including a brief history of police disciplinary procedures in this country and province. The second part is an indepth description of the current system in British Columbia and a full analysis of case law decided under the current Regulation. The third part describes the issues that have arisen in police discipline and the approaches taken by other jurisdictions. Legislation, case law and published materials from other jurisdictions, primarily other provinces in Canada, on the discipline of police officers and related aspects is included in that part.

The fourth part of the paper summarizes the advantages and disadvantages of the current system of police discipline in this province and reviews the submissions received from the various groups interested in police discipline in this province, in response to our initial request and in response to the initial draft that was circulated.

The fifth part of the paper contains our recommendations and a draft regulation.

(3) HISTORY OF POLICE DISCIPLINE PROCEDURES

The current system of police discipline in this province is a product of its history and shares many similarities with police discipline systems from other jurisdictions because of similar historical origins.

The current system of municipal policing in this province cannot be said to be a direct descendant of any former system in place in this country or another. The North West Mounted Police, the now defunct B.C. Provincial Police and the municipal forces of England in the 1800's, after which our forces are said to be patterned, have all had some influence on the current system of municipal policing in this province. As a consequence, the current system of disciplining police officers has many elements that are common to all those forces.

(a) Royal Canadian Mounted Police

The Royal Canadian Mounted Police originated as the North West Mounted Police, a national police force established in 1873 and patterned after the Royal Irish Constabulary. From its inception, the North West Mounted Police was constituted with immense powers¹¹ and was, in effect, the only law and the only government west of Manitoba. While this could have developed into a dangerously volatile situation, it was prevented from becoming so by the "conscious adaptation of the paramilitary model exemplified by the Royal Irish Constabulary."¹²

"Two characteristics distinguished the Royal Irish Constabulary: its military organizational structure and its police function. The former characteristic entailed not only the use of a military rank structure but of uniforms, weapons, and a military code of discipline."¹³

Most of the men in the North West Mounted Police, particularly the officers, were recruited from either the British Army or the Canadian Militia,¹⁴ and it was natural for the force to adopt the military style of discipline used in both these organizations.

"The Act of 1873 which authorized the existence of the Force provided no guidelines for the administration of discipline. The disciplinary proceedings which developed reflected the same influences that affected the Force elsewhere in its organization. Faced with the task of developing and managing the administration of discipline, successive Commissioners and officers of the Force were greatly influenced by their experience as military officers and their legal experience as stipendiary magistrates and justices of the peace within the North West Territories. To deal with breaches of discipline, the officers of the Force developed a system which was complementary to the civil and criminal process in use in the Territories."¹⁵

¹¹. Gramolini, Inspector A.J., "The Early Development of the N.W.M.P.", Annual Symposium, Canadian Police Commissioners, Victoria, B.C., 1986, p. 6.

¹². Ibid.

¹³. Marin, Rene J., The Report of the Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedure Within the Royal Canadian Mounted Police, Information Canada, Ottawa, 1976, p. 16.

¹⁴. Ibid.

¹⁵. Op. cit., note 11, p. 25.

The initial legislation creating the force allowed for only two penalties: Dismissal or fines not exceeding 30 days pay.¹⁶ The procedural conventions were summary in nature¹⁷ and early in the history of the North West Mounted Police it was established that questions of police discipline were to be dealt with by a police tribunal and not by a court of law.¹⁸

The R.C.M.P.'s style of policing and organizational structure undoubtedly had some influence on the style, structure and discipline of the present day municipal police forces despite the fact that those municipal police forces shared no common origin with the R.C.M.P.

(b) B.C. Provincial Police

A brief look at the now defunct provincial police force is useful because the legislation that governed the provincial police force and discipline of its members can be traced, through various amendments over time, to the present-day Police Act¹⁹ under which authority the Police (Discipline) Regulations have been enacted.

The Act Respecting Police Constables²⁰ was British Columbia's first statute to specifically address the issue of provincial policing.²¹ The conduct of members of the Provincial Police force was first regulated by statute in 1923. An Act Respecting the Provincial Police Force and Provincial Gaols²² is predecessor legislation to the current Police Act. Section 18 of the 1923 legislation read as follows:

¹⁶. Ibid., p. 20

¹⁷. Op. cit., note 13, p. 26.

¹⁸. Op. cit., note 11, p. 10.

¹⁹. "Police Act" when used in this report, unless otherwise specified, means S.B.C. 1988, c. 53.

²⁰. S.B.C. 1880, C. 22.

²¹. Statistics Canada, Policing in Canada. 1986. p. 74.

²². S.B.C. 1923, c. 57.

18. If the Superintendent, Assistant Superintendent, or the Inspector of any police division considers it advisable to make any inquiry into the conduct of any member of the force, or into any complaint against any member of the force, or into any complaint respecting the enforcement by any member of the force of any penal law in force in the Province, he may examine any person under oath and may compel the attendance of any person as a witness in the same manner as if the proceedings were before a Justice under the Summary Convictions Act.

The nature of the discipline that could be imposed upon a member was detailed in the legislation two years later when the following was added:

18A. (1) Where, after investigation into the conduct of any member of the force, or upon the report of an Inspector, the Superintendent is of the opinion that a member is guilty of any act or conduct for which he should be disciplined in some manner other than by suspension, the Superintendent may fine the member an amount not exceeding one month's pay of the member, and may reduce the member in rank.

(2) The superintendent shall at once report any proceedings taken by him under this section to the Attorney-General, to whom an appeal shall lie; and the Attorney-General may confirm, mitigate, or remit any penalty imposed on a member of the force under this section.

(3) The penalties imposed upon a member of the force under this section shall be in addition to all other penalties to which he may be liable under this or any other Act.²³

The wording of the section remained similar for more than half a century. In 1960, section 19 of the Police And Prisons Regulation Act read as follows:

19. (1) Where, after investigation into the conduct of any member of the force, or upon the report of an Inspector, the Commissioner is of opinion that a member is guilty of any act or conduct for which he should be disciplined in some manner other than by suspension, the Commissioner may take disciplinary action in one or more of the following ways;

- (a) Fine the member an amount not exceeding one month's pay of the member;
- (b) Reduce the member in rank;
- (c) Severely reprimand or reprimand the member.

(2) The Commissioner shall at once report any proceedings taken by him under this section to the Attorney-General, to whom an appeal lies; and the Attorney-General may confirm, mitigate, or remit any penalty imposed on a member of the force under this section,

²³. S.B.C. 1925, c. 41.

(3) The penalties imposed upon a member of the force under this section are in addition to all other penalties to which he may be liable under this or any other Act.²⁴

Until 1974, the discipline provisions contained in the Police Act were applicable only to the Provincial Police force²⁵ and the province had no direct involvement in the discipline of municipal police forces. The Vancouver Charter²⁶ and the Municipal Act²⁷ empowered the City of Vancouver and other municipalities respectively to establish and govern their own municipal police forces. These forces were governed by a board²⁸ established by the municipality.

It was not until the province undertook a massive reform of policing in 1974²⁹ that the above provisions were changed, the Police (Discipline) Regulation was enacted and the applicability of the Act widened to include constables employed by municipal forces.

(c) The Municipal Forces

The first municipal constable in what is now Canada probably appeared in Quebec City as early as 1651.³⁰ The early constables, however, were appointed by judicial officers, usually justices of

²⁴. R.S.B.C. 1960, c. 288, s. 19.

²⁵. The R.C.M.P. now acts as the Provincial force under contract pursuant to the provisions of the Police Act. This change occurred in 1950. Most other provinces have now abandoned their provincial police forces in favour of contracting with the R.C.M.P. Only Ontario and Quebec remain policed by provincial forces. The Royal Newfoundland Constabulary shares provincial policing responsibility with the R.C.M.P. and New Brunswick operated the New Brunswick Highway Patrol, which complements the provincial policing services of the R.C.M.P.

²⁶. S.B.C. 1953 c.55.

²⁷. R.S.B.C. 1960, c. 255.

²⁸. Section 664 of the Municipal Act of 1960 provided that the police force of a municipality should be governed by a "Board of Commissioners of Police" which consisted of the mayor, one person appointed by the Provincial government and one person appointed by municipal council. There was further provision in section 665 for some municipalities to have their board comprised of the mayor, a judge of the County Court within the territorial limits of the municipality and a police magistrate of the municipality. This latter type of board would apply to certain municipalities designated by the Legislature or by an Order of the Lieutenant-Governor in council.

²⁹. Other reforms occurring around this time included the setting up of the Justice Institute of British Columbia and the Coordinated Law Enforcement Unit.

³⁰. Stenning, Philip C., Police Commissions and Boards in Canada, Centre of Criminology, Toronto, 1981, p. I.3

the peace, and their primary function was to perform administrative tasks.³¹

"With the development of urban communities during the eighteenth and nineteenth centuries, the need for a different kind of constable, whose primary role would be that of protection and keeping the peace, became increasingly evident. At first, the power of appointing such urban constables, and of thereby creating the first municipal police forces in the larger urban centres, remained with judicial officers such as the justices of the peace and the newly established "police magistrates". In some instances, grand juries were given such powers of appointment. With the gradual development of systems of local elected government, however, an important change occurred in the government of urban police forces. Instead of being viewed principally as a service ancillary to the judiciary, police forces increasingly came to be viewed as primarily a municipal service."³²

Canada's French/English heritage allowed it to draw from the French experience as one of the earliest European countries to experiment with police, and from England's experience with the Metropolitan Police Act. The French legal system proved much more hospitable to the organization of a permanent body of armed men at the disposal of the state than did the English common law,³³ and England's Metropolitan Police Act . . .

". . . was extremely influential, serving as a model for urban police forces throughout the English speaking world. By placing control in the hands of an appointed commission, the police were effectively removed from the realm of local politics."³⁴

Municipal policing in British Columbia has its origins in the first Municipal Act passed by the provincial legislature in 1872.³⁵ The municipal forces in Canada were patterned after the London Metropolitan Police Force. An examination of the discipline system in force in the London Metropolitan police Force in the late 1800's reveals military traditions and standards that had prevailed in most constabularies for generations.³⁶

". . . the archetypal chief constable 1829-1879 . . . tended to be a grandiose man of iron who despised his humble constables and their base origins. Most men were

³¹. Ibid.

³². Ibid., I.4

³³. Macleod, R.C., Lawful Authority: Readings on the History of Criminal Justice in Canada. [1987] Ontario, p. 83.

³⁴. Ibid.

³⁵. Op. cit., note 21, p. 75.

³⁶. Boothman, John V., "Facing the Music: Modern Police Discipline and Primitive Police Discipline 1829 -1879., 7 Liverpool Law Review, [1985] 1, at p. 4.

undeserving of compassion, and, as rough and ill-educated labourers, they required a regime of savage repression to secure minimum standards of police reliability and efficiency. The discipline of fear was thought to be the only solution to the perennial problems of lazy, unreliable and drunken constables."³⁷

The rules established for municipal police forces in England and Wales remained constant for more than a century. The following was written about police discipline rules in effect in England and Wales in 1979:

"By 1880 [In England and Wales] about three quarters of the modern rules of police discipline were firmly established, and this included about 95% of the detailed offenses in the modern Discipline Code. All the seven modern police sanctions had been elaborated many years earlier, and perhaps a half of the main principles of modern disciplinary procedure had been pioneered in various constabularies in the period. The principle of a limited police right of appeal was established in the [eighteen] seventies in some borough forces; and the concept of a formal complaints procedure and some key ingredients of the modern law were also firmly established in several constabularies by about 1850."³⁸

The writer concluded that modern police discipline in England "has deep historical roots and is standing firmly on the shoulders of the early law".³⁹

(d) Municipal Forces in British Columbia

As stated previously, until 1975, discipline of municipal forces in British Columbia was the responsibility of individual municipalities. Section 668 of the Municipal Act⁴⁰ provided:

"The [municipal police] Board shall from time to time make such regulations as it may deem expedient for the government of the police force, and for preventing neglect or abuse, and for rendering the force efficient in the discharge of its duties."

A survey of the rules made by various municipalities prior to 1975 show a marked similarity to the current Regulation in tenor and style. Of particular note are the Discipline Code with similar "offenses" and wording, punitive terms and provision for a hearing before the chief constable.

³⁷. Ibid., p.3.

³⁸. Ibid., p. 31.

³⁹. Ibid. p. 31.

⁴⁰. R.S.B.C. 1960, c. 255.

The rules indicate a strong military flavour throughout, emphasised by the following provision which was found in the rules for the Esquimalt Police Department.⁴¹

103. "saluting is the outward and visible sign of a well-trained force."

(1) A member of the Force shall salute in the prescribed manner when in uniform and wearing headdress. A salute will be accorded to all Officers of the Force and any other person entitled thereto, upon entering his presence, before addressing him, upon leaving his presence, and when passing him".

Although not all the old rules of the municipal police forces are readily available for study, all the ones to which we had access provided that dismissal was one of the punishments to be imposed upon a finding of guilty on a disciplinary charge. Dismissal was legally tenable through the provisions of the Municipal Act which provided that "all the members of [the] police force shall be appointed by and hold their office at the pleasure of the Board."⁴²

In 1968 a new subsection was added providing:

"Where a chief of Police, a constable or other police officer is dismissed by a Board of Police Commissioners, the dismissal may be appealed by motion to a Judge of the Supreme Court of British Columbia, whose determination is binding on the Board and on the appellant."⁴³

That provision did not change the fact that police officers held their office at the pleasure of the Board and a disciplinary infraction was not necessary for discharge. Merrifield v. Board of Police Commissioners of Saanich⁴⁴ confirmed the power of a police board to summarily dismiss a police officer, without giving him reasons or any opportunity to be heard.

The development of the collective bargaining process between the municipal police forces and their employer boards and a movement towards having collective agreement purport to deal with citizen complaint matters gave rise to the Police Commissioner of the day, John Hogarth, requesting the drafting of standard Police Discipline Regulations.⁴⁵

⁴¹. This provision was repealed on March 20, 1968.

⁴². Municipal Act, R.S.B.C. 1960, c. 255, s. 675.

⁴³. S.B.C. 1968, c.33, s. 161.

⁴⁴. [1972] 6 W.W.R (S.C.).

⁴⁵. This information comes from an Affidavit sworn by Professor Grant and contained in the files of the B.C. Police Commission.

The province retained Professor Alan Grant⁴⁶ to draft those regulations and the result was a comprehensive set of discipline regulations that incorporated elements that were common to the municipal police discipline rules of the day, the R.C.M.P. discipline regulations and regulations from other provinces, most notably Ontario.⁴⁷

⁴⁶. At that time, Alan Grant was an Associate Professor of Law at Osgoode Hall Law School, and a member of the bar in England and Ontario. He had been a member of the London Metropolitan Police between 1956 and 1971 and held all ranks from Constable to Chief Inspector during those years. His experience included the prosecution and defence of internal police discipline cases and the investigation of citizen complaints against the police.

⁴⁷. Police discipline regulations for the province of Ontario can be traced back at least to 1947. The Code of Discipline contained in the Ontario Regulations did not change much from 1947 over the years and is similar in wording the Code contained in the current British Columbia regulation. The procedure, likewise, incorporated a quasi-criminal hearing before the chief constable.

PART TWO
DISCIPLINE AND DISCHARGE OF POLICE OFFICERS IN BRITISH COLUMBIA

(1) THE POLICE (DISCIPLINE) REGULATION

As of 1985 there were 12 municipal police forces in British Columbia comprising 1754 officers, serving 29 percent of the population. The rest of the province is served by the R.C.M.P. under provincial or municipal contract.⁴⁸ In addition, there are one hundred federally appointed police officers⁴⁹ and approximately four hundred "special Provincial constables".⁵⁰ The current Police (Discipline) Regulation applies to the discipline of all municipal police forces in the province but does not apply to the discipline of members of the R.C.M.P., federally appointed police constables, provincial constables or special provincial constables, although one part of the regulation, that dealing with citizen complaints, sets out the procedures to be followed if a citizen wishes to make a complaint against a municipal officer, an auxiliary constable or a special provincial constable.⁵¹

This report is confined to an examination of matters of discipline and discharge pertaining to the municipal police forces in this province. It was beyond the scope of our task to examine the discipline of any other police members in the province.

(a) The Basic Structure

A municipal constable is employed by a municipal police board, as is the chief constable of the force. The chief is the "disciplinary authority" for the force, and the board is the "disciplinary tribunal" for the force.⁵²

⁴⁸. Op. cit., note 21, p. 75.

⁴⁹. Ibid.

⁵⁰. Special provincial constables perform policing duties for crown corporations such as B.C. Hydro and Power Authority, B.C. Rail and B.C. Transit.

⁵¹. The Regulation as amended by B.C. Reg 142/89 refers to auxiliary constables, although the Act does not.

⁵². Act, s. 49.

There is provision for verbal and written reprimands to be given without going through the hearing process. However, a member is not bound to accept a written reprimand given unilaterally. He may request, within seven days of the receipt of the written reprimand, the matter to be investigated and proven against him in a full hearing. In such a case, the matter is handled in the same manner as all other disciplinary matters that proceed to hearings.⁵³

An alleged breach of the Discipline Code can come to the chief's attention by way of complaint made by a member of the public, through an "internal" investigation or by a complaint made by another member. In all cases, the chief is responsible for:

- appointing an officer to investigate an alleged breach of the discipline Code,
- determining the maximum penalty to be imposed in respect of each breach;
- appointing a "presenting officer" who functions as a prosecutor;
- acting as "presiding officer" or appointing a "presiding officer" who performs an adjudicatory function.⁵⁴

The "presiding officer" determines if a breach has been proved and if he finds it proved, recommends a penalty to be imposed. That penalty may not be more than the maximum recommended by the chief if the presiding officer is other than the chief,⁵⁵ and may, within 7 days of the decision made by the presiding officer, be confirmed or lowered by the chief.⁵⁶ At that time, the constable, as well as any citizen whose complaint is the subject of the disciplinary action taken by the chief constable, has the right to request the police board to hold a public inquiry under the Citizen Complaints procedures.⁵⁷ The right to an inquiry appears to be absolute and no reasons need be given in requesting it.⁵⁸ The constable has an additional right of appeal

⁵³. Regulation, s. 7.

⁵⁴. Regulation, s. 8, s. 12, s. 17, s. 18.

⁵⁵. Regulation, s. 30(3).

⁵⁶. Regulation, s. 37. If no action is taken by the chief, the decision and punishment awarded by the presiding officer is confirmed.

⁵⁷. Act, s. 60.

⁵⁸. This is a change from the former Act that required the complainant to give reasons for requesting an inquiry. The necessity for reasons to be given was seen by the Supreme Court as giving the police board discretion as to whether or not to hold a public inquiry. See Wood v. A.G.B.C. (1985), 68 B.C.L.R. 177 (S.C.). It is doubtful that the new section would be interpreted

to the Police Board under the provisions of the Regulation.⁵⁹ That appeal is held in camera and is governed by criteria set out in the Regulation.⁶⁰

(b) Prohibited Conduct

The Discipline Code is Appendix A to the Regulation. The Discipline Code is a comprehensive list of prohibited conduct that forms the basis of any disciplinary action. No officer may be disciplined unless he is proven⁶¹ to have committed or admits to committing a disciplinary default. The conduct proscribed by the Discipline Code ranges from "untidiness"⁶² and "insubordination"⁶³ through to "deceit"⁶⁴ and "improper use of firearms".⁶⁵

(c) Citizen Complaints Procedures

The discipline process cannot be fully understood in isolation from the citizen complaints procedures which are incorporated in the Act. Whether or not an alleged disciplinary breach arises as a result of a complaint by a citizen, the initial proceedings taken against the member are the same. However, if a citizen has made a complaint, he or she will have certain rights throughout the process. A "complaint" is defined as "an allegation . . . which, if proven, would constitute a disciplinary default under a code of conduct established by regulation."⁶⁶

If a citizen complaint has been made and the chief deems it appropriate, he may attempt an "informal resolution".⁶⁷ If a resolution is proposed to which the complainant agrees, he or she

in the same manner.

⁵⁹. Regulation, s. 37.

⁶⁰. Regulation, ss. 38 and 39.

⁶¹. Section 23 specifically provides that disciplinary charges must be proved "beyond a reasonable doubt."

⁶². Discipline Code, section 11.

⁶³. *Ibid.*, s. 2.

⁶⁴. *Ibid.*, s. 4.

⁶⁵. *Ibid.*, s.8.

⁶⁶. Act, s. 49.

⁶⁷. Act, s. 56, Regulation, s. 52.

signs a form to that effect and the matter is not recorded as a complaint on the member's service record of discipline.⁶⁸ However, nothing prevents a chief from taking disciplinary action against a member on a complaint that has been informally resolved, although statements made by the member in an attempt to effect an informal resolution cannot be used against him to prove a disciplinary breach.⁶⁹

A citizen complaint, therefore, that has been "informally resolved" may or may not involve any disciplinary penalty being imposed upon the member. In most cases, however, no disciplinary action will be taken.

If a citizen makes a complaint that the chief refuses to investigate on the grounds that it is "frivolous, vexatious, or not in good faith or trivial"⁷⁰ he or she may seek a review of the chief's decision before a two member panel of the municipal police board. If either of those members determine that the complaint should be investigated, the chief will be ordered to investigate.

Both a citizen who has made a complaint against a member and the member against whom the complaint is made have the right to request a public inquiry by the police board at the conclusion of disciplinary proceedings or where none are contemplated. There is a further right to a public inquiry before the Police Commission, although leave must be sought. The Complaint Commissioner, a member of the Police Commission appointed by the minister to perform duties assigned under the Act, will not normally take part in such a hearing⁷¹.

No rules of procedure for the public inquiry are prescribed in either the Act or the Regulation although specific provision is made for the evidence to be given vive voce, for the inquiry to be public, and for the complainant, the constable and the disciplinary authority to give evidence at

⁶⁸. Regulation, Form 9, Part E, and as amended by B.C. reg. 142/89, s. 52(3).

⁶⁹. Regulation, as amended by B.C. Reg. 142/89, ss. 52(4) and 52(5). Such statements cannot be used whether or not an informal resolution is effected.

⁷⁰. Act, s. 58.

⁷¹. Section 40(4) of the Act provides that the chairman may appoint a panel for hearing an application for leave to appeal under section 64 or an appeal under section 65. Subsection 40(8) provides that "the member of the commission appointed by the minister to perform the duties of the complaint commissioner shall not be a member of a panel." The section is drafted in such a way that the complaint commissioner is only specifically excluded from hearing the matter where a "panel" is appointed. In cases where the chairman wants the matter heard by more than a panel of members, the Act does not specifically exclude the complaint commissioner. This appears to be a flaw in the legislation.

the inquiry and the police board or commission to require any of them to do so.⁷² There is case authority to the effect that an appeal before a board of police commissioners or a police commission is not governed by strict rules of evidence, although the normal rules of natural justice apply.⁷³

The Act appears to allow a police board or a police commission to make a finding that a disciplinary default occurred without reference to the provisions of the Police (Discipline) Regulation. This means that the "rules applicable in summary conviction proceedings" which are incorporated into the Regulation are of no benefit to the member when a public inquiry is held. It is similarly doubtful whether the board is bound by the same limitation periods as the chief of the department would be. The Act allows the chief to refuse to investigate as "frivolous and vexatious" any complaint where the "complainant knew or ought to have known, more than 6 months before making the complaint, of the act or omission" to which the complaint refers⁷⁴ but his exercise of discretion in that regard is reviewable.⁷⁵

Similarly, if a Form 3 has been issued, the presiding officer is bound at a disciplinary hearing by the maximum penalty set out thereon, but there is nothing in the Act or the Regulation which would suggest that the Form 3 binds the board or the commission in the amount of the penalty it can assess on public inquiry.⁷⁶ Indeed, if they were, the purpose in having a public inquiry would be futile where the member was disciplined to the full maximum set out in the Form 3 originally served upon him, and the legislature has provided for public inquiries in such circumstances.

⁷². Act, s. 60(6).

⁷³. Re Whitelaw and Vancouver Police Commissioners Board (1972) 29 D.L.R. (3d) 781 (B.C.), re Beauchamp and Espanola (1981) 122 D.L.R. (3d) 149; affirmed on other grounds 128 D.L.R. (3d) 766 (Ont. C. A.); Saulnier v. Quebec Police Commission [1976] 1 S.C.R. 572.

⁷⁴. Act, s. 58(1)(c).

⁷⁵. Act, s. 58. However, it is not clear what the chief would be expected to do where such a review panel sent the complaint to the chief to be investigated but where it was too late under the discipline regulations to lay disciplinary charges. Presumably, if the complaint was a legitimate one and the chief could not lay charges because of the limitation period, he would so advise the complainant and the complainant would then be entitled to call for an inquiry under Section 60 of the Act and the member could be disciplined by the board.

⁷⁶. Conversely, the board and the commission are both limited by the Form 3 where a member appeals his discipline. See Regulation, ss. 40(1) and 42(4).

A member does not have an independent right of appeal where a complainant chooses to take a complaint to public inquiry. The former Police Act allowed a member who was dismissed after a public inquiry to appeal to the Supreme Court of British Columbia⁷⁷ but this provision was dropped from the new legislation. Consider the case where a member is "acquitted" of a disciplinary default by a presiding officer, and the complainant requests a public inquiry. If the police board affirms the decision of the presiding officer, but the police commission finds that a breach was committed and disciplines the member accordingly, the member is left with no appeal.

Our recommendations to the Police (Discipline) Regulations are predicated on our interpretation of the Act and Regulations: that is, that the Act replaces and takes precedence over all aspects of the Regulation where a citizen complaint results in a public inquiry. This interpretation appears to be the only one that makes logical sense.

(d) Investigation and "Minor" Breaches of Discipline

With two exceptions, disciplinary infractions must be proceeded with through a highly formalized investigation and adjudication process. Those two exceptions are that a verbal reprimand⁷⁸ may be given unilaterally for a "minor breach of discipline"⁷⁹, and a written reprimand may be given unilaterally for a breach of discipline that "calls for a reprimand to be entered on a member's service record of discipline."⁸⁰ A verbal reprimand is entered in the official police note book of both the member and the officer giving the reprimand, but is not appealable and does not form part of the member's service record of discipline. A written reprimand is entered on the member's service record of discipline and may be disputed within seven days. If it is disputed, the disciplinary infraction is dealt with through the formal investigation and adjudication method set out for all other alleged breaches of the Discipline Code.

Investigations are conducted by a member of a certain prescribed rank appointed by the chief for the purpose.⁸¹ The investigation must follow the procedure set out in the regulation. Written statements must be taken from all witnesses, notice must be served on the officer and any

⁷⁷. Police Act, R.S.B.C. 1979, c. 331, s. 47.

⁷⁸. Regulation, s. 7(4).

⁷⁹. Ibid.

⁸⁰. Regulation, s. 7(7).

⁸¹. Regulation, s. 8.

statement made by the member upon being served with the notice must be taken down in writing.⁸²

The investigating officer makes recommendations to the chief and submits his report and copies of all written statements taken by him to the chief along with a recommendation as to whether disciplinary action should be taken against the member, and if so, he recommends the maximum penalty in respect of each charge. In addition, the investigating officer is to identify "such organizational or administrative practices of the municipal force as may have cause, or contributed to the creation of, the disciplinary default."⁸³ The chief or his delegate decides on appropriate action on receipt of the investigating officer's report and recommendations.⁸⁴ The report made by the investigating officer is not given to the member.⁸⁵ Upon receipt of the investigating officer's report, the chief decides to either:

1. Lay disciplinary charges against the member;
2. Advise the member as to his future conduct;⁸⁶ or
3. Take no further action.

If the matter stems from a citizen complaint, the chief's decision to take no further action or to advise the member as to his future conduct may result in a public inquiry requested by the citizen.⁸⁷ Where the chief decides to take disciplinary action, the complainant is notified at regular intervals of the progress of the action⁸⁸ and may request a public hearing when the adjudication process is complete.⁸⁹ The officer complained against also has a right to request a public inquiry when the chief makes his decision, but realistically a member would never avail

⁸². Regulation, s. 10(1).

⁸³. Regulation, s. 11.

⁸⁴. Regulation, s. 12.

⁸⁵. Regulation, s. 13(3). However, in Bowles v. Post, [1985] B.C.W.L.D. 702, 16 D.L.R. (4th) 591 (S.C.) an allegation of reasonable apprehension of bias appears to have been overcome in part by allowing the officer access to the investigators report.

⁸⁶. Regulation, s. 15 reads: "A case in which a member has been advised as to his future conduct shall not be referred to as a disciplinary default for discipline purposes and it shall not be entered on the member's service record of discipline."

⁸⁷. Act, s. 60

⁸⁸. Act, s. 55.

⁸⁹. This is the combined effect of s. 59 of the Act and s. 54 of the Regulation.

himself of his right unless disciplinary action was taken against him. At the conclusion of the hearing for a disciplinary default, if the matter stems from a citizen complaint the member has the same rights as a complainant to request a public inquiry. He always, whether or not a complaint is involved, has a right to appeal to the municipal police board under the provisions of the Regulation.⁹⁰

(e) The Internal Discipline Hearing

The internal discipline hearing is a quasi-criminal hearing incorporating "the rules of evidence and procedure in summary conviction proceedings."⁹¹ Service of a "Form 3" upon the member commences the proceedings and must be served within 6 months after the occurrence of the disciplinary default, or 3 months after the discovery that an alleged disciplinary default has occurred, whichever is later.⁹² Form 3 sets out the nature of the disciplinary default alleged and the maximum penalty faced by the member if the default is proved against him.

The member may be represented by counsel or agent,⁹³ and the case against him is presented by counsel or agent appointed by the chief who is referred to as the "presenting officer". The burden of proof is on the presenting officer and the standard is "beyond a reasonable doubt"⁹⁴ and the member who is alleged to have committed a disciplinary default is referred to as the "accused member". The hearing is closed to the public.⁹⁵ The proceedings are "recorded verbatim by some

⁹⁰. Regulation, s. 37.

⁹¹. Regulation, s. 23(2).

⁹². Regulation, s. 34.

⁹³. Section 18(1) of the Regulation provides that counsel may appear only in matters where the maximum penalty is dismissal, requirement to resign or reduction in rank. For other types of penalties, the member is to appear in person or be represented by "agent", that is, by another member of the police force. The latter provision, however, was ruled ultra vires by the Supreme Court of British Columbia and confirmed by the B.C. Court of Appeal in Joplin v. Chief Constable, City of Vancouver Police Department et al., (1982), 144 D.L.R. (3d) 285, 2 C.C.. (3d) 396, [1983] 2 W.W.R. 52, 4 C.R.R. 208, 42 B.C.L.R. 34 (S.C.), confirmed on appeal at (1985) 61 B.C.L.R. 396 (B.C.C.A.).

⁹⁴. Regulation, s. 23(1).

⁹⁵. Regulation, s. 17(1).

reliable means⁹⁶ and adjudication is made either by the chief or by a member delegated by the chief for that purpose, who is referred to as the "presiding officer".⁹⁷

At the conclusion of a discipline hearing, the presiding officer determines if the disciplinary default has been proved against the member, and if he finds it proved "imposes"⁹⁸ one of the penalties set out in section 33 of the regulation in respect of each breach proved. He may not "impose" a penalty greater than that set out in Form 3 and there is authority to the effect that section 33 is an exhaustive list of penalties that can be imposed.⁹⁹ The penalties set out in section 33 are as follows:

- (a) recommendation to the board that the member be dismissed from the municipal force;
- (b) recommendation to the board that the member be required to resign from the municipal force;
- (c) reduction in rank;
- (d) fine, not to exceed \$200, and with time to pay, if any, at the discretion of the presiding officer;
- (e) suspension without pay for not more than 5 days;
- (f) reprimand.

The punishment imposed by the presiding officer is subject to confirmation by the chief, where the chief is not the presiding officer, within 7 days of its imposition. The chief may confirm or reduce, but may not increase, the punishment imposed by the presiding officer.¹⁰⁰

Where the disciplinary default does not arise through a citizen complaint, at the completion of the hearing, the member has a right to appeal the discipline imposed by the presiding officer and confirmed by the chief. Appeals are discussed below.

⁹⁶. Regulation, s. 17(3).

⁹⁷. Regulation, s. 17(1)

⁹⁸. Regulation, s. 33.

⁹⁹. Mitchell v. Kowal, (1979) 10 B.C.L.R. 96, 96 D.L.R. (3d) 464 (S.C.).

¹⁰⁰. Regulation, s. 37.

Where the disciplinary default does arise through a citizen complaint, both the member complained against and the citizen making the complaint have the right to request a public inquiry under the provisions of the Act,¹⁰¹ but the member's right to appeal under the Regulation depends on whether or not a citizen requests a public inquiry. If the complainant chooses to exercise his or her rights to a public inquiry, the member loses any independent appeal rights he has under the Regulation. If he is dissatisfied with the results of the discipline hearing, he must argue his case in the public inquiry alongside the complainant. When the time limits for requesting a public inquiry expire without the complainant requesting one, the member may avail himself of his appeal rights under the Regulation.

It must be noted that although the Regulation states that the penalty is imposed on the member at the conclusion of the hearing, other parts of the regulation refer to the penalty as being merely an "intended penalty" at this stage.¹⁰² A complainant may request a public hearing if dissatisfied with the "intended penalty". The use of the word "imposed" is quite confusing in this context.

Where the Regulation provides that "there is no appeal against the dismissal of a charge"¹⁰³, the Act gives the police board the right, on a public inquiry, to "reject the disciplinary action intended to be taken by the disciplinary authority and order that it take the disciplinary action the disciplinary tribunal specifies."¹⁰⁴ The Act specifically provides that "disciplinary action" includes a decision not to take disciplinary action.¹⁰⁵ What this means is that the complainant can, in essence, appeal the dismissal of charges against a police member, although the Regulation on its face precludes an appeal of dismissal. The provisions of the Regulation would prevent the chief and the board from appealing if the presiding officer dismisses the charges against the member.

¹⁰¹. Act, s. 60.

¹⁰². Regulation, s. 54(1)(d).

¹⁰³. Regulation, s. 36(3).

¹⁰⁴. Act, s. 63(1)(b). In Mitchell v. Kowal, op cit., note 99, Meredith J. paralleled the rights of the Police Commission and the Police Board under the public inquiry provisions with the appeal provisions under the Regulation.

¹⁰⁵. Act, s. 63(3).

(f) Appeals

A member who has been found by a presiding officer to have committed a disciplinary default may appeal that finding committed and/or the penalty imposed to the police board pursuant to section 38 and 39 of the Regulation. The grounds of appeal are:

- (1) that there was no evidence on an essential element of the case against the accused member,
- (2) that the accused member was deprived of a fair trial in accordance with the principles set out in the Act and [the] regulation,
- (3) that the facts as found by the presiding officer did not amount to a disciplinary default under the code,
- (4) that new evidence that could not have been discovered by reasonable diligence by or on behalf of the appellant has been discovered that renders the decision or punishment, or both, unjust or unsatisfactory,
- (5) that the punishment inflicted was unreasonable having regard to all the circumstances of the case.

The appeal to the police board takes the form of a review of the record and is closed to the public.¹⁰⁶ At the conclusion of the appeal the police board may "make any finding or order and, where appropriate, impose any punishment that the presiding officer may have awarded at the hearing, except that the board, as employer, may dismiss a member or require resignation from the municipal force, or the board may order a new hearing. . ."¹⁰⁷

A further appeal is provided to the Police Commission. The grounds of appeal are the same as to the police board and the appeal before the police commission is also on the record and closed to the public.¹⁰⁸ The Police Commission may, like the police board, "make any finding or order, and, where appropriate, impose any punishment that may have been awarded by the board, or . . . order a new hearing."¹⁰⁹

¹⁰⁶. Regulation, s. 39.

¹⁰⁷. Regulation, s. 40.

¹⁰⁸. Regulation, s. 41.

¹⁰⁹. Regulation, s. 42(4).

(g) Expungement of Service Record of Discipline

Section 48 of the Regulation deals with expungement of records. A member may apply to have his service record of discipline expunged if there have been no further entries against his record after certain lengths of time, depending upon the type of discipline imposed. A member must wait one year to apply for expungement of a written reprimand imposed unilaterally under section 7; two years where the reprimand is imposed after a hearing; three years where the penalty was either a fine or a suspension; and five years where the penalty was a reduction in rank.

(h) Probationary Members

The Regulation does not specifically mention probationary police officers. The definition of "member" in the Regulation includes any member "who has been sworn in as a peace officer", which would include a probationary member and therefore make the Regulation applicable to disciplinary matters where such a member was concerned. But there is no provision in the Act or the Regulation that deals with the dismissal of probationary members for unsuitability, although many, if not all, of the collective agreements currently in effect set out criteria for dismissal of such employees.

However, probationary members are not entirely free from legislation. The training, certification and registration of municipal constables is governed by provincial regulation.¹¹⁰ All municipal constables in the province must attend and adhere to the program set out by the Justice Institute of British Columbia. That Regulation mandates each police board to ensure that constables attain certain status at certain stages of their employment. For example, a member is to attain the status of "qualified municipal constable" prior to the first anniversary of his appointment as a police officer. That status is a "prerequisite to the continuation of his employment as a municipal constable at a point in time beyond that anniversary." (Section 2)

The regulations further provide that if a constable fails to successfully complete the peace officers basic training program prior to the first anniversary of his appointment as a constable, the directors of the Justice Institute may extend the one year limit to attain the status by a period not exceeding six months. If the directors refuse to extend the limit, the constable has a right of appeal to the police commission.¹¹¹

¹¹⁰. B.C. Reg. 109/81.

¹¹¹. Ibid.

The nature of the program means that even after a police member has been employed for 32 weeks, his employer has really only had the chance to observe his performance for eight. To be fair, a probationary period must be long enough to allow for proper evaluation, but conversely, proper time for assessment means that a member will have already invested a year of his time.

The comprehensive training program and the power given to the directors of the Justice Institute to ensure that all officers successfully complete their training are two particularly unique aspects that must be considered in devising the ideal scheme to allow police boards to dismiss probationary members for unsuitability.

(2) CASE LAW RELATING TO POLICE DISCIPLINE AND DISMISSAL IN BRITISH COLUMBIA

The current system of police discipline in British Columbia has been considered several times by courts and arbitration boards in British Columbia. A review of those decisions and the issues represented by them is crucial to an understanding of the problems inherent in the current system. Several distinct problem areas have emerged and each will be discussed in turn, followed by a discussion of other matters that have arisen from time to time.

(a) Police as Office Holders

At least two cases in British Columbia have confirmed that a police officer, while an employee of a municipal board, also holds office and is accorded certain rights by virtue of that office when dismissal is sought.

"... a police officer is not an "employee" in the ordinary sense of that word. He, by virtue of his "office" has, to a certain degree, a measure of independence. He must conduct himself "without favour, affection, malice or ill will". . . he cannot be dismissed from "office" except in strict accordance with the regulation and upon proof that he has been guilty of a "disciplinary default" beyond a reasonable doubt."¹¹²

Because he is an office holder and because crime investigation is not an administrative matter, the conduct of police officers is not reviewable by the ombudsman.¹¹³

¹¹². Carpenter v. Vancouver Police Board and Stewart, (1985), 63 B.C.L.R. 310, at 323 (Anderson, J.A.).

¹¹³. Friedmann v. Attorney General of British Columbia (1985), 64 B.C.L.R. 335, (S.C.). The new Police Act specifically excludes the Ombudsman's jurisdiction: S.B.C. 1988 C. 53, s. 72.

(b) Collective Bargaining, Discipline and Dismissal

The members of each municipal police force in the province are represented by associations certified as bargaining agents under the Industrial Relations Act.¹¹⁴ Those associations bargain with their employer boards in respect of wages, benefits and working conditions and the Industrial Relations Act applies to grievances filed.¹¹⁵ The former and current Police Act recognized the applicability of the Industrial Relations Act to certain aspects of policing,¹¹⁶ but confusion over whether the Industrial Relations Act was applicable to the discipline or dismissal of municipal constables led to the following provision in the new legislation:

26. (4) Part 6 of the Industrial Relations Act does not apply to discipline or dismissal of a constable appointed under this Act.¹¹⁷

That section was not proclaimed with the balance of the Police Act on July 1 of this year, pending the implementation of new regulations to deal with discipline and discharge.¹¹⁸

Determining what is presently covered by the Industrial Relations Act and what is left in the domain of the Police Act has caused arbitrators and courts problems in the past. A look at those

¹¹⁴. R.S.B.C. 1979, C. 212.

¹¹⁵. s. 1(1) of the Industrial Relations Act includes "a person engaged in police duties" in the definition of "employee".

¹¹⁶. See, for example, sections 22, 28 and 38 of the Police Act, R.S.B.C. 1979, c. 331, and sections 26 and 51 of the Police Act, S.B.C. 1988, C. 54.

¹¹⁷. Part 6 of the Industrial Relations Act is the part dealing with grievances of dismissal or discipline. Section 93 of that Act provides that all collective agreements shall contain a provision requiring that the employer have a just and reasonable cause for dismissal or discipline of an employee and, where a collective agreement does not have such a clause, section 93(3) deems the incorporation of a specific clause requiring just and reasonable cause and allowing differences to be arbitrated.

¹¹⁸. Section 26(4) exempts the applicability of the Industrial Relations Act for all constables appointed under the Police Act. The section was incorporated on the expectation that non-culpable dismissal and all forms of discharge would be included in regulations enacted under the authority of the Police Act. It appears that an important matter may have been overlooked when the section was incorporated into the legislation: The Police (Discipline) Regulation does not deal with the discipline of provincially appointed constables and such constables are not included in our study. Even if all aspects of discipline and discharge of municipal constables were incorporated into separate legislation not necessitating reference to Part 6 of the Industrial Relations Act, it is not advisable that section 26(4) be proclaimed until a satisfactory mechanism for the discipline of both municipal and provincially appointed constables is in place, because section 26(4) would mean that any collective agreements currently in effect for provincial constables would not apply to discipline or discharge.

decisions may give some indication as to the present separation of jurisdiction, and will set the groundwork for discussions later in the paper on the complex issue of how the overlapping functions and interests represented by those two Acts can be satisfactorily resolved.

The first reported case we could find on the matter was a decision of a Board of Arbitrators in 1980. Victoria City Police Board and Victoria City Policemen's Union (Sauer grievance)¹¹⁹. The grievor in that case had been a member of the Victoria City Police Department for a little more than three years. His promotion to constable first class had been delayed twice for cause when he failed to pass certain examinations and suffered poor work evaluations. He was to write the previously failed examination in January of 1980 or face "termination for failure to meet employment standards."¹²⁰ In October it came to light that a sum of money had been turned over to the member some months previously by a citizen who had found. That money had not been properly accounted for and had subsequently gone missing. There were grounds for taking disciplinary action,¹²¹ but the grievor tendered his resignation after an "intimidating" meeting with the Chief Constable, the Deputy Chief Constable and an Inspector. He attempted to retract his resignation later the same day, but the retraction was rejected.

The arbitration board held that the atmosphere of the meeting amounted to constructive dismissal and went on to consider whether there were grounds for such dismissal. The board held that in considering if there were sufficient grounds, it could not consider the missing money and the constable's actions in relation thereto. That aspect of the matter could only be heard pursuant to the Police (Discipline) Regulation. Since there were insufficient grounds other than the missing money to justify termination, the constable was ordered reinstated.¹²²

In argument before the arbitration board, the employer cited a decision of a respected arbitrator from Ontario on the identical issue in Re Metropolitan Toronto Board of Commissioners of Police and Metropolitan Toronto Police Association.¹²³ That case held that the Ontario Police Discipline Regulations applied only if disciplinary proceedings were actually taken against the member,

¹¹⁹. [1981] 4 W.L.A.C. 443, (Bird).

¹²⁰. Ibid, at p. 444.

¹²¹. The member denied criminal liability, but criminal liability would not have been necessary for disciplinary proceedings to have been taken against him. He may have been disciplined for "neglect of duty".

¹²². The municipal police board, after the decision was rendered could not take disciplinary action against the member because of the time limits contained in section 34 of the Regulation.

¹²³. (1978) 18 L.A.C. (2nd) 7, (Adams).

otherwise the Ontario Labour Code governed. The British Columbia board declined to follow similar reasoning.

"The employer's cases (sic) against Sauer has been made under relaxed rules of procedure, before a tribunal where court rules of evidence are not always applied and contending against the employer has been counsel chosen by and taking instructions from the union. Much of the employer's evidence was intended to show that either Sauer stole the money or was so negligent in handling it that he is very irresponsible and in either case ought not to be a police officer. Because police officers often are acting by themselves in unusual and difficult circumstances where risks are high and emotions are strong, it is entirely appropriate for the legislature to make provision for special statutory rules and regulations governing the procedural means and establishing (sic) substantive offenses for dealing with allegations of misconduct by police officers in the course of their often difficult duties. Unfortunately the legislature did not make clear what the relationship is between police discipline and labour arbitration. (emphasis added)¹²⁴

The board held that there was no conflict between the Labour Code and the Police (discipline) Regulation but there was a conflict between that particular collective agreement's choice of arbitration and the Regulation. Insofar as the agreement was in conflict, the Regulation was to prevail.

In another case dealing with the overlap between the Labour Code and the Police Act and Police (Discipline) Regulation, an arbitration board refused to hear the case because of a lack of jurisdiction. Delta Police Board and Delta Municipal police Association (Wood Grievance)¹²⁵ concerned a grievance filed by that association against the board in respect of a police officer who applied for and was given a promotion to the rank of Staff Sergeant even though he had lied to the selection panel concerning his previous training. He was disciplined for making the false statements and was reprimanded but not demoted. The association and the unsuccessful candidates grieved his promotion claiming the respondent would not have been awarded the promotion but for his lies. The employer and the officer in question objected to the jurisdiction of the board of arbitrators saying that the previous discipline proceedings acted to effectively oust the jurisdiction of the arbitration board. The arbitration board agreed. It followed the trial judgment of Mackenzie J. in Carpenter v. Vancouver Police Board and Stewart¹²⁶ and quoted with approval from that judgment:

"The legislature has not rationalized the applicability of the overlapping statutes. In the absence of that rationalization I must conclude that the Police Act and

¹²⁴. Op. cit. note 119 at pp. 467-468.

¹²⁵. [1984] 5 W.L.A.C. 23 (Vickers).

¹²⁶. (1983), 149 D.L.R. (3d) 405, 47 B.C.L.R. 161 (S.C.).

Regulations have exclusive application to matters of internal discipline and disciplinary defaults within this police force to the exclusion of the Labour Code. When a given situation arises, a decision must be taken as to whether it involves a disciplinary default and, if it does, then the Police Act and Regulations procedures must be adhered to strictly. The liberty of the subject is not involved but the policeman is placed in considerable jeopardy and he is entitled to the safeguards placed by the legislature for his benefit. I am thinking particularly of such benefits as the burden of proof being upon the presenting officer, which shall be proof beyond a reasonable doubt. By contrast, the standard of proof before an arbitration board would be on a balance of probabilities.¹²⁷

Carpenter v. Vancouver Police Board and Stewart was appealed to the Court of Appeal.¹²⁸ That case dealt with an attempt by the Vancouver Police Board to dismiss a constable for unsuitability through the provisions of the collective agreement. Constable Carpenter had previously been charged and acquitted on criminal charges of possession of stolen goods, and the Vancouver Police Board purported to terminate him because his "misconduct" was so serious as to "constitute a fundamental breach, a repudiation" by him of his contract of employment as a police officer.¹²⁹

Constable Carpenter petitioned the Supreme Court for judicial review of the proceedings by which he was dismissed and the employer and Chief Constable made preliminary objection to the jurisdiction of the Court, saying that the Labour Code should apply to the dismissal. The preliminary objection was dismissed at trial, appealed to the Court of Appeal and dismissed on appeal. While Seaton, J.A. would have allowed the appeal,¹³⁰ the majority of the court held that

"when the grounds for dismissal are grounds that could be the subject of disciplinary proceedings under the Police Act and the Police (Discipline) Regulation then the provisions of the Labour Code governing dismissal arbitration, and the provisions of the collective agreement between the Vancouver Police Board and the Vancouver Policemen's Union governing dismissal grievance and arbitration, have no application. In short, I do not think that the Vancouver Police Board can, by a unilateral decision, elect to adopt a dismissal process that is appropriate for the collective agreement and the Labour Code but inappropriate for the Police Act and

¹²⁷. Op. cit., note 125 at p. 30.

¹²⁸. (1983) 47 B.C.L.R. 161, 149 D.L.R. (3d) 405, affirmed 63 B.C.L.R. 310 (B.C.C.A.).

¹²⁹. Quoting from the letter sent by the board to constable Carpenter, as quoted at 63 B.C.L.R. 310 at 314. Because of section 10(3) of the Regulation, the board could not have taken disciplinary proceedings against Const. Carpenter for matters that were based on the same "facts and circumstances" as the criminal charges.

¹³⁰. Ibid., at 312 to 313. Seaton J.A. would have followed the reasoning of the arbitrator in the Metro Toronto case (see text at note 123), that it was the proceedings that were taken, not the nature of the misconduct alleged, that decides what review procedure is appropriate.

Police (Discipline) Regulation, and thereby deprive a police officer of the statutory protection afforded by the Police Act and Police (Discipline) Regulation.¹³¹

The Court of Appeal concluded by emphasising the confusing nature of the overlapping jurisdiction, saying that:

"jurisdictional matters of this nature should not be dealt with by the courts on a case by case basis but should be dealt with by the legislature so that all matters relating to jurisdiction can be dealt with by way of appropriate legislation."¹³²

A different jurisdictional issue arose in a Matsqui arbitration that was appealed to the B.C. Court of Appeal¹³³ pursuant to s. 109 of the Labour Code.¹³⁴ The Court of Appeal affirmed a board of arbitrators ruling which interpreted a collective agreement's clause reading:

"The Board will indemnify and save harmless any member from an action, claim cause, demand or legal fees whatsoever, that may be made or arise out of the members carrying out the duties of a Police Officer while acting on reasonable and probable grounds."

as mandating the reimbursement of the legal costs of a member who was tried and acquitted of an internal disciplinary infraction, even though the arbitration board acknowledged that the clause would not apply to an ordinary grievance - disciplinary or otherwise - filed by or on behalf of a police officer pursuant to the collective agreement and the Labour Code and it was "inherently improbable that an employer would agree to finance its employees' grievances."¹³⁵

The issue to be decided by the Court of Appeal was whether the arbitration board lacked jurisdiction or statutory authority to make the order sought by the union. The police board and the municipality argued that the police board did not have the power under the Police Act to reimburse legal fees incurred in such matters. Section 54.1 of the Police Act then read:

"54.1 . . . where . . . a municipal constable . . . has been charged with an offence against a regulation of the Province in connection with the performance of his duties, the council of the municipality in which he is employed may

¹³¹. Ibid., at 314. (Lambert, J.A.)

¹³². Ibid., at 324 (Anderson, J.A.)

¹³³. Matsqui Police Board and District of Matsqui v. Matsqui Policemen's Association, Local No. 7 (1987) 14 B.C.L.R. (2d) 88, 39 D.L.R. (4th) 676 (C.A.), affirming 22 L.A.C. (3d) 93.

¹³⁴. R.S.B.C. 1979, C. 212.

¹³⁵. Op. cit., note 133, 22 L.A.C. (3d) at 103

- (a) on the recommendation of its board, and
- (b) to the extent that it considers appropriate in the circumstances, pay the costs incurred and not recovered by him in the proceedings following or otherwise connected with the charge." [emphasis added by Court of Appeal]¹³⁶

The Court of Appeal determined that "offence" within the meaning of the Police Act included an infraction of the Discipline Code under the Regulation and that the police board had jurisdiction to agree to reimburse legal fees incurred in defending oneself against such an "offence".

(c) The Technical Nature of Discipline Proceedings

The Police (Discipline) Regulation gives the member a great deal of protection in matters of internal discipline and the courts have not taken away those protections through interpretations of the Police Act or the Regulation.

Two cases have dealt with penalties under the Regulation and both have affirmed that the penalty section contained in the Regulation is an exhaustive list of penalties, and that no right exists to prescribe a penalty other one set out in the Regulation.

Mitchell v. Kowal,¹³⁷ involved the citizen complaint provisions of the former Police Act which contained wording similar to the current one. The officer was charged with a disciplinary default and, after a hearing under the provisions of the Regulation, the presiding officer found the default not to have been proven. The Chief Constable, accordingly, proposed taking no disciplinary action. The complainant initiated an inquiry by the police board, which confirmed the decision of the chief. A subsequent appeal to the B.C. Police Commission resulted in the Commission ordering the chief constable to reprimand the member and order him to prepare a "paper of not less than 2,000 words on the subject "care and handling of prisoners".¹³⁸ On an application for judicial review to the Supreme Court of British Columbia, the court held that section 33 of the Regulation set out an exclusive list of penalties that could be imposed upon a member and that the Police Commission did not have the authority to impose a penalty on a member that was not listed in section 33, notwithstanding that the Police Act gave the commission the power to:

¹³⁶. This section was amended in the new Police Act and is now section 22.

¹³⁷. Op. cit., note 99.

¹³⁸. Ibid., 10 B.C.L.R. at 97.

"46 (3) (b) reject the disciplinary action intended to be taken by the disciplinary authority or disciplinary tribunal and order that the disciplinary authority take such disciplinary action as the Commission may specify."¹³⁹

By way of dicta the Court stated that the Regulation did not support the opinion of the Commission that it was aimed at correction rather than punishment. "It seems to me that they are (sic) aimed at punishment pure and simple whether or not correction is the result."¹⁴⁰

In the other case, the County Court found that the police Board had no authority to deduct the cost of lost police property from a police officer's wages.¹⁴¹ Leggatt, Co. Ct. J. held that damage to police property was covered by the Regulation, that only the procedures of the Regulation could be utilized where the Discipline Code was breached and that restitution for damages was not a penalty allowed by the Regulation.

Courts in this province have refused to allow the admission of wire-tap evidence in an internal discipline hearing that would not have been admissible in criminal proceedings.¹⁴²

(d) Citizen Complaints

In Bowles v. Post¹⁴³ The County Court ruled that the chief constable cannot take internal discipline proceedings based on a citizen complaint unless the steps prescribed in the Act for dealing with citizen complaints are followed, despite that the actual proceedings were identical. However, the Supreme Court ruled in the same year that omission to attempt an informal resolution pursuant to the citizen complaints procedures will not result in a loss of jurisdiction to

¹³⁹. Act, s. 46(3)(b). It should be noted that the recently amended Police Act gives the police board and the Police Commission an additional power, that was not contained in the statute considered by the court in Mitchell v. Kowal to "make an order it considers appropriate in the circumstances." [63(1)(d) and 65(1)(c).] Because of that amendment, Mitchell v. Kowal may not be binding on police boards and the Police Commission.

¹⁴⁰. Op. cit. note 99, 10 B.C.L.R. at 100.

¹⁴¹. Vancouver Police Board v. Director of Employment Standards (1987), 19 B.C.L.R. (2D) 394 (Co. Ct.).

¹⁴². Wylie v. British Columbia Police Commission, Vancouver Police Board and Chief Constable, Vancouver Police Department (1984) 53 B.C.L.R. 116 (S.C.) and (1985) 64 B.C.L.R. 56 (Court of Appeal).

¹⁴³. (1985) 16 D.L.R. (4th) 591, B.C.W.L.D. 702 (S.C.).

hold a formal inquiry where the complainant has been guided by police in pursuing his complaint and no party has been prejudiced.¹⁴⁴

Where an officer had already faced and been acquitted of criminal charges in connection with a matter that was the subject of a citizen complaint, the Supreme Court ruled that the Police Board has a discretion as to whether it will hold a public inquiry pursuant to the request of the complainant. It is doubtful whether that case remains good law because the Police Act now no longer requires that a complainant give reasons for requesting a public inquiry, and the requirement to give reasons was relied upon by the court to imply that the Police board has jurisdiction.

(e) Charter of Rights and Apprehension of Bias

The chief constable is responsible, directly or indirectly, for all stages of the internal discipline process. Appeals go to the Police board and then to the Police Commission. The validity of similar discipline proceedings has been questioned in other provinces through arguments either alleging a breach of the Charter of Rights¹⁴⁵ or arguments based on real or apprehended bias on the part of the chief constable or one of the appellate bodies. In this province, neither argument has been advanced strenuously or successfully in any case.

The application of section 11(d) of the Charter was rejected in Wylie v. B.C. Police Commission¹⁴⁶. The Court there held that being charged with a disciplinary default is not the same as being "charged with an offence" within the meaning of the Charter. That ruling is consistent with four recent rulings by the Supreme Court of Canada which have rejected the application of section 11(d) of the Charter to cases involving police discipline.¹⁴⁷ An argument

¹⁴⁴. Narain v. Parsons [1987] B.C.W.L.D. 3903 (S.C.).

¹⁴⁵. The arguments are based on either section 7 or section 11(d) of the Charter. Section 7 guarantees the right not to be deprived of "life, liberty and security of the person" except in accordance with the principles of "fundamental justice" and section 11(d) guarantees "any person charged with an offence" the right to be presumed innocent until proven guilty "according to law in a fair and public hearing by an independent and impartial tribunal".

¹⁴⁶. (1987), 18 B.C.L.R. (2nd) 192 (C.A.).

¹⁴⁷. R. v. Wigglesworth, [1987] S.C.C. No 71; Trimm v. Chief of Police for Durham Regional Police Force, 81 N.R. 197 [1987] 2 S.C.R. 582, 37 C.C.C. (3d) 120, 24 O.A.C. 357, 45 D.L.R. (4th) 276, 29 Admin. L.R. 106, 63 O.R. (2d) 734, 32 C.R.R. 244; Burnham v. Toronto Police Force, 81 N.R. 207, [1987] 2 S.C.R. 572, 37 C.C.C. (3D) 115, 24 O.A.C. 367, 45 D.L.R. (4th) 309, 29 Admin. L. R. 94, 63 O.R. (2d) 734, 32 C.R.R. 250., Trumbley and Pugh v. Fleming et. al. v. Metropolitan Toronto Police [1987] 2 S.C.R. 577.

based on section 7 of the Charter was also unsuccessful in Green v. Attorney General and Stewart¹⁴⁸. The Court held that disciplinary proceedings did not involve "liberty" but an "economic or commercial right".

An allegation of reasonable apprehension of bias was raised in Bowles v. Post but not strenuously argued after the petitioners were provided with a copy of the investigator's report.¹⁴⁹ Reasonable apprehension of bias, however, is a topic that has been the subject of litigation in the other provinces and will be discussed below.

(f) Probationary Members

The Supreme court in this province has ruled that a "probationary member" of a police force is a "member" and that the Police (Discipline) Regulation applies to his dismissal in the same manner as if he were a non-probationary member. Deighton v. Vancouver Police Board¹⁵⁰ concerned an attempt by the Vancouver Police Board to dismiss a probationary member for "unsuitability", but Wood J. found that the "chief constable's conclusion that [Deighton] lacked self-control, discipline and judgment results from allegations of conduct, which, if they were proven, would amount to disciplinary defaults."¹⁵¹ In such circumstances, the court said, the only means of dismissal is through the Discipline Regulation. The fact that no disciplinary proceedings could be taken against the member because the time limits in the Regulation had expired was of no consequence to the decision. By way of dicta, the Court indicated that if no disciplinary matters were involved, the probationary member may be subject to dismissal pursuant to the principles set out in Nicholson v. Haldimond-Norfolk Police Commissioners Board¹⁵². Those principles and that case will be discussed in the next section of this report.

¹⁴⁸. 29 C.R.R. 35, [1986] B.C.W.L.D. 4574 (S.C.).

¹⁴⁹. Regulation section 13(3) specifically denies the member access to the investigator's report.

¹⁵⁰. (1986) 15 C.C.E.L. 215, (S.C.).

¹⁵¹. *Ibid.*, at 220.

¹⁵². [1979] 1 S.C.R. 311, 78 C.L.L.C. 14, 181, 88 D.L.R. (3D) 671, 23 N.R. 410 (S.C.C.).

(g) Other Issues

A provision in the Regulation that denies the right to counsel in a discipline hearing where certain penalties are involved has been ruled ultra vires as a denial of natural justice.¹⁵³

The chief has been held to have the jurisdiction to discipline members for conduct occurring while members are off duty and out of the municipality by which they are employed.¹⁵⁴

The section of the Discipline Code that provides that a conviction for criminal conduct which renders a member unfit to perform his duties constitutes a disciplinary default has been upheld.¹⁵⁵

¹⁵³. See Joplin v. Chief Constable, City of Vancouver Police Department et al., [1985] 4 W.W.R. 538, 61 B.C.L.R. 398, 10 Admin. L. R. 204, 19 C.C.C. (3d) 331, 20 D.L.R. (4th) 314, affirming [1983] 2 W.W.R. 52, 42 B.C.L.R. 34, 2 C.C.C. (3d) 396, 144 D.L.R. (3d) 285, 4 C.R.R. 208 (B.C. Court of Appeal).

¹⁵⁴. Bowles v. Post, op cit., note 85.

¹⁵⁵. MacDonald v. Marriott and Esquimalt Municipal Police Board, (1984) 52 B.C.L.R. 346, 7 D.L.R. (4th) 697, (B.C. Supreme Court).

PART THREE
POLICE DISCIPLINE AND DISMISSAL IN OTHER JURISDICTIONS

In the course of background research done for this project, police discipline systems in other provinces, other common law jurisdictions and in the R.C.M.P. were surveyed. The survey consisted of a review of the legislation and case law from the other provinces and a selected review of literature from other countries. The survey of police discipline systems in jurisdictions other than Canada was not comprehensive.

The review of the approaches taken by other jurisdictions is useful to our analysis because legislative changes can indicate trends and new approaches. A review of case law is useful because it can indicate potential problems inherent in a new scheme. We have chosen to present our review in the context of "issues" rather than by individual jurisdictions, while selecting notable legislation and case law relevant to each issue.

(1) COLLECTIVE BARGAINING AND POLICE DISCIPLINE

All provinces in Canada face the same problem we do in British Columbia: While police officers are given the right to belong to an association which bargains collectively on their behalf, certain matters must, as a matter of public policy, be excluded from the collective bargaining arena.

(a) Legislation

Due to the military history shared by police in common law jurisdictions,¹⁵⁶ quasi-criminal discipline proceedings are the norm rather than the exception. Although almost all jurisdictions have collective agreements with associations of police officers, discipline is either expressly by statute¹⁵⁷ or implicitly by inference excluded from the terms of collective bargaining.¹⁵⁸ Police

¹⁵⁶. See text, supra.

¹⁵⁷. Legislation excluding discipline from the collective bargaining process takes two forms. Some provinces, such as Alberta, have legislated specific "police labour code" statutes, setting out the rights and obligations of police associations. (Police Officers Collective Bargaining Act, S.A., 1983, C. P-12.05.) Other provinces, such as New Brunswick, include in the provincial Police Act the matters that may be bargained and the matters that are excluded from bargaining. (See supra at note 139)

¹⁵⁸. This seems to be the approach taken by British Columbia. However, despite opinion that holds that collective bargaining may not deal with discipline, some collective agreements between police boards and police associations in this province purport to make differences over discipline

officers are, therefore, not disciplined in the same manner as other members of bargaining units.¹⁵⁹ There are two probable reasons for the exclusion: The first is that the public interest aspect of discipline of police officers is considered to outweigh employee/employer considerations. The second is simply historical - the manner of disciplining police officers was in place long before collective bargaining became common. Whatever the reasons, police discipline matters are not normally grieved through the provisions of the collective agreement.

Research shows that while there are differences in the type of hearing and the adjudicatory body, common law jurisdictions do not commonly give the chief constable the usual rights of a supervisor to discipline a member without a hearing, except to impose "minor" penalties for "minor" disciplinary infractions. These are usually limited to reprimands and/or counselling.¹⁶⁰ All systems in Canada incorporate a quasi-criminal hearing, most incorporate adjudication by officers from within the police organization and generally refer to a finding of "guilt" or "acquittal" at the conclusion of the hearing.

Because of the difficulty in separating the very distinct processes, some provinces opt for specific legislation to clarify which matters may and which may not be the subject of collective bargaining for police. Collective bargaining by police officers in Alberta is governed by the Police Officers Collective Bargaining Act¹⁶¹. That Act deals with matters such as collective bargaining, mediation, interest arbitration, grievance procedures and unfair practices. That Act also incorporates a method to solve a dispute over whether a matter is to be determined pursuant to the Police Act¹⁶² or through the collective agreement:

arbitrable: See, for example, the agreement between the West Vancouver Police Board and the West Vancouver Policemen's Association for the period 1986 January 01 to 1987 December 31, Section 16.0 (a)(1) and section 13.2 of the 1987 Collective Agreement between the Port Moody Police Board and the Port Moody, District 43, Police Services Union.

¹⁵⁹. There are three basic differences between the two processes. The first, and main one is that the labour process allows for the immediate unilateral imposition of discipline while the police model requires a full hearing to prove that a disciplinary infraction was committed prior to any discipline being imposed. The second is that the right to grieve discipline and insist on an impartial hearing belongs to the association under a labour model and to the member in a police model, and the third is that the labour type hearing is less formal than the typical police discipline hearing.

¹⁶⁰. The chief constable is often, as in British Columbia, given the power to suspend a member pending hearing.

¹⁶¹. Op. cit., note 157.

¹⁶². S.A. 1988, C. P-12.01.

26. (1) Where a question arises between the parties over whether a matter is a difference as to the interpretation, application, operation, contravention or alleged violation of the collective agreement or is a matter to which the Police Act and the regulations under that Act apply, either party or any arbitrator before whom the matter arises on his own motion may, by originating notice, refer the matter to a judge of the Court of Queen's bench.

...

(3) The judge on hearing the reference may do all or any of the following:

- (a) make any finding of fact that is necessary;
- (b) quash, vary or confirm any action taken by either party, or by the arbitrator;
- (c) amend or waive the time limit as he sees fit;
- (d) refer the matter back to the parties or to the arbitrator for further consideration.

New Brunswick has handled the problem differently. The Police Act in that province sets out the matters that may be bargained¹⁶³ and provides that:

40. (3) Any aspect of the relationship between a municipality, joint board, the province or any agency of a municipality, joint board or the Province that is not set out in Subsection (2) is not a bargainable matter and shall not form the basis of negotiation during bargaining and shall not be dealt with under a collective agreement

40. (6) Where a collective agreement contains a provision that does not relate to a bargainable matter as set out in subsection (2), that provision

- (a) is void and shall have no force or effect and
- (b) is severable from the collective agreement.

40.1. (1) Where a question arises as to whether an aspect of the relationship between a municipality, joint board or the Province, or any agency of a

¹⁶³. An Act to Amend the Police Act, S.N.B. 1987, c.41, section 23 amends section 40 of the Police Act, S.N.B. 1977, c. P-9.2. The New Brunswick Court of Queen's Bench, Trial Division, recently rejected the argument that the Legislature intended to completely remove from the realm of collective bargaining all matters not expressly reserved to that process by s. 40(2) of the Police Act. Board of Police Commissions of Saint John et. al. v. Canadian Union of Public Employees, Local 490, Moncton Police Association, (1987) 37 D.L.R. (4th) 62, 79 N.B.R.(2d), 210 A.P.R. 430. Of interest is the Court's comment on the legislation at 443 of 79 N.B.R. (2d): "The Act in its present form has the potential for many and prolonged disputes before the courts, conciliation boards and arbitration tribunals. Relations between police officers and their employers and the public concern for effective policing services would both be better served by a clearer expression of legislative intent". A reasonable inference could be made that such comments prompted the amendment detailed above.

municipality, joint board or the Province, or any agency of a municipality, joint board or the Province, as the employer and the members of a police force

- (a) is a bargainable matter under this Act, or
- (b) is not a bargainable matter under this Act, an application may be made under section 81.1 of the Industrial Relations Act to the Industrial Relations Board for a determination of the question.¹⁶⁴

Ontario's Police Act¹⁶⁵ also brings police bargaining within its jurisdiction. It details which matters can be bargained, excluding those "working conditions as are governed by a regulations made . . . under the Act"¹⁶⁶ and continues the "Ontario Police Arbitration Commission" which fulfils a similar function to an Industrial Relations Council, but specifically in relation to police arbitrations. The Act empowers the Commission to, inter alia, maintain a register of arbitrators available for designation by the Solicitor General under the Act, and sponsor the publication and distribution of information in respect of arbitration processes and awards.¹⁶⁷

In the United States more police discipline cases are subjected to binding arbitration under employee contracts.¹⁶⁸ Some jurisdictions are opting for binding arbitration on appeal by an officer: "A common tactic of an arbitrator, who is paid by both parties to the action, is to find that the employee has engaged in misconduct, but to reduce the penalty for the offense."¹⁶⁹

However, not all American jurisdictions will allow matters of discipline to be arbitrated. For example, Jersey City and the Jersey City Police Officers Benevolent Association entered into a collective bargaining agreement which contract provided for binding arbitration of the reasonableness of penalties imposed by the city upon police officers following disciplinary hearings. The Public Employment Relations Committee in its scope of negotiability proceeding

¹⁶⁴. However, the Act is confusing in that it also appears to give the board of police commissioners the power to determine the same question. Section 81.1(1) gives the power to make an application to the board of police commissioners to resolve the same issues.

¹⁶⁵. R.S.O. 1980, C. 381, as amended.

¹⁶⁶. *Ibid.*, s. 29(2).

¹⁶⁷. *Ibid.*, s. 38.

¹⁶⁸. International Association of Chiefs of Police, Managing for Effective Police Discipline. A Manual of rules, Procedures, Supportive Law and Effective Management (1976), p. 77

¹⁶⁹. *Ibid.*, p.77

concluded that the question of the reasonableness of a disciplinary penalty was arbitrable. The Superior Court of New Jersey reversed that determination.

"All aspects of the local disciplinary process fell within the nonnegotiable and nonarbitrable sphere of managerial prerogative."¹⁷⁰

(b) Jurisdictional Questions

Different jurisdictions take different approaches in the way the line is drawn between those matters that can and those matters that cannot be subject to collective bargaining. When that line gets muddy or indistinct, courts have been asked to resolve conflicts between collective agreements and governing police legislation. Because each province's legislation is different, an extensive analysis of all court decisions relating to jurisdiction is of dubious value, but it may be helpful to mention some cases that have dealt with the conflict between the two processes.

The Ontario High Court held, and was affirmed by the Supreme Court of Canada in its ruling, that provision in the Ontario Police Act giving authority to the Board to dispense with the services of a probationary constable meant that an arbitrator had no jurisdiction to entertain a grievance filed on behalf of a constable whose services were dispensed with.¹⁷¹

The Supreme Court of Canada has determined that a collective agreement can provide for the mandatory payment of legal expenses on certain conditions even where the provincial Police Act has given a statutory discretion to the council of the municipality and hence the Board of Commissioners of Police to pay such fees.¹⁷² Where a collective agreement covers the payment of legal fees incurred in defending a member against criminal charges or disciplinary charges, an arbitrator will have jurisdiction to determine if the fees are payable,¹⁷³ but the Manitoba Queens

¹⁷⁰. Police Labour Review #76 (1981)

¹⁷¹. Re Metropolitan Toronto Board of Commissioners of Police and Metropolitan Toronto Police Association, (1980) 29 O.R. (2d) 95, 112 D.L.R. (3d) 252, 121 D.L.R. (3d) 675, Affd. 42 N.R. 271 (S.C.C.).

¹⁷². Durham Regional Police Association v. Durham Regional Board of Commissioners of Police et al. (1982) 140 D.L.R. (3d) 1 (S.C.C.).

¹⁷³. City of Brandon et al. v. Manitoba Police Commission et al. (1987) 25 Admin. L. R. 142 (Man. Q.B.) and Matsqui Police board and District of Matsqui v. Matsqui Policemen's Association, Local No. 7, op. cit. note 122.

bench indicated that in such a matter the Manitoba Police Commission could also determine the matter.¹⁷⁴

It also appears that in Manitoba a member suspended pending the outcome of disciplinary proceedings could file a grievance, and the arbitrator could lift the suspension.¹⁷⁵

An interesting case from New Brunswick involves a member who was dismissed as a result of a course of misconduct revealed after an extensive inquiry held by the Nova Scotia Police Commission. The purported grounds were that the constable did "not perform his duties in a manner fitted to, or his conduct [was] such as not to, satisfy the requirements of his position as Constable . . ." ¹⁷⁶ The Commission considered several disciplinary matters as well as the member's general attitude. The constable filed a grievance, and the employer objected to the grievance and the jurisdiction of the arbitration board, arguing that the dismissal was for disciplinary reasons and therefore not subject to the collective agreement but exclusively covered by regulations under the Police Act. The arbitration board found the grievance to be arbitrable and held that the town's action in dismissing the police officer was proper. Both the trial division and the appeal division of the Nova Scotia Supreme Court upheld the arbitration board's jurisdiction and decision.

(2) DISCIPLINE CODES

Because of the trial process involved, a discipline code is necessary, and is found in almost all jurisdictions. A case from Alberta dealing with its regulations is authority for its necessity:

"The authority of a police force to discipline its members is statutory in origin. It has no inherent jurisdiction and the actions of those involved in the decision making process are confined within precise limits".¹⁷⁷

The International Association of Chiefs of Police states that:

"Before a police department can discipline an officer for misconduct, it must have clearly defined, preferably in writing, what constitutes misconduct. There is a legal

¹⁷⁴. Ibid.

¹⁷⁵. City of Brandon et al., *ibid.*

¹⁷⁶. Kentville Police Association v. Town of Kentville (1985) 71 N.S.R. (2d) 1, 171 A.P.R. 1 (N.S.T.D.) affirmed (1986), 74 N.S.R. (2d) 72, 180 A.P.R. 72 (N.S.C.A.).

¹⁷⁷. Sterzik v. Beattie, (1985) 39 Alta L.R. (2d) 375, 16 Admin L.R. 75, 62 A.R. 390 (Alta Q.B.).

maxim which holds that there is no crime unless it has been created by law ("nullum crimen sine lege"). The same holds true for administrative disciplinary action. An officer may not be disciplined for action which the officer has not been informed is prohibited, nor for omitting an action which has not been required."¹⁷⁸

Court decisions in the United States have verified the need in that jurisdiction for a distinct Code of Behaviour. The practice of including unspecified offenses under the charge of "conduct unbecoming an officer" or "conduct tending to bring the department into disrepute" has been restricted by some American courts as "too vague to sustain a disciplinary action against an officer for any conduct not specifically defined as "conduct unbecoming".¹⁷⁹ Some courts have ruled, however that "conduct unbecoming" is an appropriate charge when "because of common knowledge or department practice, the officer knew or should have known that the conduct was proscribed."¹⁸⁰

Most police discipline codes are remarkably similar in wording and content. In Canada, most of the provinces have adopted codes that are almost identical, framed as prohibitions against certain conduct. With the exception of the code contained in the Manitoba Law Enforcement Review Act¹⁸¹ which is shorter than those of the other provinces and specifically requires that the member "affect the complainant or any other person" with his actions, the discipline codes in provincial legislation in Canada prohibit broad categories of conduct and include a categorized list of prohibited activities that are proscribed within the meaning of that conduct. For example, "discreditable conduct" is an offence against discipline in every jurisdiction. "Discreditable conduct" in British Columbia's regulation is defined as when an officer:

- "acts in a disorderly manner or in a manner prejudicial to discipline or reasonably likely to bring discredit upon the reputation of the force;
- assaults any other member of a police;
- uses oppressive or abusive conduct or language towards any other member of a police force;

¹⁷⁸. Op. cit. note 168, p. 47.

¹⁷⁹. Ibid., p. 46 and source cited therein.

¹⁸⁰. Ibid.

¹⁸¹. R.S.M. 1987, C. L75

- contravenes the provisions of the Act or any rule or regulation made or enacted in accordance therewith.¹⁸²

Certain provinces prohibit behaviour that other provinces do not include in their codes. For example, Saskatchewan's discipline code¹⁸³ proscribes as "discreditable conduct" the same activities as British Columbia's Regulation, but adds the following:

- wilfully or negligently makes any false complaint or statement against any member of a police force;
- withholds or suppresses a complaint or report against a member of a police force;

The province of Alberta classifies disciplinary defaults into "General" and "Departmental" defaults.¹⁸⁴ General defaults are prescribed by regulation and are, in general, the same as those "offenses" contained in the discipline codes of the other provinces. "Departmental" offenses or defaults¹⁸⁵ are violations of rules or directives made by the municipal police commission for the government of the police force, the conduct, dress, deportment and duties of its members, for preventing neglect or abuse and for rendering it efficient in the discharge of its duties.¹⁸⁶ According to the regulation, an officer cannot be found "guilty" of either a general or a departmental default without a hearing, but the penalties are different. Departmental offenses or defaults are not used in Alberta, however, according to spokespeople from both the Edmonton Police Department and the Alberta Solicitor General's department.¹⁸⁷ That province is, and has been for some time, in the process of developing new discipline regulations for the municipal police departments. The final form of those regulations has not yet been determined, but it is likely that the concept of "departmental" defaults will not appear in new discipline regulations.¹⁸⁸

¹⁸². B.C. Reg. 330/75, App. A, Sec. 1.

¹⁸³. Municipal Police Discipline Regulations, Sask. Reg. 262/75, s. 3.01.

¹⁸⁴. The Municipal Police Disciplinary Regulations, Alberta Regulation 179/74 as amendments up to and including Alberta Regulation 274/86.

¹⁸⁵. The Regulation uses both words. See Sections 16, 17 and 18.

¹⁸⁶. *Ibid.*, s. 18(1).

¹⁸⁷. Telephone conversation, Jill McIntyre and Cst. Grue, Edmonton City Police Department, August 22, 1989 and with Wayne Wilson, Law Enforcement Division, Solicitor General Department, August 22, 1989.

¹⁸⁸. Telephone Conversation, Jill McIntyre and Wayne Wilson, *ibid.*

Although not defined, some provinces¹⁸⁹ distinguish between "major" and "minor" breaches of discipline. This does not mean that the Codes themselves are separated into "major" and "minor" offenses, but it recognizes that "abuse of authority" could be anything from an outright assault to rudeness. The decision as to whether certain conduct can be classified as "major" or "minor" is left to the chief constable, and there is no appeal from that decision.

A conviction for a criminal offence is, in itself, a disciplinary infraction in most jurisdictions. However, Courts are reluctant to uphold provisions that provide for automatic dismissal of a police officer by virtue of a conviction. Some hearing to determine whether the conviction affects his performance as a police officer is probably necessary.¹⁹⁰

It has traditionally been accepted that police officers should be held to a higher standard of behaviour than others, and that it is acceptable to regulate a police officer's off-duty conduct to a greater degree than would be acceptable for employees in other types of work.¹⁹¹ Off-duty sexual activity and moonlighting are two areas that are commonly regulated in police officer's discipline codes but which are not normally the subject of discipline for an employee with a different occupation.¹⁹²

(3) INITIATION OF PROCEEDINGS

The chief constable is responsible for disciplining the members of his police force. An allegation that a police officer has breached the discipline code may be brought to the chief's attention by way of a complaint made by a member of the public or may arise internally, directly by another

¹⁸⁹. See, for example, R.R.O. 791, as amended, s. 16 and 17, Nfld. Reg. 75/85, s. 8, and New Brunswick Reg. 86-49, s. 9(3).

¹⁹⁰. See Martin v. Jackson et al., (1985) 10 C.C.E.L. 166, and F. v. The Commissioner of the Royal Canadian Mounted Police, as noted in (1988) 4 Police Employment Law, No. 12.

¹⁹¹. See, for example, Calgary Police Association et al. v. Calgary Police Commission and Chief of Police City of Calgary, (1987) 57 Alta. L.R. (2d) 8, [1988] 2 W.W.R. 741 (Alta Q.B.): "The restrictions on extra-curricular activity found in the discipline regime of a modern police force are domestic and internal contractual arrangements that may be negotiated or modified by the parties in the usual course." (57 Alta. L. R. (2d) 8 at 10). Section 7 of the Canadian Charter of Rights and Freedoms does not, therefore, apply.

¹⁹². See Marmo, Michael, "Off-Duty Behaviour by Police: Arbitrators Determine if On-the-Job Discipline is Appropriate", (1986) 14 Journal of Police Science and Administration 102, and Korando, Kimberly J., "Professions and Occupations: Dismissal for Sexual Activities--Should Police Officers be Held to a Higher Standard of Conduct than Other Employees?", [1985] 38 Oklahoma Law Review 301.

police officer's complaint or indirectly through a police investigation. Generally, a distinction is made as to the source of the allegation, although most provinces stream matters arising out of public complaints into the internal discipline procedures. Two exceptions to this are the province of Manitoba and the Metropolitan Toronto Police Force, both of which have specific acts that solely with citizen complaints and discipline of officers for matters arising out of citizen complaints.¹⁹³

(a) Citizen Complaints

The methods used to recognize the legitimate interests of citizens in matters of police discipline vary considerably from jurisdiction to jurisdiction, but the subject of citizen complaints is broad and complex, and our mandate does not involve a review or study of the citizen complaints procedures recently revised by this province, so we have not extensively reviewed the citizen complaints methods used by different jurisdictions. Where internal discipline proceedings differ where a complaint is involved, the differences will be mentioned within the discussion on internal discipline matters.

(b) Informal Resolution

Most acts allow for the informal resolution of disciplinary matters. This is not the same as informal resolution of complaints. Where it seems clear to the chief that a member has committed a disciplinary breach, but it is of a relatively minor nature, the member may receive a verbal warning or reprimand, or "counselling as to future conduct". These matters usually do not appear on the member's record. Written reprimands may often be issued without a hearing, but are usually appealable.

Newfoundland seems to contemplate the use of grievance procedure for written admonitions, but this is not clear.¹⁹⁴

¹⁹³. The Law Enforcement Review Act, R.S.M. 1987, c. L75, and An Act to revise the Metropolitan Police Force Complaints Project Act, 1981, S.O. 1984, c. 63.

¹⁹⁴. Newfoundland Reg. 75/85, s. 8(1). The regulation provides that the member is to be given notice "in accordance with the collective agreement". It is not known whether this provision contemplates that such discipline would actually be grievable, but no appeal process is provided.

Alberta takes a different approach with respect to minor breaches of discipline and allows an appeal of written reprimands to the chief, who may have been the person who imposed the discipline.¹⁹⁵

Members of the R.C.M.P. are not represented by the same type of "association" as the municipal forces¹⁹⁶, but a recent study of R.C.M.P. discipline processes recommended setting up a grievance procedure for oral admonitions while retaining a formalized procedure for more serious breaches of discipline.¹⁹⁷ Subsequent legislative amendments to the Royal Canadian Mounted Police Act instituted an "informal" disciplinary procedure where actions are "grieved".¹⁹⁸

If the chief determines charges are to be laid, a form is prepared and served on the member giving him notice of the charges against him and the penalty sought. Much of the legislation is specific about the detail to be put into such a form.

(4) INVESTIGATION OF ALLEGED BREACHES

The investigation of disciplinary infractions is normally done within the police department by a delegate of the chief. Two issues are often raised in discussing investigation of misconduct on the part of police: The first is whether the investigation is impartial when not supervised by outsiders, the second concerns the right of police to remain silent during the investigation process.

(a) Outside Investigators

Whether or not police can impartially investigate themselves is a controversial subject. Few people advocate that the police should call in outside investigators when the matter is purely internal. But many groups argue vociferously for outside investigation of public complaints:

"... recent public disquiet about police complaints mechanisms has focused repeatedly upon allegedly insufficient provision for an "independent" investigation and review component in existing complaints procedures. A frequent criticism is that the police themselves exercise too great a role in the investigation of complaints against their own members, or at least against fellow police officers. In

¹⁹⁵. Alberta Reg. 179/74 as amended 222/78, 377/78 and 274/86, section 12(2).

¹⁹⁶. Members of the R.C.M.P. are not allowed to belong to an association certified to bargain collectively but the organization does recognize staff "representatives".

¹⁹⁷. Op. cit., note 13, p. 140.

¹⁹⁸. The Royal Canadian Mounted Police Act R.S.C. 1970, c. r-9 as amended by S.C. 1986, c. 11, ss. 41 and 42.

fact, the practice of the police investigating themselves has raised three types of concern. It has led to questions not only about whether their investigations are in any real sense impartial but also about whether their responses to substantiated complaints are adequate. Certainly viewed statistically, there would appear to be some evidence to support the sceptical interpretation that previous police complaints procedures in the United Kingdom were insufficiently "independent." As well as raising questions about the effectiveness of particular procedures and individual complainant satisfaction with the investigation, the practice has caused concern about whether the procedures are sufficiently accountable to legitimate external influences."¹⁹⁹

Some form of civilian review or control of the investigation process has been common in many jurisdictions of the United States for years and can be classified into three broad types:

- civilian-dominated and mixed (police and civilian) review boards which sit external to the Police Department;
- Police Commissions or Boards of Police Commissioners comprised of civilians which sit over the Police Department; and
- Committees and offices which include civilians within the Police Department in either advisory or investigatory capacities.²⁰⁰

Proponents of outside investigation argue that a complaints program cannot be effective without credibility and credibility is lost when the police investigate their own. Even if the investigation is done properly, it is not seen by the public to be done properly. Arguments in favour of some sort of outside review or control of the investigation process include increased public confidence in the complaints process and the police; increased objectivity; increased public relations whereby the police can convince the public that they want to curb abuse and so on.²⁰¹

"An attempt to introduce an independent element into [any of the stages of a complaint process, including investigation] runs at least two risks. The first is that it may shift the responsibility for the discipline and morale of the police force away from the Commissioner of Police, whose primary responsibility it must always be. The second is if change is introduced without the confidence support of the police as a whole, it will fail due to the lack of the necessary co-operation at all levels of the police."²⁰²

¹⁹⁹. Goldsmith, Andrew J. and Farson, Stuart, "Complaints Against the Police in Canada: A New Approach", [1987] Criminal Law Review 615.

²⁰⁰. Hartford Institute of Criminal and Social Justice. Civilian Review of the Police--The Experiences of American Cities, 1980. p. 2.

²⁰¹. For a more exhaustive list see *ibid.*, pp. 49 -51.

²⁰². New Zealand Law Journal (1983), p. 370

The police organizations, which without exception are opposed to outside investigation, argue that they alone have the skills to investigate. Arguments against the use of civilian boards of investigation or review relate to police autonomy, police expertise in investigation and the "belief that they (the police) are being singled out unfairly, they are being specially stigmatized as oppressive of minority groups and the poor."²⁰³

Canada, New Zealand and Great Britain have only recently followed the United States by injecting some degree of citizen participation into the investigation of citizen complaints. The question of internal versus independent investigation in the United Kingdom is analyzed by Lustgarten:

"After years of debate, a broad consensus - including Lord Scarman and embracing groups normally as chasmatically apart as the Police Federation and NCCL but not, unfortunately, the Government - was finally reached on the necessity for an investigatory body wholly independent of the police service . . .

Although an "independent element" had supposedly been introduced into the system with the creation of the Police Complaints Board (P.C.B.) in 1976, its performance satisfied no one . . . In 1984, 8 percent of all complaints actually investigated were held to be substantiated. Not one complaint involving harassment, racial discrimination, false evidence or perjury was found substantiated; the same was true in 1983. Only 20 of 1410 complaints of assault - 1.5% were substantiated. Either those who do bother to complain are all liars, or there is something wrong with the system.

Two factors seem to be primarily responsible for this failure of the complaints machinery. The first is an intractable problem which will survive any procedural and administrative changes in complaints investigations however otherwise desirable. There is an unusually strong sense of solidarity among the police work group, a phenomenon often noted by observational studies. Its sources are various, but perhaps the most important are the two key elements Skolnick identified in his classic study of the policeman's "working personality": authority and danger. The need to provide instantaneous and unhesitating support to a colleague threatened with physical danger, or who is exercising his powers over a resistant citizen, creates an ethos in which total reliability is required if an individual is to be an acceptable member of the relief or specialist group, and breeds a sense of social isolation from both the public and organisational superiors. In certain situations this degree of trust is necessary, but it can also be very dangerous, supplanting obedience to fundamental moral and duties. One of the most important conclusions to emerge from the PSI study was that "we believe that police officers will normally tell lies to prevent another officer from being disciplined or prosecuted, and this

²⁰³. Weiler, Paul C., "Who Shall Watch the Watchmen?" Reflections of Some Recent Literature About the Police," (1968) 11 Criminal Law Quarterly 422. For a more exhaustive list see Civilian Review, op. cit., note 200, pp. 52-54.

is the belief of senior officers who handle complaints and discipline cases." In a different occupational setting this is known as the code of omerta.²⁰⁴

Interestingly, while Lustgarten was writing the above in Britain in 1986, we find the following in New Zealand, 1983:

"It is well established that an independent investigation will not receive the full cooperation of the police whilst making an investigation.

One of the most obvious impediments to the use of external investigators is seen in the experience of investigators employed by civilian review boards in the United States. In many instances there were met with undisguised hostility and there were cases where the police simply closed ranks to severely frustrate the external examination. In other cases, where the external investigator was a relative stranger to the police organisation he was more easily sidetracked or frustrated than an internal investigator would have been. There is also the difficulty of recruiting experienced investigators who are in fact and in appearance independent of the police community."²⁰⁵

In Canada, the municipality of Metropolitan Toronto and the province of Manitoba have introduced an element of independence into investigation of complaints made against police by members of the public in a manner similar to the recently proclaimed Police Act in this province. Manitoba's Law Enforcement Review Act mandates the Commissioner appointed under that Act to investigate the complaint and empowers him with broad powers.²⁰⁶ He may, for the purposes of his investigation, request:

"all documents, statements, and other materials relevant to the complaint which are in the possession, or under the control, of the police department involved in the complaint"²⁰⁷

²⁰⁴. Lustgarten, Lawrence, The Governance of Police, Sweet and Maxwell, London, 1986. p. 155, footnotes omitted.

²⁰⁵. Bilkey, Geoff, "The New Zealand System for Dealing with Complaints Against the Police, A Comparative Evaluation". (1983) 4 Auckland University Law Review 151, at 161.

²⁰⁶. Section 12(1) of The Law Enforcement Review Act empowers the Commissioner with the "powers of Commissioners under Part V of The Manitoba Evidence Act."

²⁰⁷. Ibid., s. 12(2).

and, if necessary, apply to the Court for an order for search and seizure of "any building, receptacle or place."²⁰⁸ Further, the Manitoba legislation specifically precludes the department which is the subject of a complaint from investigating its own complaint unless specifically requested to do so by the commission:

"Except as otherwise provided in this section, the Commissioner shall not employ for purposes of investigation any person who is, or at the time of the occurrence complained of was, a member of the police department involved in the complaint."²⁰⁹

Only where criminal charges are contemplated or the complainant requests in writing, can the department investigate a member of its own department.²¹⁰

Metropolitan Toronto²¹¹ empowers the "Public Complaints Investigation Bureau" to "cause an investigation to be made" into a complaint, but is silent on the actual powers of the Bureau to investigate. However, the act does give the Commissioner, or a person appointed by him, the powers to investigate the allegations in the complaint in certain circumstances²¹² and for the purposes of the investigation, has broad powers to enter the police station and review "books, papers, documents and things" and can obtain an order authorizing him to enter and search, "if necessary by force."²¹³

²⁰⁸. Ibid, s. 12(5). The powers of search and seizure apply to "(a) anything upon or in respect of which a disciplinary default under this Act has been or is suspected to have been committed; or (b) anything which there is reasonable ground to believe will afford evidence of the commission of a disciplinary default under this Act"

²⁰⁹. Ibid., s.12(7).

²¹⁰. Ibid, s. 12(7).

²¹¹. An Act to revise the Metropolitan Police Force Complaints Project Act, 1981, S.O. 1984, c. 63.

²¹². Ibid., s. 18. These circumstances are: any time after he receives the first interim report or the thirty-day period mentioned therein has expired, upon the request of the chief of police, or where he has reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of an investigation.

²¹³. Ibid., s. 20(7).

Alberta provides for outside investigators in certain circumstances, but the outside investigation must be undertaken by another police force.²¹⁴

The Commission of Inquiry relating to Public Complaints, internal Discipline and grievance procedure within the Royal Canadian Mounted Police considered, but rejected the concept of implementing outside investigation in matters of public complaints.

"We have received many submissions which have urged the establishment of some form of civilian review as an alternative to the current practice whereby the responsibility for investigation and decision-making with respect to public complaints remains with the police. Among these submissions, we found a firm consensus that a judgment on the validity of a complaint could best be handled by an authority independent of the police. There was no similar consensus on whether this same body could ensure effective internal investigations as well.

"One of the most obvious impediments to the use of external investigators is seen in the experience of investigators employed by civilian review boards in the United States. In many instances, these men met with undisguised hostility and there were cases where the police simply closed ranks to severely frustrate the external investigation. In other cases, where the external investigator was a relative stranger to the police organizations, he was more easily sidetracked or frustrated than an internal investigator would have been."²¹⁵

The commission stated its belief that there were probably few experienced investigators who were in fact and in appearance independent of the police community and continued

". . . The experienced police investigator will know what legal aids are available to him in terms of search, seizure, arrest and custody, and when to invoke them. He will be expected to make an intelligent judgment in those cases where he is faced with conflicting information as to the truth of the matter. These qualities are evident in the vast majority of experienced policemen we have seen and heard. When we couple with this the integrity evidenced in the investigation of complaints we have examined, we are forced to conclude that the investigation of complaints made by the public against the Royal Canadian Mounted Police is best undertaken by the policemen themselves."²¹⁶

²¹⁴. The Alberta Police Act, S.A. 1988, c. P-12.01 provides in Section 45(5) that where there is no police officer with sufficient rank and experience to, or where it would be in the public interest, the chief of police may request the commission to make arrangements for another police service to conduct the investigation, present the case or preside at the hearing. Section 9 of British Columbia's Police (Discipline) Regulation allows the chief to appoint a member from another force to investigate, but there is no provision for an outside member to be appointed to present the case or preside at the hearing.

²¹⁵. Op. cit., note 13, p. 85.

²¹⁶. Ibid., pp. 83 and 95.

The question of the investigation of police misconduct by the police themselves is the main focus of much that has been written about the investigation of police misconduct. The other main issue is the right of the police officer to remain silent during the investigation stage.

(b) Right to Remain Silent

The investigation of police misconduct by the police poses a curious dilemma. On the one hand, the criminal like nature of the proceedings and the accompanying investigation is one with which the police are familiar. One aspect of a criminal investigation is the right of the suspect to remain silent throughout the investigation stage and at any subsequent trial. But in direct opposition to that principle is the militaristic, hierarchical structure of the police which mandates subordination and compliance to orders of a superior. Integral to this structure is the need for the chief to find out from any officer suspected to have committed a disciplinary infraction his version of any incident brought to the chief's attention. The police officer's right to remain silent during the investigation of an alleged disciplinary default pits these two principles against one another.

Prior to its reexamination by the Commission of Inquiry, The R.C.M.P. had the following provision in their Administration Manual:

"Although a member is not obligated to give a statement after being warned, neither does he have the right to remain silent. He is obligated to answer all relevant questions put to him touching on any internal investigation by the Force.

Statements or answers to questions given voluntarily may be used in evidence.

False or misleading statements or answers to questions, oral or written, volunteered or ordered, may be used in evidence for the purpose of proving the falsity or misleading nature of the statement made.²¹⁷

The Commission of Inquiry recommended abolition of the "ordered statement."²¹⁸ Interestingly, however, the new legislation governing the R.C.M.P. contains a modified version of the ordered statement. Section 40 reads as follows:

"(2) In any investigation under subsection (1), no member shall be excused from answering any question relating to the matters being investigated when required to do so by the officer or other member conducting the investigation on the ground that the answer to such question may tend to criminate the member or subject the member to any proceeding or penalty.

²¹⁷. Op. cit., note 13, p. 124.

²¹⁸. Ibid, p. 153.

(3) No answer or statement made in response to a question described in subsection (2) shall be used or receivable in any criminal, civil or administrative proceedings other than a hearing under section 45.1 into an allegation that with intent to mislead the member gave such answer or statement knowing it to be false."²¹⁹

Provisions in Britain have long provided that the police officer has the right to remain silent during an investigation and is entitled to be cautioned that evidence obtained from him during questioning may be used against him at trial.²²⁰

"No other occupation enjoys a similar protection: a worker who refused to answer an employer's questions about misconduct at work could almost certainly be fairly dismissed."²²¹

In response, Lustgarten recommends that the right to remain silent in relation to criminal offenses could be preserved by two rounds of questioning.

"If a constable, having duly been cautioned, makes clear his refusal to answer questions related to a prosecution for ABH, such questioning would cease and he could then be told that all the ensuing interrogation related to the disciplinary offence of abuse of authority. Failure to answer these questions would call down adverse inferences in the disciplinary adjudication. This seems a fair balance of the competing considerations; however, there must be an inviolate rule that if the officer responds to questions in the disciplinary interrogation, his answers may never be used in criminal proceedings against him."²²²

The police officer's right to remain silent during the investigation and his right not to have any statement made by him utilized against him except with his consent has been codified in Manitoba.²²³

Alberta's regulations provide that an officer may be "instructed by his superior officer" to provide an explanatory report . . .

²¹⁹. Op. cit., note 198.

²²⁰. Lustgarten, op. cit., note 204, p. 151.

²²¹. Ibid.

²²². Ibid.

²²³. Law Enforcement Review Act, R.S.M. 1987, c. L75, s. 19 and 20.

"but any oral or written statement or report obtained shall be regarded as an involuntary statement and shall not be admissible in evidence in any proceedings, except to prove that the statement is false."²²⁴

(5) HEARING

(a) Adjudicatory Body

Traditionally, adjudication of a police officer's alleged disciplinary breach would be by the chief constable or his delegate and several jurisdictions still utilize this mode of adjudication.²²⁵ However, there seems to be a trend away from the chief as sole adjudicator especially in matters of public complaints.

A chief constable in Manitoba has very little power to discipline one of his police officers as a result of a complaint made against him by a member of the public. That province has appointed a "Commissioner" who is an officer of the Manitoba Police Commission. That commissioner, where the police officer admits to having committed a disciplinary default, confers with the chief of police to determine the severity of the alleged disciplinary default and the contents of the respondent's service record. The commissioner then makes a recommendation as to penalty, and only if the police officer against whom the complaint was made concurs with that recommendation does the chief have the power to actually impose it. If the police member does not concur with the recommendation, the Law Enforcement Review Board holds a hearing as to the question of penalty only.²²⁶ The Law Enforcement Review Board is comprised of at least seven persons, from which a quorum of three is drawn on a sequential basis to hear matters. The presiding officer and deputy presiding officer must be lawyers and the membership of the board comprises at least two persons who are or were peace officers. Where the police member does not admit the disciplinary default, a public hearing to determine the matter is held in front of the Law Enforcement Review Board. At this hearing, the complainant may receive legal aid or have counsel appointed by the government to present the case in support of his complaint.²²⁷

²²⁴. Alberta Reg. 179/74 as amended, s. 7(b).

²²⁵. Ontario, Prince Edward Island and Alberta, as well as British Columbia, still retain this mode of adjudication.

²²⁶. R.S.M. 1987, c. L75, s. 16.

²²⁷. Ibid., s. 24(8).

All aspects of police discipline involving municipal police in Newfoundland, whether or not the subject of a public complaint, involve a hearing in front of a "disciplinary panel" consisting of three members, one appointed by the Chief of Police, one appointed by the Association and a third person appointed by the first two to act as chairperson. Only if the police officer wishes to "plead guilty" in front of the chief does the chief constable have the right to impose the penalty.²²⁸

The Province of Quebec sets up "ethics committees" comprising at least fifteen people, equal numbers of lawyers, police officers and members from the community at large. Decisions on complaints made against police officers in that province are determined by "divisions" of the ethics committee, comprised of one lawyer, one police officer and one member from the community at large.²²⁹

The Commission of Inquiry into matters of discipline in the R.C.M.P. considered three options for adjudicating a formal discipline hearing:

1. A three-man board appointed to hear the evidence and adjudicate on the matter in a formal manner. One member would be trained in law.
2. An arbitration-like hearing in which formality is minimized, but within which protection of all participants would be ensured through due process.
3. A one-man tribunal with the stipulation that he be trained in law²³⁰

The Commission recommended the first option, with the qualification that the officer facing disciplinary action be entitled to object to any of the members of the board prior to the hearing. This was, in fact, the scheme that was adopted in the Legislation.²³¹

In a recent work on the subject of police discipline prepared by the International Association of Chiefs of Police, it was found that a majority of the American police departments studied used

²²⁸. Royal Newfoundland Constabulary Regulations, Nfld. Reg. 75/85.

²²⁹. An Act respecting police organization and amending the Police Act and various legislation, S.Q. 1988, c. 75. sections 89 - 107.

²³⁰. Op. cit., note 13, p. 156.

²³¹. An Act to amend the Royal Canadian Mounted Police Act and other Acts in consequence thereof, 33-34-35 Eliz. c. 11, s. 43.

internal disciplinary boards to advise the chief in disciplinary cases. Approximately fifty percent of these boards included a member of the accused officer's rank. According to questionnaire results, eighty-five percent of the officers surveyed thought that an accused officer should have the right to be judged by a group which included his fellow officers. While such presentation is not mandated by law, it appears that inclusion of an officer of the accused's rank on disciplinary boards increases officer confidence in the disciplinary hearing process.²³²

"The law of most states and federal due process standards require that an officer be allowed a hearing on disciplinary charges. It is not mandatory that the hearing be before departmental personnel, or even that the police department offer a hearing at all. It is enough that, at some point before any disciplinary action becomes permanent and final, the officer be given the right to a due process hearing. Thus, officers may be suspended, demoted or discharged before an administrative due process hearing so long as they are given an opportunity to have a due process hearing within a reasonable time. However, if the officer serves at the will and pleasure of the appointing authority, no hearing is required." (references omitted)²³³

(b) Right to Counsel

Four main issues arise in police discipline hearings: The right to counsel, compellability of the officer, the standard of proof and whether an acquittal on a criminal charge arising out of the same facts and circumstances as the disciplinary matter should ipso facto bar disciplinary proceedings being taken against the member. In all these matters, the police discipline hearing is unique. It bears little relation to rights grievances in labour relations or to professional misconduct proceedings.²³⁴

Many jurisdictions have attempted to limit the police officers right to counsel. The traditional "court martial" saw the accused member prosecuted and defended by military personnel. In the United States, there is no constitutional right to counsel in an administrative hearing, including a police discipline hearing.²³⁵

"There may be statutory or contract provisions for such a right, but it does not exist as a Sixth Amendment right"

²³². Op. cit., note 168, p. 71.

²³³. Ibid, p. 70.

²³⁴. For an excellent summary of the law in Canada relating to Professional Misconduct proceedings, see Steinecke, Richard and Posluns, Donald, "Professional Misconduct Proceedings", (1987) 9 Advocates Quarterly 160.

²³⁵. Op. cit., note 168, p. 72.

Cases in Alberta, British Columbia and the Federal Court have overruled as contrary to the principles of natural justice legislative provisions that purported to deny a police officer right to counsel in a disciplinary hearing.²³⁶

(c) Compellability of the Officer

The right of a police officer not to testify at a hearing to determine whether he has breached the discipline code varies from jurisdiction to jurisdiction. Many provinces in Canada specifically provide in police discipline regulations that the officer facing disciplinary proceedings is not compellable.²³⁷ However, the trend toward opening up the public complaints process runs contrary to providing the officer with that protection. Alberta, however, makes the police complaint process a civil one and has not exempted the police officer from the general compellability of all people in a hearing by the Law Enforcement Review Board,²³⁸ but the Act does provide the member with protection from having any evidence compelled in that hearing used against him in any other proceeding.²³⁹

(d) Standard of Proof

In the United States, a discipline hearing is strictly an administrative hearing, and strict adherence to evidentiary rules and procedures is not necessary.²⁴⁰ Consistent with that line of reasoning, the standard of proof in an American police discipline hearing is generally the civil standard.

In England, the standard of proof is the criminal one:

"apparently as a matter of custom and practice - the point was not covered by any rule of law - disciplinary charges have always had to be proven beyond a reasonable doubt. No convincing reason has ever been offered as to why a

²³⁶. Bachinsky and Cantelon v. Sawyer, [1974] 1 W.W.R. 295 (Alta. S.C.), Joplin v. Chief Constable, City of Vancouver Police Department et al. (1985) 10 Admin L. R. 204 (B.C.C.A.)

²³⁷. See, for example, s. 23(13) of the Metropolitan Police force Complaints Project Act, S.O. 1984, c. 63.; and s. 24(10) of The Law Enforcement Review Act, R.S.M. 1987, C. L75, and s. 45.1(7) of the Royal Canadian Mounted Police Act, R.S.C. c. R-9.

²³⁸. Police Act, S.A. 1988, C. p-12.01, section 47(1).

²³⁹. *Ibid.*, section 51 prohibits the use of that evidence against him "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."

²⁴⁰. *Op. cit.*, note 168, p. 73.

criminal standard of proof should govern these civil proceedings. The anomaly is especially glaring because under unfair dismissal law, even before the Employment Act 1980 muddied the waters, the employer has only to discharge the civil standard of proof - balance of probabilities - for a dismissal to be adjudged fair. Dismissal is a far graver sanction than most policemen ever face, yet their misconduct can involve far more serious malefactions than ordinary workers could possibly face."²⁴¹

The standard of proof for an R.C.M.P. officer charged with a discipline offence was not specifically addressed in the legislation prior to 1986, and the Commission of Inquiry stated that there was some question as to whether the civil or the criminal standard was applicable.²⁴² The Commission of inquiry recommended incorporating the criminal standard²⁴³, but the new legislation incorporates the civil standard.²⁴⁴

British Columbia and Saskatchewan utilize a criminal standard of proof in all internal discipline matters. Public complaints in Manitoba, Nova Scotia and with respect to the Metropolitan Toronto Police Department are also subject to the criminal standard of proof. Internal discipline matters in Nova Scotia²⁴⁵, citizen complaints and internal discipline matters in Alberta utilize the civil standard. Although the Ontario discipline Regulations are silent in respect of the standard of proof, there is some indication that internal discipline matters there are governed by the civil standard.²⁴⁶

(e) Autrefois Acquit

Closely related to the standard of proof is the issue of autrefois acquit, the principal that a person, once acquitted of criminal charges, cannot be tried for them again. Where an alleged disciplinary breach is comprised of the same facts and circumstances which formed the basis for a criminal charge which was dismissed by the Court, and where disciplinary breaches are also

²⁴¹. Op. cit., note 204, p. 157.

²⁴². Op. cit., note 13, p. 126.

²⁴³. Op. cit. note 12, p. 158.

²⁴⁴. Op. cit., note 231, s. 45.12(1).

²⁴⁵. N.S. Reg. 101/88, s. 26.

²⁴⁶. See Appleby, T., "Officers guilty of sex in car", The Globe and Mail, June 22, 1989, p. 1.

adjudicated on the criminal standard of proof,²⁴⁷ the argument has advanced many times in the past.

The application of section 11(h)²⁴⁸ of the Charter of Rights and Freedoms to police discipline proceedings has now been conclusively rejected by the Supreme Court of Canada²⁴⁹. In finding that the acquittal did not bar discipline proceedings, the Court quoted with approval from Spencer Bower and Turner, The Doctrine of Res Judicata, 2nd ed. (1969) as follows:

"An example is readily found in an inquiry instituted by the disciplinary authority of a professional body, with a view to the expulsion of one against whom conduct infamous in a professional respect is alleged. In such a case it may be that the conduct alleged is no more and no less than conduct in respect of which the accused person has already been acquitted by a criminal court on a criminal charge. Neither a conviction nor an acquittal before a criminal court on a criminal charge will bar the use of the same conduct before such a tribunal on an application to suspend or expel; for the purpose of the proceeding is not to punish the practitioner for the commission of an offence as such, but to exercise disciplinary power over the members of a profession so as to ensure that their conduct conforms to the standards of the profession."²⁵⁰

Although the Charter does not apply to such proceedings, some police legislation in this country²⁵¹ and Great Britain²⁵² specifically precludes a member from being tried for a disciplinary infraction if he has previously been tried and acquitted of criminal charges, predicated on substantially the

²⁴⁷. Where disciplinary proceedings are adjudicated on a civil standard, the argument has not normally arisen.

²⁴⁸. Section 11(h) of the Charter reads: "Any person charged with an offence has the right . . . (h) if finally acquitted of the offence, not to be tried for it again and if finally found guilty and punished for the offence, not to be tried or punished for it again;"

²⁴⁹. *Op. cit.*, note 136.

²⁵⁰. See also, Re Pelissero and Loree, (1982), 140 D.L.R. (3d) 676, Ont. H.C., Re MacDonald and Marriott (1984), 7 D.L.R. (4th) 697 (B.C.S.C.), R.v. Debaie (1983), 60 N.S.R. (2d) 78 (N.S.C.A.), R. v. Belliveau (1984) 55 N.B.R. (2d) 82 (C.A.).

²⁵¹. British Columbia's Regulation is one example, consistent with that of Nova Scotia, discussed below.

²⁵². As to related problems that arise with the res judicata issue, see Alan Greaves, "Double Jeopardy and Police Disciplinary Proceedings," [1983] Criminal Law Review 211. In Great Britain the Home Office extended the principle of res judicata to apply where the Director of Public Prosecutions reviewed the evidence against a police member and determined that there was insufficient evidence to support a criminal charge. The Home Office instructed police not to lay disciplinary charges against members based on that evidence. But if borderline charges were not referred to the D.P.P. or if the D.P.P. laid charges and the trial resulted in "no case to answer", disciplinary charges could still be laid. This resulted in an anomalous situation in which the decision of the D.P.P. was crucial to the outcome of police disciplinary charges.

same facts and circumstances as the criminal charges. Interestingly, however, a case from Nova Scotia dealt with such a provision in the Regulations made pursuant to Nova Scotia's Police Act which stated:

"Where a member has been prosecuted in respect of an offence punishable on indictment or on summary conviction and has been acquitted, no disciplinary proceedings shall be taken under these Regulations arising out of the same facts and circumstances."

In that case, a member was acquitted and disciplined prior to the Attorney General for that province calling the Police Commission to inquire into his conduct. The member did not contest his discipline, but was challenging the right of the Commission to hold such an inquiry. The Attorney General argued that the member should not have been disciplined because of the above provision, but the court held that the police department "were under a duty to proceed with disciplinary action" in spite of the acquittal and the provision. The court quoted with approval the following passage from Spearns v. Fry et al. (1979), 102 D.L.R. (3d) 764, 37 N.S.R. (2d) 86:

"It is my opinion that if the constables are acquitted of the criminal charges, they would nevertheless be subject to discipline procedures on charges under s. 1(a) of the Code of Discipline as the disciplinary hearing relates to a separate distinct issue from that tried in the criminal proceeding, the issue in the criminal proceeding being whether the constables committed an assault under the Criminal Code, while the issue in the discipline (sic) proceedings being whether the constables contravened the Code of Discipline by acting in a manner that was reasonably likely to bring discredit upon the reputation of the Halifax Police Force."²⁵³

The new legislation governing discipline of members of the R.C.M.P. specifically exempts the principle of res judicata.²⁵⁴

(f) Apprehension of Bias

One matter that arises from time to time in police discipline hearings and appeals is the matter of "bias". One of the fundamental rules of natural justice requires that the decision-maker must be disinterested and unbiased.

"Two types of disqualification for bias have been recognized. The first is called "actual bias". The other ground of disqualification is often called a "reasonable apprehension of bias." The test of "reasonable apprehension" is whether a person, viewing all the circumstances objectively, would have a reasonable apprehension

²⁵³. Martin v. Attorney General for Nova Scotia, (1980) 110 D.L.R. (3d) 325. (N.S.S.C.) Quoted at 332.

²⁵⁴. Op. cit., note 231, Section 39(1).

that the tribunal (or a member of the tribunal) would not decide the allegations in an impartial manner. Although there is probably no rule of law precluding a finding of actual bias, the courts have confined themselves to determining whether a reasonable apprehension of bias has been established."²⁵⁵

A review of the cases decided under police discipline legislation in Canada shows that a "reasonable apprehension of bias" has been argued several times both in relation to the adjudicator of first instance and to the appellate bodies.

Without more, the mere fact that the disciplinary breaches are tried by the police officer's "boss" is not sufficient to support a claim of reasonable apprehension of bias.²⁵⁶ Pre-involvement of the presiding officer with the constable to be disciplined has been held not to constitute a reasonable apprehension of bias where the presiding officer was the constable's supervisor some years prior when he was previously disciplined but there was no evidence that he was involved with the investigation or discipline of the constable's prior disciplinary breach.²⁵⁷ However, where the police member had, over four months, been tried and convicted by the same Superintendent of three charges, the member's claim of a reasonable apprehension of bias was successful.²⁵⁸

A reasonable apprehension of bias has been alleged in several cases dealing with the relationship between inquiries held by Police Boards and Police Commissions and police disciplinary procedures. Where the Quebec Police Commission held an inquiry into the "conduct" of a member of the police department of the City of Montreal and as a result purported to undertake "an evaluation" of the officer and "the standardization of his rank and duties in the . . . police department", the Supreme Court of Canada granted a writ of evocation, restoring the ruling of the trial judge who stated as follows:

"Here, there arises an irreconcilable conflict between the spirit of the Act and the rules of elementary justice. The tribunal before which applicant could appeal the decision of the investigator is none other than the one which decided his case at first instance, through a Commission of Inquiry. It is as though the Court of Appeal of this Province were to be asked to give a ruling before the case in question had come before the Superior Court. By ordering that applicant be subject to the provisions of s. 31, after finding him unfit to carry out the duties of his position, the Commission was deciding a matter which it might subsequently

²⁵⁵. Steinecke and Posluns, op. cit. note 234, at 177. (footnotes omitted).

²⁵⁶. Berteit v. Carlisle (1987) 80 N.B.R. (2d) 154 (N.B.Q.B.).

²⁵⁷. Clayton Thompson v. Calgary Police Commission and the Law Enforcement Review board (1987) 80 A.R. 193 (Alta. Q. B.)

²⁵⁸. Re Batorski and Moody (1983) 150 D.L.R. (3d) 114 (Ont. Div. Ct.)

be called on to decide as an appellate tribunal, under the aforesaid section. By acting in this manner it reversed the order of successive jurisdictions established by the Act, and in my view this constitutes an excess of jurisdiction sufficient to justify issuance of the writ prayed for."²⁵⁹

The potential conflict between the provincial police commission inquiring into a complaint against a member and also sitting as appellate body for a member who might be disciplined as a result of that complaint was considered by the Saskatchewan Queen's bench, and affirmed by the Saskatchewan Court of Appeal. Without considering whether the claim of reasonable apprehension of bias was made out, the Court of appeal stated:

"Insofar as bias is concerned, if there is bias, it results from the legislation and not from any action of the Board of Police Commissioners. Prohibition does not lie to prohibit a board from carrying out a statutory duty or a statutory right even if it can be said, in so doing, there is a likelihood of bias not from the actions of the board but as a result of the legislation."²⁶⁰

Where a complainant met privately with the mayor, chairman of the police board, prior to a hearing to determine if a disciplinary infraction had taken place, the Saskatchewan Court of Appeal found a reasonable apprehension of bias.²⁶¹ Similarly, where a Board of Police Commissioners intended to conduct an Inquiry and it was apparent from the notice to conduct the Inquiry that it had already determined certain facts, the Board was prohibited from conducting the inquiry on the grounds of reasonable apprehension of bias.²⁶²

(6) PENALTIES

In addition to reprimands, dismissal and suspension, it is common for police legislation to provide for demotion, forfeiture of days off, or a monetary fine upon being found to have committed a disciplinary infraction. The imposition of fines as a disciplinary penalty in the workplace is novel in an employee/employer relationship, and was recently considered by the Supreme Court of Canada. While ruling that the power to impose fines per se was not sufficient to make police

²⁵⁹. Saulnier v. Quebec Police Commission et. al. (1975) a S.C.R. 572, 57 D.L.R. (3d) 545, 6 N.R. 541 (S.C.C.), at 547.

²⁶⁰. Hanson v. Selinger and Board of Police Commissioners (1980) 3 Sask R. 274 (Sask. C. A.), (at 276) affirming [1980] 2 W.W.R. 749 (Q.B.).

²⁶¹. Spence v. Spencer and Prince Albert Board of Police Commissioners, (1987) 53 Sask. R. 35 (C.A.).

²⁶². Weimer v. Symons et al. (1987) 25 Admin L. R. 111 (Sask. Q. B.)

discipline legislation criminal in nature and thus bring it within section 11 of the Charter, the Court stated that:

"if a body or an official has an unlimited power to fine, and if it does not afford the rights enumerated under section 11, it cannot impose fines designed to redress the harm done to society at large. Instead, it is restricted to the power to impose fines in order to achieve the particular private purpose."

The failure of traditional police discipline legislation to provide for an action non-punitive in nature has resulted in a trend lately to import remedial provisions into legislation. The R.C.M.P. commission of inquiry felt remedial action to be a particularly strong need to be addressed in revamping the legislation.

"Problems of performance and conduct may be due to inconsistencies between rules, regulations and directives and the operational requirements of policing. In other cases, local conditions such as a shortage of adequate manpower, ineffective leadership and supervision or a protracted stress situation may give rise to problems of either conduct or performance."²⁶³

The Commission therefore recommended that oral admonitions be given in certain circumstances and not recorded. It also recommended non-punitive options be given to commanders on sentencing.²⁶⁴ The new legislation governing the R.C.M.P. imports the concept of "informal disciplinary action" which may involve counselling, recommendation for special training, recommendation for professional counselling, recommendation for transfer, a direction to work under close supervision, forfeiture of time off not exceeding one day and reprimand.²⁶⁵

The discipline regulations for the province of Newfoundland provide that a member may be ordered, following a request by the member to that effect, to "participate in such program or activity" as the disciplinary panel feels appropriate in addition to or as an alternative to the penalties provided.²⁶⁶

²⁶³. Op. cit., note 13, p. 135.

²⁶⁴. Ibid., p. 146.

²⁶⁵. Op. cit., note 231, s. 41(1).

²⁶⁶. Newfoundland Regs. 75/85, s. 16(2).

(7) APPEAL PROVISIONS

There is no system of appeal that is typical throughout Canadian jurisdictions. Saskatchewan, Prince Edward Island and Ontario, with the exception of Metropolitan Toronto, follow the same procedure as we do in British Columbia: Appeals from the chief's decision go initially to the municipal police board and then to the provincial police commission. For the other provinces, the appeal system varies considerably.

Some provinces have different procedures for appeal depending upon whether a citizen complaint is involved. If no citizen complaint is involved, an officer from Manitoba will appeal the decision of the presiding officer to the police commission for that province.²⁶⁷ But where a complaint is involved, an officer found by the Law Enforcement Review Board to have committed a disciplinary default will appeal to the Court of Queen's bench "upon any question involving the jurisdiction of the board or upon any question of law alone".²⁶⁸

In Alberta, all discipline matters are heard in front of the chief or his designate²⁶⁹ but are appealed to the Law Enforcement Review Board²⁷⁰ for that province, with further appeal to the Court of Appeal on a question of law where the matter involves a citizen complaint.²⁷¹

Nova Scotia has set up a "Police Review Board" with similar functions to the Law Enforcement Review Boards in Manitoba and Alberta. The "Police Review Board" is composed of three

²⁶⁷. Provincial Police Act, R.S.M. 1987, c. P150, S. 26(2).

²⁶⁸. R.S.M. 1987, c L.75, section 31.

²⁶⁹. Police Act, S.A. 1988, c. P-12.01, section 45 and Regulation 179/74 as amended. The Police Act deals with internal discipline matters involving public complaints where the regulations deal with discipline matters not involving a complainant.

²⁷⁰. The Law Enforcement Review Board is set up under the Police Act and is composed of not fewer than 3 members appointed by the Lieutenant Governor in Council. At least one member of which is a judge of the Court of Appeal or the Court of Queen's Bench. That Board hears appeals of disciplinary matters involving complaints and also conducts inquiries respecting complaints through provisions in the Police Act, but is also set up as the appeal body for internal discipline matters under the Regulation (sections 54 and 55).

²⁷¹. *Ibid.*, s. 18. The Regulations do not provide for an appeal to the Court of Appeal of internal discipline matters and the appeal provisions of the Act are restricted to matters involving complainants. It is not clear from the legislation, therefore, whether a police officer has a further right of appeal in an internal discipline matter to the Court of Appeal.

members appointed by the Governor in Council²⁷² and it hears appeals of internal discipline matters in private²⁷³ and matters respecting a complaint generally in a public hearing²⁷⁴. The Review Board hears matters *de novo* and the police officer, the chief constable, the municipal board of police commissioners, the complainant, if any, the Attorney General and "any person who can demonstrate a personal interest in the proceedings" all may be parties to the proceedings.²⁷⁵

Appeals from the disciplinary panel in Newfoundland are to a Provincial court Judge "on the record".²⁷⁶

New Brunswick has set up a "Police Discipline Appeal Board"²⁷⁷ comprised of a Chairman and vice-chairman who are lawyers or former judges, four members who are former police officers and four members from the community at large. Appeals of internal discipline are heard by panels of at least three, one of which must be a former police officer and one of which must be from the community at large. A further appeal to the Supreme Court of New Brunswick on a question of law, fact or mixed law and fact.²⁷⁸

(8) PROBATIONARY EMPLOYEES²⁷⁹

Most police discipline legislation is silent on probationary employees. It is generally accepted that probationary members are subject to the same disciplinary procedures as non-probationary

²⁷². An Act Respecting the Nova Scotia Police Commission and Police Forces in Nova Scotia, S.N.S. 1974, C. 9, s.28.

²⁷³. N.S. Reg. 101/88, S. 23.

²⁷⁴. *Ibid.*, s. 23(1).

²⁷⁵. *Ibid.*, s. 24

²⁷⁶. Newfoundland Regs. 75/85, s. 18

²⁷⁷. Police Act, S.N.B. 1977, C. P-9.2 as amended by S.N.B. 1979, C. 56, S.N.B. 1981, C. 59, S.N.B. 1984, C. 54, S.N.B. 1986, C. 64, and S.N.B. 1987, c. 41, section 30.1.

²⁷⁸. *Ibid.*, s. 32.

²⁷⁹. As to the problems in the general workplace caused by the dismissal of probationary employees, see, Brode, Patrick, "Justice for Probies'--the Appropriateness of Courts as Arbiters of Labour Disputes", (1984) 7 Canadian Community Law Journal 128, and Kuttner, Thomas S., "Discharge and the Probationary Employee: Is there a Remedy before the Labour Boards?", (1986) 11 Queens Law Journal 293.

members, but difficulties have arisen in some provinces in the past when discharge of a probationary member for unsuitability was sought by the employer.

The discipline regulations for the province of Ontario provided that nothing effected the "authority of the Board or council to dispense with the services of a constable within eighteen months of becoming a constable."²⁸⁰ The Supreme Court of Canada interpreted that provision to allow for the discharge of a constable for non-disciplinary reasons, but imposed upon the police board the duty to give reasons for dismissal and the opportunity for the probationary member to respond.²⁸¹ There have been a great number of cases subsequent to Nicholson and Haldemand that have considered the sufficiency of the notice and the hearing given to the probationary member.²⁸²

The same provision considered by the Supreme Court in Nicholson and Haldemand was the subject of later consideration by the Ontario High Court²⁸³ which held that those words prohibited a probationary officer from grieving his dismissal under the collective agreement.

In Alberta, the absence of an express provision in the legislation there allowing for dismissal of a probationary employee was interpreted to mean that a probationary employee cannot be

²⁸⁰ R.R.O. 1970, Reg. 680, s. 27(b) reads as follows: "No chief of police, constable or other police officer is subject to any penalty under this Part except after a hearing and final disposition of a charge on appeal as provided by this Part, or after the time for appeal has expired, but nothing herein affects the authority of a board or council,

(b) to dispense with the services of any constable within eighteen months of his becoming a constable.

²⁸¹ Nicholson & Haldemand v. Norfolk Regional Board of Commissioners of Police [1979] 1 S.C.R. 311, 88 D.L.R. (3d) 671, 78 C.L.L.C. 14, 23 N.R. 410 reversing 12 O.R. (2d) 1337, 69 D.L.R. (3d) 13, which reversed 9 O.R. (2d) 481, 61 D.L.R. (3d) 36.

²⁸² See, for example, Biggar v. Town of Elliot Lake Police Commission Board et. al. (1984) 5 C.C.E.L. 174, 26 M.P.L.R. 23, 4 O.A.C. 60 (Ont. Div. Ct.), Re Gillingham and Metropolitan Toronto board of Commissioners of Police (1979) 26 O.R. (2d) 77, 101 D.L.R. (3d) 570 (Div. Ct.), Re Fredericks and Board of Commissioners of Police of Town of Essex (1983), 43 O.R. (2d) 776, 20 A.C. 283, 2 D.L.R. (4th) 525 (Div. Ct.), Leslie and Stocen v. Board of Police Commissioners of the City of Weyburn & Williams (1983) 24 Sask R. 54 (Q.B.), affirmed (1984) 32 Sask R. 211 (C.A.).

²⁸³ Re Metropolitan Toronto board of Commissioners of Police and Metropolitan Toronto Police Association, 112 DLR (3d) 355, Ontario High Court, 1980.

dismissed for other than disciplinary reasons.²⁸⁴ The Court there held that since the Police Act did not refer to "probationary constables" the employing board could not create a new category of employment.²⁸⁵ That case may have been effectively overruled by Re Ongarato²⁸⁶, a later case decided by the Alberta Court of Appeal which held that a collective agreement could provide for the dismissal of a probationary constable without cause.²⁸⁷ However, the Alberta government has now presumably settled the controversy by enacting a specific regulation dealing only with the discharge of probationary police members. Alberta Regulation 211/83 provides in part that:

2. In addition to grounds for dismissal under the Municipal Police disciplinary regulations (Alta Reg. 179/74) a probationary member and a probationary chief may be dismissed under this regulation.

3. (1) The chief of a police force or a person directed by the chief shall from time to time at reasonable intervals review the job performance of each probationary member and, if as a result of a performance review he considers that any aspect of the job performance of the member indicates or may indicate that the member is not suitable for continued employment as a member of the police force, he shall discuss the matter with him within a reasonable time after the review.

(2) The chief shall

(a) keep and maintain adequate written records of performance reviews and of discussions with a member pursuant to this section, and

(b) provide the member with a reasonable opportunity to correct any deficiency or error in the records.

4. subject to an express provision to the contrary in the contract of employment of a probationary member, if the chief of a police force decides that the member should be dismissed, he may give notice of his decision to the member in a notice of dismissal in writing which shall be in Form A and shall be given to the member personally, or if the member cannot reasonably be located, by leaving the notice at his latest known residential address.

²⁸⁴. Re Martin and Wright et al., (1981) 128 D.L.R. (3d) 133, (Q.B.).

²⁸⁵. Ibid.

²⁸⁶. (1984) 35 Alta L. R. (2d) 299, 58 A. R. 61 (Alta C.A.) reversing (1983) 25 Alta L.R. (2d) 76, 44 A.R. 150 (Alta Q. B.)

²⁸⁷. See also Leslie and Stocen v. Board of Police Commissioners of the City of Weyburn and Williams (1983) 24 Sask. R. 54, aff'd 32 Sask R. 211. Leave to appeal to S.C.C. refused 35 Sask. R. 320, 56 N.R. 234.

(9) NON-CULPABLE DISMISSAL

The Act governing the R.C.M.P. has always contained a provision for "administrative discharges". The Royal Commission was informed that the manner in which administrative discharges were used "permitted abuse".²⁸⁸ The Commission felt that a hearing "at some stage" should be incorporated into the administrative discharge provisions. The new provisions set out the grounds upon which a member may be administratively discharged,²⁸⁹ and require that before he is administratively discharged he must be given "proper guidance, assistance and supervision" to give him the opportunity to bring his standard of service up to an acceptable level."²⁹⁰

The Alberta Police Act provides for non-culpable dismissal through a labour relations model.²⁹¹ Saskatchewan takes a different approach by legislating the procedure to be followed.²⁹²

²⁸⁸. Op. cit., note 13, p. 161.

²⁸⁹. These grounds include being "clearly not suited" for police duties; persistent inefficiency in the performance of duty; inability on the part of the member to respond to efforts to improve the quality of his service.

²⁹⁰. Op. cit., note 13, p. 162.

²⁹¹. Police Act, S.A. 1988, C. P-12.01, s. 37(1).

²⁹². Police Act, R.S.S. 1978, c. P-15. s 136(1).

PART FOUR
ASSESSMENT AND NEED FOR CHANGE

(1) ADVANTAGES, DISADVANTAGES AND PROBLEMS OF CURRENT SYSTEM

The greatest advantage to the current system is that it is familiar to the officers who work with it. Not only has the Regulation been in effect for almost fifteen years, but it adopts procedures which are essentially criminal which are the ones with which police officers are comfortable. The Form 3 is an "information" and the hearing is a "trial"; the member is "accused" and the case is "proven against him" "beyond a reasonable doubt".

Another advantage that has often been cited is that the quasi-criminal procedures protect the rights of individual police members from false or vindictive claims made by complainants. In our opinion, however, this advantage is totally illusory because any protection given to the member in the Regulation can be totally erased by the citizen complaints procedures under the Act.

The Regulation was progressive in its day. Its provision for verbal reprimands to not form a part of the service record of discipline, for written reprimands to be given without a hearing if uncontested by the member, and the attempt at excluding lawyers from hearings where the penalty sought was less than dismissal or demotion, all indicate that the draughtsman was attempting to simplify and expedite the process without prejudicing the member. The investigative and suspension procedures are clear and give the member fair treatment.

However, there are a great number of problems with and disadvantages to the current system. One, it is time consuming and is not conducive to immediate remedial action to correct behaviour.

Two, the relationship between the labour process and the police discipline system is unclear. There probably is a right on the part of the police board to dismiss a member for unsatisfactory performance, but if there is any allegation of wrongdoing on the part of the member, the chief must go through disciplinary procedures first.

Three, although all municipal police forces are subject to the same rules, the size of the police force makes a big difference in the impartiality of investigation and the quality of adjudication. A large force such as Vancouver's can ensure that the investigation and adjudication are made by officers who do not know the member and who are not privy to the "gossip" surrounding the

incident. A smaller force, especially in a matter with a high profile, would be hard pressed to do the same.²⁹³

Four, the Discipline Code deals with a wide range of matters, many of which are of a relatively minor nature. Unless the member consents to receiving a written reprimand in respect of one of these matters, the only options for the chief are to verbally reprimand the member, of which there is no record, or to commence formal discipline proceedings against him. There is a wide range of conduct for which neither process is suitable.

Five, in a significant matter relating to discipline where discharge is sought, the member will undoubtedly be represented by highly experienced legal counsel, and the case against him will be presented by similar counsel. Since the Regulation is highly technical, a number of technical legal arguments may be presented. The adjudicator of first instance, being trained as a police officer and not as a lawyer, cannot be expected to have the same level of legal expertise as counsel on the case. Similarly, the police board must decide such issues on appeal and while some boards may have as members experienced legal counsel, many will not.

Six, the entire police discipline process is held in camera and involves only people from, or with close affiliation to, the police community. Such a closed system does not inspire confidence on the part of the public that the system is operating properly and is not covering up acts of misconduct on the part of police.

Finally, as has been recognized by at least one court, the discipline regulations are not remedial in nature. They are replete with criminal terminology and the discipline code itself is more like a criminal code than a professional code of ethics. The police associations are not benefitting from the years of labour arbitral jurisprudence that recognize the remedial and progressive aspects of discipline.

(2) CONFINES OF CITIZEN COMPLAINTS SYSTEM

We were not asked to examine the advantages and disadvantages of the newly enacted citizen complaints procedures, and, as we have stated previously in this report, we understand that we are not to recommend changes to those procedures. However, in the context of our work with the discipline regulations, we have had to examine certain aspects of the procedures as they

²⁹³. The Regulation does provide for the chief to appoint an investigator from another police force (s. 9) but it does not allow for presentation and adjudication of the case to be by members from another force.

impact on internal discipline. The most troublesome aspect of the complaints process to us is that it gives the complainant the absolute right to request a public inquiry after the presiding officer has made his decision, and it gives the police board or police commission the jurisdiction to make any finding it wishes, with no regard to the prior proceedings. The citizen complaint process is theoretically capable of completely usurping the internal discipline process. A member who has been absolved of a breach of the discipline code could have a finding of breach substituted and discipline imposed following a public inquiry. Presumably the rationale for this jurisdiction is found in the closed, "in-house" nature of a discipline hearing. If our recommendation for a public hearing of formal disciplinary proceedings by the Police Conduct Review Board is accepted, consideration might be given in the future to restrict the complainant's right to a public inquiry where the chief refuses to investigate a complaint or to institute proceedings against a member.

We are concerned also by the fact that once the public inquiry process has been set in motion, the member loses his appeal rights under the Regulation. The new public inquiry procedures comprise a very real risk of the "public interest" overshadowing the rights of the member involved. For that reason, we feel that the member should have the right to a final appeal to the court where the police board or police commission finds him to have committed a breach of the discipline code. This recommendation is not strictly within our mandate.

The lack of any provision in the Act or Regulation to govern the rules of evidence of standard of proof and onus of proof in a public inquiry also concerned us. While the nature of hearing would indicate that rules and procedure applicable in a civil proceeding would apply, it appears that not all persons familiar with the process feel that such rules necessarily follow by virtue of the nature of the hearing itself. It seemed to us that it would be preferable if the rules and procedures were codified. We are not sure if there was an underlying policy behind not codifying such rules, however, and because these rules or the absence of them are directly within the sphere of the citizen complaints procedures, we did not feel that we could deal with this subject within our recommendations.

(3) CANVASSING INTERESTED PARTIES

(a) Method

By letter dated June 1, 1989, input was requested from fifty one "interested parties", including the chiefs, boards and member associations of all municipal police forces in the province. A copy of the letter requesting input, and a list of the persons and organizations to which the letter was sent are found in Appendix E and F respectively.

The letter asked that submissions be received by August 31, 1989. By that date letters or briefs were received from the following organizations:

British Columbia Civil Liberties Association
B.C. Association of Chiefs of Police
B.C. Federation of Police Officers
Corporation of the District of Saanich
Corporation of the Township of Esquimalt
Corporation of the City of Nelson
Corporation of the City of Port Moody
Delta Police Department
Oak Bay Police Department
Vancouver Police Union
Victoria City Police Department, Senior Officer Association²⁹⁴

The briefs received varied from one-page letters to thirty-page submissions. Some briefs dealt only with one issue, others covered the ambit of the issues raised in the letter.

Based on those submissions, the reports of the predecessor committee and research conducted on various models, a draft proposal was prepared, incorporating what we saw as one model that would address the issues in a suitable manner. That model was circulated on September 1, along with an explanation of it, to all the fifty-one groups or organizations, asking again for input. The proposed model, the explanation and the letter may be found in Appendix F. It was emphasized that the proposed model was just that - one of several under consideration - and was drafted for discussion purposes only. The letter asked for input on the model by the end of September. Although most responses were delayed, the following groups or organizations did provide comments on the proposal in time for them to be considered by us in making our final recommendations:

²⁹⁴. Comments from this association were not received until after the middle of September and were not considered in the preparation of the first draft proposal, since the proposal had already been prepared and circulated by the time the comments arrived.

B.C. Civil Liberties Association
B.C. Federation of Police Officers
B.C. Police Commission
Vancouver Police Board

The purpose of this section of the paper is to summarize the input received at both the first and second stages of the project. For ease of reference, the discussion is separated into the issues raised in the letter dated June 1.

(b) Discipline Issues

There was general consensus that the disciplinary procedures contained in the current Regulation were too cumbersome for all breaches of discipline and that there should be a less formal process for some types of conduct or conduct involving certain penalties. There was, however, no consensus as to how this could best be done.

The associations gave consideration to changing the Discipline Code and removing certain matters from that Code. The original brief received from the Federation suggested the implementation of a "positive" Professional Code of Conduct²⁹⁵ which would focus on a police officer's duties to his community. After seeing such a code drafted, however, the Federation realized that a "positive" code of conduct does not allow for as much certainty. The concept of a positive code of conduct was also strongly rejected by the B.C. Police Commission.

The Federation suggested a better approach would be to keep the current format of the discipline code and remove from it certain matters that related primarily, if not solely, to the management of the force. The Federation suggested that matters that related to the internal management of the force should be dealt with in a labour relations model. Where appropriate, the Federation envisions discharge taking place under a labour model, if the conduct was strictly of an employee/employer nature. This might happen, for example, where a member persisted in conduct showing a disrespect for the authority structure of the police organization, including insubordination, carelessness with police department property and arriving late for work. The Federation's position was that the protections afforded by the current Regulation were necessary where the member's dealings with the public and his professional reputation were at stake, but that they were not necessary or desirable in the day-to-day management of the force. For ease of reference, we termed the type of model favoured by the Federation a "conduct-driven" model.

²⁹⁵. B.C. Federation of Police Officers First Submission to Terrence L. Robertson, Q.C., p. 15.

The other way of dividing "formal" procedures from "informal" procedures we have termed the "penalty-driven" model, meaning that the type of procedure is governed not by the type of conduct, but by the type of penalty sought. The Chiefs and the boards, where they addressed the issue, generally favoured a penalty-driven model rather than a conduct driven model.²⁹⁶ However, the Vancouver Police Board, while favouring a penalty-driven model, made the following statement:

"While the board agrees with the concept of determining "minor" or "serious" breaches on the basis of the recommended penalty, we are concerned that some explicit procedures be developed to assure that factors required to manage the Force properly are not preempted by a "serious" penalty leading to a new procedure that usurps the labour relations function.

For example, frequent lateness may result in a decision by the chief that an individual is not fit for service. As a result, the Chief may dismiss the officer from the Force. The officer should have the right of normal labour relations appeals but certainly should not go through the present rigorous procedure. Even though the penalty is serious, the nature of the conduct involved relates strictly to the employer-employee relationship and should be dealt with under the labour relations model."²⁹⁷

The above comment seems to contemplate a conduct-driven model rather than a penalty-driven model in spite of the words of the first line of the quoted paragraph.

Interestingly, the chiefs seemed to envision some sort of hearing even for what they termed "minor" offenses, which would be dealt with through an "informal process".²⁹⁸

The B.C. Police Commission advocated a penalty-driven model as well. The brief received from the Commission stated that most reasons for discipline have discipline code elements to them and was concerned that a conduct driven model would "create duplicity of proceedings involving a

²⁹⁶. Brief of B.C. Association of Chiefs of Police, July 1989, submitted to Terrence L. Robertson, Q.C., p. 3

²⁹⁷. Letter from Mayor Campbell to Mr. Terrence L. Robertson, Q.C., dated November 17, 1989.

²⁹⁸. Op. cit., note 296, p. 4

multiplicity of tribunals, with potentially even more litigation and involvement of the legal community".²⁹⁹

"The chief Constable may wish to pursue the matter through the less rigorous labour procedures where the sanctions may include dismissal, to be met by the argument that the matter could be seen as a code of conduct issue where the higher standard of proof must be met. An arbitrator, who has no particular knowledge of policing standards, will make the initial assessment of whether a matter is a breach of the code of conduct, thereby defining the code. An arbitrator may view a matter as being a breach of the code, yet when the matter is dealt with as a matter of a breach of the code of conduct, it may be established that the matter does not involve breach (sic) of the code but does disclose some matter which should be dealt with by discipline.

It is our view that the proposal will create extra complexity, extra expense and extra delay in resolving many discipline matters. We say this bearing in mind, in particular, the discipline cases which have been appealed to the Police Commission in which one could readily see both employment type issues and code of conduct issues."³⁰⁰

The main advantage to the penalty driven model lies in the fact that it would not be confusing. The chief would determine the appropriate penalty and where anything more than a penalty of a certain level was sought, the formal process would be implemented. Of the organizations that specifically favoured the penalty-driven model, none specifically indicated the level of penalty that should separate the formal from the informal procedure.

(c) Burden of Proof

The issue of the burden of proof was vociferously argued by both the B.C. Civil Liberties Association and the B.C. Federation of Police Officers, the former advocating a change to the civil burden and the latter advocating the retention of the criminal burden.

The position of the B.C. Civil Liberties Association related particularly to matters of complaints against the police and among the matters raised in support of their position were that police should be treated no differently from other professions, that police officers have one of the strongest appeal processes of any employee group and are represented by a strong union or association, that police officers have extraordinary powers over members of the public and, with such, must be more sensitive to the abuse of these powers and that these powers must be seen to be exercised with caution. To quote from their brief:

²⁹⁹. Brief prepared by the B.C. Police Commission, dated October 24, 1989. P. 2

³⁰⁰. Ibid.

"It has been altogether too often the experience of the BCCLA that when citizens complain of police misconduct, the mere fact that the officer denies the complainant's account of the incident or that the corroborating evidence is incomplete. . . is sufficient to raise a reasonable doubt, and so the allegations are dismissed. This sort of response is particularly unsatisfying to most complainants, not because the allegations have been dismissed, but rather because the process appears to them to be biased towards the officers, and the response inadequate and insensitive. What is desperately needed is a disciplinary process through which complainants feel satisfied that their allegations have had a fair hearing. The BCCLA is convinced that only by using the civil standard of proof can such a process be achieved."³⁰¹

The Association submitted that complainants may be intimidated by police and the process, that they often have difficulty in expressing themselves, that most incidents take place in isolation or in the "heat of the moment", making corroborating evidence difficult to find and that investigations take a long time and the time delay works against the complainants.

The B.C. Federation of Police Officers argued as strongly for the retention of the criminal burden. They submitted that a police officer is in a higher risk category than other professionals in having false claims made against him or her because the "police officer is continually asked to go out and find the very people who want to avoid him,"³⁰² that some of the people with whom he must deal "come from a segment of our society where the need for integrity is not highly valued"³⁰³ and that a large number of the people with whom an officer must deal have emotional and mental problems which alter their perception of reality. The Association also argued that the accessibility of the complaints process, the "difficult responsibilities" given to the police officer, including the need to utilize force, and the fact that the police officer's "code of conduct is enforced by his or her employer" unlike other professions all made the criminal standard necessary to ensure that police officers were not treated unfairly.

³⁰¹. Brief prepared by B.C. Civil Liberties Association, entitled "The Standard of Proof in the Police Complaint Process", p. 5.

³⁰². Op. cit., note 295, p. 20.

³⁰³. Ibid., p. 21.

The issue of the burden of proof was not discussed to any great length in any of the other submissions. The B.C. Association of Chiefs of Police submitted that the civil burden would be used in instances of "minor offenses/informal process" and that matters of "major offenses/formal process" would continue to utilize the criminal standard of proof.³⁰⁴ The Esquimalt Police Board submitted that the standard of proof should "vary with the seriousness of the offence."³⁰⁵ The Police Board of the City of Nelson and one senior officer from the Victoria City Police specifically disapproved of the criminal burden, and the Vancouver Police Board also favoured changing the present burden of proof.

(d) **Autrefois Acquit**

The present Regulation does not allow disciplinary proceedings to be taken against a member where he has been acquitted of a criminal offence.³⁰⁶

Only the brief received from the Federation and one senior officer from the Victoria City Police force favoured retention of the rule. The B.C. Association of Chiefs of Police stated their position as follows:

"acquittal on criminal charges should not be a barrier to disciplinary charges in all cases. The acquittal may be purely technical and does not of necessity change the fact that the offence was committed by the member. We should still have the ability to proceed by disciplinary action in an attempt to correct the behaviour of the member involved if such action is deemed necessary by the facts of the case. An acquittal in a criminal charge without subsequent disciplinary action may be perceived by the public to be a sanctioning of the member's actions by the department".³⁰⁷

³⁰⁴. Op. cit., note 296, p. 4.

³⁰⁵. Letter dated June 26, 1989, from Lorraine M. Doyle to Terrence L. Robertson, Q.C.

³⁰⁶. Sec. 10(3) of the Regulation provides: "Where a member has been prosecuted in respect of an offence punishable on indictment or on summary conviction and has been acquitted, no disciplinary proceedings shall be taken under this regulation arising out of the same facts and circumstances."

³⁰⁷. Op. cit., note 296, p. 4.

The Esquimalt Municipal Police board, 2 out of 3 senior officers from the Victoria City police also specifically disapproved of the rule.

(e) Mode of Adjudication

The B.C. Federation of Police Officers suggested that we closely examine the mode of adjudication used in Newfoundland for trying disciplinary matters involving members of the Royal Newfoundland Constabulary. A member in that province may "plead guilty" before the chief, but if he does not, a hearing is held by a three-person adjudicatory body, one person appointed by the officer to be disciplined, one by the chief, and one agreed to by the two appointees. The Federation advocated the model because it felt it represented a fair balance between the interests of the community and the members.

"The hearing process is still private, but the community is aware than an outside unbiased person sits in the fulcrum position and determines the issues."³⁰⁸

(f) Appeal Process

The B.C. Federation of Police Officers submitted that a final appeal to the B.C. Supreme Court be implemented in substitution for the B.C. Police Commission.

"The internal discipline procedure is unique from other professional hearing processes, because the police officer is judged not by his or her peers, but by the employer. This represents a conflict for the employer who has the dual role of investigator and adjudicator. Because there is a potential for bias on the part of the employer, the appeal process is key to ensuring fairness. ...It is submitted that the Police Commission may be perceived as biased by both civilian complainants and police members who are appealing Police Board decisions. The Federation can understand the desire to have Police Board examine a decision of the presiding officer in it's employ. However, once that has been done, it is time to involve an independent third party to assess the decisions of the presiding officer and the Police Board."³⁰⁹

One senior officer from the Victoria City Police advocated abolition of the police board in the appeal process by saying:

³⁰⁸. Brief prepared by B.C. Federation of Police Officers, November 1, page 14.

³⁰⁹. Ibid., p. 27.

"An appeal against any adjudication should be an independent hearing and not one heard by a police board."

The Vancouver Police Board stated that the Board should no longer hear appeals about internal disciplinary matters.

The B.C. Police Commission expressed great concern with the proposal to remove it from its appellate role. The brief presented a number of points in support of its concern, which centred around the impartial nature of its functions and its purpose in establishing standards for police conduct. It also stated that there already is appeal to the courts from decisions of the Police commission (assumably referring to the availability of Judicial Review) and that court proceedings would be longer, more expensive and in public.

None of the other briefs with the exception of that of the B.C. Civil Liberties Association ³¹⁰ discussed a change in the body or bodies hearing the appeal, but concerns were expressed over the powers of the appellate bodies and the grounds of appeal

At present, the appeal process allows for discipline to be revised downward, not up. The chiefs of police in their comment did not specifically state that the appellate bodies should have the right to increase penalty but said:

"the appeal body should have the right to vary the punishment assessed by the disciplinary authority."³¹¹

A similar comment was received from the Corporation of the City of Nelson:

"If the Police Board doesn't have the right to vary [discipline imposed], why appeal it? Board should have right to vary discipline assessed".³¹²

Since the present appeal process already allows the penalty to be varied downwards, both of those comments could indicate a desire to broaden the powers of the appellate body.

³¹⁰. The B.C. Civil Liberties Association took the position that the Police Commission not be the appellate body, but felt that the Supreme Court not be the appellate body either because the cost and procedure of court proceedings were beyond the reach of most complainants. However, this position arose from a misunderstanding of our first proposal and after it was cleared up, the issue of the appellate body was not further addressed by the association.

³¹¹. Op. cit., note 296, p. 5.

³¹². Letter dated July 21, 1989 from Mrs. C. L. Olson to Terrence L. Robertson, Q.C.

The Federation of Police Officers advocated a widening of one of the grounds of appeal. Presently the Regulation reads that the member can appeal on the basis that there was "no evidence" on an essential element of the case against the member . . ." The Federation would like to see that amended to

"allow the appeal judge to assess the findings of fact made by the presiding officer and determine if they were reasonable based on the evidence presented at the hearing."³¹³

(g) Penalties

Most of the briefs that dealt with the issue of penalties stated that there should be more flexibility. The B.C. Association of Chiefs of Police said that they were "too restrictive, and no conducive to remedying a member's behaviour". That association advocated more "flexibility" together with discretion to allow the disciplinary authority to order counselling, treatment, other remedial measures as well as "compensation or restitution" if appropriate. More "variance" was advocated in one of the submissions. The word "flexibility" was used several times and one officer mentioned that the penalty section of the Regulation needed to be "brought up to date".

The Federation of Police Officers felt the present range of penalties to be appropriate but was "willing to consider specific proposals" in regards to changes. Of particular concern to that association, however, was the use of suspensions pending disciplinary proceedings to effectively increase the punishment imposed at the hearing. The Regulation gives the presiding officer the discretion not to repay lost wages of a member who was suspended prior to a hearing and found to have committed a default. Although the present regulation allow the maximum of a five-day suspension, the power not to repay wages lost during the suspension can be used to increase the penalty beyond that five-day limit. We were of the impression that the Federation did not object so much to the length of the suspension, but the fact that the decision not to repay the lost wages, or to repay only a portion of them, was not considered a penalty and imposed accordingly.

(h) Expungement of Records

The present system of expungement of records was of concern to several groups. The Federation of Police Officers attacked as unfair the provision contained in the current Regulation where a written reprimand imposed by a chief and not through hearing was able to be removed from the

³¹³. Op. cit., note 298, p. 27.

service record of discipline after a year, whereas a written reprimand imposed by a presiding office could not be removed for two years. The Federation also submitted that the expungement of records should be automatic and should not be predicated on a request by a member.

The length of time a written reprimand stays on the service record of discipline was of particular concern to one chief constable, who averted to the difficulty posed to management by such a provision in attempting to

"establish a cumulative set of circumstances for notification of shortcomings which may or may not lead to culpable or non-culpable dismissal. We have examples of poor performers who average about one reprimand a year but because of the expungement provisions, their service records seldom show more than one."

The Vancouver Police Board appeared to favour abolishing the entire practice of expungement when it said:

". . . our Board believes that the practice of expunging an officer's record be revised by regulation or legislation so a full review is possible, as is currently the case in normal labour relations practices."³¹⁴

(i) Probationary Constables

There was no question that probationary constables should be subject to discharge during their probationary term or at the expiry of their probationary period for reasons other than disciplinary reasons. Only one of the submissions considered whether the probationary member should be liable for discharge during his probationary term for unsuitability, as opposed to at the end of the term.

There were two lines of thought on the best process to be followed for dismissal of probationary members. Generally, the police boards and the police chiefs from whom we heard favoured the probationary period and the procedure for discharge being incorporated into legislation. These bodies favoured the probationary period being standardized across the province and the suggested probationary lengths varied from three months³¹⁵ to longer than a year.³¹⁶ One police board submitted that a probationary member have no right of appeal, but the general position of the

³¹⁴. Op. cit., note 296, p. 2.

³¹⁵. As suggested by the Corporation of the District of Nelson, op. cit., note 310.

³¹⁶. As suggested by the B.C. Association of Chiefs of Police, op. cit. note 296.

other chiefs and boards from whom we heard favoured an appeal to the Police Board. The B.C. Association of Chiefs of Police favoured a subsequent appeal to the Police Commission. One municipality favoured an appeal to the police board, with a named appointment from the Police Commission.³¹⁷

The B.C. Federation of Police Officers submitted that probationary constables should be discharged pursuant to the collective agreement. The written brief received from the Vancouver Police Union did not specifically deal with the matter, but the president of the Union, in a meeting held with the writers, confirmed that the Union's position was that probationary members should be dealt with through the labour process.

The decision as to whether probationary employees should be handled under the labour process, as opposed to through statutory mechanisms, raises the same issues as discharge of non-probationary members for reasons other than disciplinary reasons.

(j) Non-Culpable Dismissal

With respect to non-culpable dismissal, the position of the B.C. Federation of Police Officers was that the labour process was the appropriate vehicle. The police boards from whom we heard favoured non-culpable dismissal being incorporated into regulations. The brief received from the B.C. Association of Chiefs of Police stated that "there is no clear consensus by our members as to whether this [non-culpable dismissal] is best dealt with by the Act or the collective agreements."³¹⁸

However, the brief went on to state that:

"There is agreement though that there should be a responsive process with a right of appeal without lengthy delay to all parties concerned. This appeal should be to the Police board initially and subsequently to the B.C. Police Commission, or a provincial court judge."³¹⁹

Appeals to the Police board and Police Commission, or to a provincial court judge would be incompatible with the labour process. The request of the chiefs in that regard may indicate that

³¹⁷. Letter dated July 18, 1989 from Mayor David T. Driscoll, Port Moody, to Terrence L. Robertson, Q.C.

³¹⁸. Op. cit., note 296, p. 3.

³¹⁹. Ibid.

they are more familiar with the process associated with discharge pursuant to the existing discipline process than with discharge pursuant to a collective agreement. This would be expected since the state of the law up until this time has been somewhat in a state of confusion with respect to non-culpable discharge of police officers.

It was brought to our attention that the differences in size of the municipal police forces particularly affect the issue of non-culpable discharge. A large force can find other productive work for an officer who is physically disabled. A smaller force may need all members to be capable of going out on patrol. Similarly, the benefits secured by members under their collective agreements vary from department to department. These benefits, of course, are of great consideration to a member whose discharge for incapability is sought by his employer. An association whose members are entitled to generous benefits will probably not be adverse to any procedure that allows a member to be dismissed for disabilities as long as the process is fair. On the other hand, an association whose members have not secured long-term disability benefits will likely oppose such a procedure and may insist on full hearings and appeals.

The B.C. Police Commission submitted that utilizing the collective agreement for non-culpable discharge was inappropriate in police matters.

". . . because much conduct which is dealt with as non-culpable is an amalgam of incidents which an individual can see as culpable matters, it is our view that dividing the process into different jurisdictions may complicate the handling of non-culpable issues and create unnecessary procedural issues."³²⁰

The Vancouver Police Board wanted the "labour relations model" for "non-culpable disciplinary matters" (sic) and decisions on probationary constables. It is not clear whether that board advocated the use of the collective agreement as well. The board urged that arbitration be "explicitly referred to a one-person arbitration board" which would run contrary to leaving the matter entirely within the collective agreements of the various municipalities.

(k) Other Issues

The B.C. Federation of Police Officers wanted to have the new Regulation drafted in a manner that would give the police association status at the discipline hearing, with the right to be heard at the hearing, to call witnesses, to dispute the allegation if the member chose not to, to speak to sentence and to appeal the finding.

³²⁰. Op. cit., note 299, p. 3.

One Police Department, not by way of formal submission, but through correspondence with the B.C. Police Commission, expressed concern that section 7 of the Regulation allowed a breach of conduct to be dealt with without reference to the chief constable. That police department felt that such action could be inappropriate at times.³²¹

The B.C. Police Commission was concerned that no changes be made to the discipline regulation that would affect the citizen complaints procedures. Conversely, all the comments made by the B.C. Civil Liberties Association advocated changes to various aspects of the citizen complaints procedures. That association advocated that the complainant, if any, be apprised of the outcome of any appeals taken by the member and given the right to appeal any discipline as varied by an appellate body.

The B.C. Civil Liberties Association also felt that the officer should be compellable at a discipline hearing.

(1) Summary

As a result of the submissions received and our meetings with interested parties, it became apparent that the diversity of issues raised by this project would not all be resolved by consensus. The matters upon which all parties were in agreement were that there was a need for provisions allowing for non-culpable dismissal and dismissal of probationers for unsuitability, and that, at least for some types of conduct, the disciplinary process should be simplified and expedited. We have attempted to draft provisions in accordance with the consensus where consensus existed. Where there was disagreement between the main interested parties, we have recommended changes that seem to us workable and fair. We have also attempted to clarify those issues where there has been litigation over uncertainty or ambiguity in the existing regulations.

³²¹. Letter from Chief Constable Anderson, Oak Bay Police Department to David Edgar, dated June 27, 1989.

PART FIVE
SUMMARY AND RECOMMENDATIONS

(1) RATIONALE

(a) Collective Bargaining and Discipline/Dismissal

The fundamental decision to be made was whether to utilize the Industrial Relations Act and individual collective agreements to provide a process for review of non-culpable dismissal, dismissal of probationers and, possibly, some types of discipline. The alternative to utilizing that process would be to set out some or all of the procedures within the Regulations to the Police Act. The issues involved in this decision are not clear cut, and there are advantages and disadvantages to both options.

Our initial feeling was that the labour process would be appropriate for non-culpable dismissal, dismissal of probationers and for handling discipline of some types of conduct.

The first model we circulated for discussion put these matters within the collective bargaining framework. We knew when making that proposal that the former Attorney-General did not wish the labour process to be invoked for dismissal or discipline matters, and that section 26(4) of the Police Act, if proclaimed, would preclude such an approach. But the many advantages of such an approach prompted us to propose a redraft of the Discipline Code and remove all aspects that did not deal with the "public trust" and allow matters that were not within the Discipline Code to be dealt with through the labour model. Although his approach would have indirectly affected the complaints procedure because the Act defines complaints to be alleged breaches of the Discipline Code, we felt that the matters we proposed to remove from the Code (such as "damage to police property") would not be subject of a legitimate citizen complaint. To resolve disputes over which process was the appropriate one we considered a "referee" concept but proposed having the arbitrator make the decision while extending the time to take formal disciplinary procedures if the arbitrator ruled that the matters should have been proceeded with under the Regulation.

Numerous difficulties were cited in criticism of the proposal in relation to having some types of discipline dealt with through the labour process and other types through the Regulation. Among the criticisms were: the length of time for a matter to be resolved if

the wrong "route" was chosen; the fact that the records would be open and that confidential police matters may be discussed; and the lack of standardization among the police forces. But the most convincing argument against such an approach was that most disciplinable conduct has both a "public trust" aspect as well as an employee/employer aspect. Convincing examples of difficult situations that could arise with our first proposed model were brought forward. We considered again whether it might be possible to define the dividing line between the two procedures at the level of penalty sought or imposed for the conduct, but we soon realized that such a model would not fit in with the rules and procedures of the Industrial Relations Act.

Once the concept of utilizing the Industrial Relations Act and collective agreement procedures for disciplinable matters was eliminated, we re-examined the decision to put non-culpable dismissal and dismissal of probationers in that stream.

There were great advantages to leaving non-culpable dismissal and dismissal of probationers in the labour relations stream. Demotion and other working conditions are governed by the collective agreement, other jurisdictions have chosen to put non-culpable dismissal within the collective agreement framework, and, most importantly, there are established procedures and a wide body of arbitral jurisprudence that has already been established which could be drawn on if such matters were left within the collective agreement. We noted that many collective agreements dealt with the terms under which a probationary member could be dismissed, and we hesitated to interfere with the bargain the parties had struck between them in relation to probationary members. Further, these matters have been handled under the collective agreement, admittedly not without some difficulties.

The major disadvantage to this approach was indicated by these past difficulties and the manner in which discipline and the concepts of "non-performance", "unsuitability" or "incapability" were interrelated. Court decisions here and in other jurisdictions had emphasized the difficulties that arise when conduct that is included in a police discipline code is alleged as part of the conduct that is sought to justify a dismissal for other than disciplinary reasons. Obviously, the labour procedures cannot and should not be utilized where, for some technical reason or oversight, an officer was not disciplined under the disciplinary procedures prescribed by the police discipline regulations, but there existed a "Catch-22" situation in police labour matters where alleging any such matter could taint the dismissal in spite of labour jurisprudence that indicates that it is not proper for an employer to discipline an employee for a disciplinable matter that is, in essence, a performance issue.

We realized that taking non-culpable dismissal and dismissal of probationers out of the forum of the Industrial Relations Act and collective agreement would not be a complete panacea. The situation needed to be addressed legislatively no matter what route was chosen.

Another consideration was the need for uniformity of police standards among the various municipalities. The province has have twelve associations and twelve employer-boards, which differ considerably in their composition and sophistication in labour matters. One advantage to setting out the procedures in police legislation is that there would be a consistency of procedures, documentation and standards among the various forces.

A further consideration was that case law seems to require that probationary members not be dismissed without a hearing of some sort. The requirement for a hearing would logically extend to the dismissal of non-probationary members as well. Confusion might be avoided if the procedure to be followed was legislated.

However, having given the advantages and disadvantages to each procedure a good deal of thought, we are convinced that the appropriate vehicle for non-culpable dismissal and dismissal of probationers is the collective agreement. The collective bargaining framework has too many advantages to ignore.

(b) Discipline Code

It was our original intention to redraft the discipline code into a "positive" code of conduct. This idea appeared sound at first examination. The community itself, however, was particularly adverse to this change once it was proposed in draft legislation and we now realize that a positive code of conduct cannot be specific enough to allow for certainty of decision making. We completely abandoned the idea of a positive code of conduct in making our final recommendation.

It was advocated by some that certain matters, such as those dealing with "damage to police property" and "being late for work" be removed from the discipline code. However, if the line between formal and informal conduct is drawn at a point that depends on the type of penalty sought, such a removal is not possible because it would mean that the conduct which was removed from the Code could not be the subject of discipline.

We renamed the Discipline Code the Code of Conduct. This was a matter of style and preference. The Act refers to a citizen complaint as a breach of a "prescribed Code of Conduct", so this change is consistent with the Act.

(c) Citizen Complaints

As has been said often throughout this report, our mandate did not include making any changes to the citizen complaints procedures. The part of the regulation that deals with citizen complaints was proclaimed July 1, 1989 and had been reviewed to correspond with the new Citizen complaints procedures. We made as few changes to this as possible, since we knew that it had already been amended. Certain changes were necessary because we instituted a new concept, that of "informal disciplinary action". We made other changes simply for clarity. For example, we recommended that sections 55 and 56 of the former regulation, which were deleted when the regulation was reviewed be reinstated. We did not feel that the relationship between the Regulation and the Act was specific enough to avoid confusion. In particular, we did not think it evident from the face of the Act or the Regulation that the citizen complaints procedures completely usurped any disciplinary action taken under the Regulation and we think that sections 55 and 56 help clarify the procedures.

We note that there was provision in the former Act that allowed a member who was dismissed after a public inquiry by the police board to appeal to the Supreme Court, but that provision was deleted from the new Act. We do not feel that this was a move made in the best interests of the police forces, since we feel that the lack of protections for the member and the resultant publicity of a public inquiry - whether or not the inquiry is held by the police board or the police commission - could result in the member being discharged without a final appeal to a Court of Law. We have recommended the adoption of such an appeal but do not think it can be done in the Regulation. We feel that the member's discipline should not be unduly influenced by the concerns of the public interest. That is not to say that the public interest does not have a very important role to play in the procedure, but that if the only parties adjudicating are the police board and the police commissions, whose primary concern the public interest should be, the member's interests may not receive a fair balancing. This is especially so where a public inquiry is held. From a legislative drafting standpoint, we did not believe that it would be proper to institute an appeal in the Regulation from a procedure in the Act, but we believe that the member should be allowed one.

(d) Informal Disciplinary Action

The need for more informality in certain aspects of discipline was identified as a particular need in the regulation by the former committee and by several briefs received by us. After rejecting the use of the procedures under the Industrial Relations Act to achieve such informality, and the use of the "major" and "minor" "offence" categories used in some forms of police discipline, we favoured the approach taken by the RCMP. We recommend retaining the procedures in the current regulation relating to verbal reprimands and "counselling as to future conduct" which do not form part of the member's service record of discipline. We feel that these are important.

In addition to the retention of these "informal" procedures, the recommended Regulation institutes a concept entitled "informal disciplinary action", which allows the chief to impose a wide range of penalties, ranging from "counselling" to a five-day suspension without pay. No hearing is necessary, and such discipline will form part of the member's service record of discipline unless it is modified on review by the Police Conduct Review Board as described below.

To protect members, we recommend that the chief be allowed to take informal disciplinary action only where no citizen complaint is involved, or where a citizen complaint has been informal resolved. The matter must be proceeded with formally if a citizen complaint is involved.

Review of informal disciplinary action would involve arbitration-type proceedings before a "Police Conduct Review Board". If the member is represented by an association, the association and the board would each appoint a person to sit on the arbitration panel and the chairman would be chosen by those two members. If the member and the board cannot agree on a chairman, the Chief Justice of the Supreme Court of British Columbia would appoint a chairman. If the board and the member can agree on one person, that one person may form the board of review. The cost of these proceedings would be borne equally by the board and the association the same as a labour grievance.

Decisions of the Police Conduct Review Board will be filed with the police commission. A central repository other than the Industrial Relations Council was needed, and the police commission seemed appropriate. No appeal from the board of review is provided for in the Regulation. Judicial review would be available through the Judicial Review Procedure Act.

(e) Investigation

We did not deal with the use of outside investigators. That is part of the citizen complaints procedures and since such procedures were not incorporated with the citizen complaint amendments, it would be untenable to incorporate them for disciplinary matters that do not involve a citizen complaint.

(f) Right to Remain Silent

The current Regulation provides that the rules of procedure in summary conviction proceedings shall be applied to police discipline procedures under the regulation. The rule against not admitting a statement made by an officer unless it was proven to be made voluntarily is one of those rules. In addition, the current Regulation provides that the member must be served with Form 2, which contains a warning that "you are not obliged to say anything . . . but, if you do . . . it may be used in subsequent disciplinary proceedings."

Grappling with our recommendation on this issue was difficult. We knew that we were not going to recommend retention of the "criminal rules" of evidence, and we knew that a member could be compelled in a public inquiry to give evidence. We also knew that it was important that the chief be able to get to the heart of a matter, and that this could only be done by getting the member's version of events. The citizen complaints portion of the Regulation, as amended, had adopted provisions that appealed to us as a reasonable compromise between protecting the member's rights and allowing the chief to find out the necessary facts.

(g) Hearing

We have concluded that criminal rules and procedures should not be removed from the process. We redrafted the regulation completely to provide for a change from punitive to remedial.

(h) Adjudicatory Body

Many jurisdictions are opting for a change away from the chief as sole adjudicator in police discipline matters and the Federation favoured such a change. Primarily, we expect that

such an approach would increase both the members' and the public's perception of fairness in the hearing. We therefore developed a model that would provide for misconduct to be adjudicated by a tripartite board. Many variations of this model were explored, including whether the board would be optional or mandatory, whether the board would actually impose a penalty or would merely find facts and recommend a penalty to the chief, and so on.

The primary difficulty in recommending such a change was with the citizen complaint procedures: If the Police Conduct Review Board made a determination or an alleged breach of the Code of Conduct that arose as a result of a citizen complaint, the police board could overrule the decision of the Police Conduct Review Board. This seemed to us an undesirable situation and we considered not recommending the change for that one reason. However, on further reflection, we determined that this disadvantage did not necessarily taint the model. We are convinced that in the hearing before the Police Conduct Review Board is an open one, the public and the complainant, if any, will be convinced of the fairness of the hearing and few inquiries will, in fact, be requested after the Police Conduct Review Board has determined a matter.

Ideally, if the Police Conduct Review Board is viewed as an impartial body by the members and the public, and if the hearing is an open one, we feel that the complainant should not be entitled to required a public inquiry as of right after a Police Conduct Review Board hearing. However, the complainant's right in this regard cannot be curtailed without amending the citizen complaints procedures. Therefore, we do not make such a recommendation. However, if the model is adopted as recommended, we would recommend that the necessity for allowing the complainant a public inquiry after the decision of the Police Conduct Review Board be re-examined, if not now, at some point in the future when the effectiveness of the Police Conduct Review Board has been fully assessed.

Our recommendation calls for the penalty imposed by the presiding officer to be subject, first, to the maximum set by the chief on Form 3, and second, to the right of the chief to amend the penalty downwards or to confirm it, in the same manner as the penalty imposed by the presiding officer is subject to confirmation as provided by the current Regulation.

The fees and expenses of the members of the Police Conduct Review Board are, under the recommended regulation, the responsibility of the police board. This is different from where the Police Conduct Review Board is sitting in review of informal disciplinary action

where payment of the fees and expenses of the members of the Police Conduct Review Board is the joint responsibility of the association and the police board.

All citizen complaints, unless they have been informally resolved, must be adjudicated by the Police Conduct Review Board. That does not necessarily mean that they are more serious. The Police Conduct Review Board may take any of the non-punitive informal disciplinary action that the chief could have taken, in addition or in substitution for, one of the more serious penalties of demotion or suspension. The recommendation that all citizen complaints be proceeded with formally came about to ensure that no member is falsely accused of misconduct.

We recognized that there should be a "speedy" way for formal proceedings to take place. The recommended model allows a member to admit a breach to the chief and have the chief impose penalty accordingly. A Police Conduct Review Board is not constituted in such cases, but the member may appeal the penalty imposed by the chief to the police commission. Appeals are discussed below.

(i) Standard of Proof

The arguments advanced in support of retaining the criminal standard of proof, that is, that it is necessary to protect members from unfounded citizen complaints, are not logical when one understands the rules of procedure before a public inquiry. Where some jurisdictions have retained a criminal burden only where a citizen complaint is involved, the legislature has already made the decision not to do so, and to retain one in strictly internal discipline proceedings makes little sense to us. Reverting to the standard of proof in civil proceedings is consistent with many jurisdictions, including the RCMP. It is also consistent with the standard used for professional discipline hearings and labour arbitrations.

(j) Autrefois Acquit

Consistent with our recommendation as to the standard of proof, we recommend that the provision prohibiting the taking of disciplinary procedures against a member where he has been acquitted of criminal charges be deleted from the Regulation. No other profession is treated in a similar fashion and there is little justification for such a provision, in law or in practice.

(k) Penalties

We recommend a considerable broadened range of penalties from which to choose. The length of suspension that may be imposed is limited at three months, and a wide range of remedial action is incorporated. Either formal or informal disciplinary action can, under the recommended proposal, result in "counselling", "requirement to work under close supervision" and similar action.

(l) Appeal Provisions

We felt strongly that the member should have a right of appeal to an appellate body "out of the system". While currently he can appeal to the court by way of judicial review, the scope of judicial review is far more limited than a true appeal.

The ways in which such an appeal could be implemented were quite varied: There could be three levels of appeal (police board, police commission and court) or either the police board or the police commission could be eliminated as appellate bodies, or the appeal could go direct from the Police Conduct Review Board to the court.

By incorporating the Police Conduct Review Board concept, the decision to eliminate the police board as appellate body logically followed. The police board as employer bears joint responsibility for appointing the Police Conduct Review Board. To have it sit in review of the decision of such a board would be inappropriate. Our decision to eliminate the appellate role of the police board is reinforced by comments of some police board members who expressed concern over the board's conflict of interest in internal disciplinary matters between supporting their chief, and giving the member a fair appeal.

An appeal direct to the court was considered. However, the police commission, under statute, specifically bears responsibility for hearing appeals of internal discipline matters, and there is some advantage to having one level of appeal between the Police Conduct Review Board and the court. Therefore, we recommend that appeals of formal discipline go first to the B.C. Police Commission and then to the Supreme Court.

(2) SUMMARY OF RECOMMENDATIONS

In the final Appendix to this report, the regulations as recommended are set out in draft form. Opposite each section of the regulation is an explanation of the provision, why it was incorporated and whether it replaces or restates a provision in the current regulation. This portion of the paper contains the major recommendations made but is not a complete list of every change.

RECOMMENDATION NUMBER ONE:

We recommend that section 26 (4) of the Police Act not be proclaimed, and that it be amended to read:

"Part 6 of the Industrial Relations Act does not apply to discipline of a municipal constable appointed under this Act."

RECOMMENDATION NUMBER TWO:

We recommend that the Police Act be amended to include a provision similar to section 26 of Alberta's Police Officers Collective Bargaining Act (S.A. 1983, C.P.-12-05) which sets out a procedure for settling disputes whether the Police Act and regulations or the collective agreement apply to a particular matter. That section reads as follows:

"26. (1) Where a question arises between the parties over whether a matter is a difference as to the interpretation, application, operation, contravention or alleged violation of the collective agreement or is a matter to which the Police Act and the regulations under that Act apply, either party or any arbitrator before whom the matter arises on his own motion may, by originating notice, refer the matter to a judge of the Court of Queen's Bench.

(2) The procedure in a reference shall be as determined by the judge.

(3) The judge on hearing the reference may do all or any of the following:

- (a) make any finding of that that is necessary;
- (b) quash, vary or confirm any action taken by either party, or by the arbitrator;
- (c) amend or waive any time limit as he sees fit;

(d) refer the matter back to the parties or to the arbitrator for further consideration.

(4) Subject to subsection (3) (c), the judge by his decision shall not alter, amend or change the terms of the collective agreement.

(5) The decision of the judge is binding on both parties and on all persons affected.

(6) The judge may make any award as to costs of the reference that he considers fit."

RECOMMENDATION NUMBER THREE:

We recommend that the name of the Regulation be changed to the Police Administration Regulation and that the scope of the regulation be expanded to clarify procedure to be used for the dismissal of members and probationary members for reasons other than disciplinary reasons.

RECOMMENDATION NUMBER FOUR:

We recommend that dismissal of members and probationary members for reasons other than disciplinary reasons be governed by the provisions of the collective agreement and the Industrial Relations Act, and that one Part of the Police Administration Regulation provide that such dismissals are so governed.

RECOMMENDATION NUMBER FIVE:

We recommend that provision be made in the Regulation detailing what use may be made of established or alleged breaches of the Code of Conduct in seeking or reviewing the dismissal of a member or probationary member for reasons other than disciplinary reasons. We further recommend that provision be made that breaches that form part of the member's service record of discipline and breaches that are established at an arbitration may be considered if relevant to establish the reasons for dismissal. We further recommend that no use be made of any alleged breach that has previously been the subject of a discipline hearing and which was not established at the hearing or was established at the hearing and overturned on appeal.

RECOMMENDATION NUMBER SIX:

We recommend that the Discipline Code be renamed the Code of conduct, but that no further changes be made to it.

RECOMMENDATION NUMBER SEVEN:

We recommend that the part of the Police Administration Regulation that deals with discipline begin with a preamble stating that discipline is intended to be remedial in nature and further setting out the standards expected of police members.

RECOMMENDATION NUMBER EIGHT:

We recommend that all reference to criminal procedure and terms be deleted from the Regulation and that the tone be changed to make it non-punitive in nature.

RECOMMENDATION NUMBER NINE:

We recommend that provision be made in the regulation allowing disciplinary action to be taken against a member even though he has been acquitted of criminal charges based on the same facts and circumstances as the alleged breach of the Code of Conduct.

RECOMMENDATION NUMBER TEN:

We recommend that the regulation provide that off-duty conduct and conduct that occurs out of the municipality of the force be subject to discipline under the regulation.

RECOMMENDATION NUMBER ELEVEN:

We recommend that the concepts of "advising as to future conduct" and "verbal reprimands" contained in the present Regulation be retained.

RECOMMENDATION NUMBER TWELVE:

We recommend that the discipline portion of the regulation introduce the concepts of "formal" and "informal" disciplinary action. We further recommend that if the breach does

not arise out of a complaint by a citizen, or if it arises out of a complaint by a citizen that has been informally resolved, the chief be given the option of taking informal disciplinary action as an alternative to formal disciplinary action. We further recommend that the chief be given the right to take informal disciplinary action, as follows:

- (1) counselling,
- (2) recommendation for special training,
- (3) recommendation for professional counselling,
- (4) direction to work under close supervision,
- (5) written reprimand,
- (6) forfeiture of less than five days off,
- (7) suspension without pay for less than five days,

without a hearing and that action as taken shall be entered on the member's service record of discipline.

RECOMMENDATION NUMBER THIRTEEN:

We recommend that the member be given the right to have informal disciplinary action taken against him by the chief be reviewed by a board of review entitled by the Police Conduct Review Board. We further recommend that the Police Conduct Review Board be an ad hoc body comprised either of three persons, one appointed by the association to which the member belongs, one by the board and one agreed to by both the association and the board, or failing such agreement, appointed by the Chief Justice of the Supreme Court of British Columbia, or comprised of one person, agreed to by both the association and the board. We further recommend that the fees and expenses of the members of the Police Conduct Review Board reviewing informal disciplinary action be shared jointly by the association and the board. The rules of evidence and standard of proof should be those applicable in civil proceedings in courts in the province.

RECOMMENDATION NUMBER FOURTEEN:

We recommend that formal disciplinary hearings be heard in front of a Police Conduct Review Board constituted in the same manner as a Police Conduct Review Board constituted to review informal disciplinary action, and that the Police Conduct Review Board have the same powers to adjudicate on and impose penalty as a presiding officer under the current Police (Discipline) Regulation. We further recommend that the fees and expenses of

members of the Police Conduct Review Board that adjudicate on breaches of the Code of Conduct be paid by the municipal police board.

RECOMMENDATION NUMBER FIFTEEN:

We recommend that rules of evidence, including the standard of proof, applicable in civil proceedings in courts in this province be applicable in formal disciplinary proceedings.

RECOMMENDATION NUMBER SIXTEEN:

We recommend that the range of penalties available to be imposed by the Police Conduct Review Board be expanded to include suspension, with or without pay, for up to three months and the range of informal disciplinary action set out in Recommendation Number Twelve.

RECOMMENDATION NUMBER SEVENTEEN:

We recommend that any penalty imposed by the Police Conduct Review Board and confirmed by the chief be stayed until the time has expired for taking any appeal or for requesting a public inquiry, or, if appeal is taken or public inquiry is held, until the appeal process or the public inquiry process is complete.

RECOMMENDATION NUMBER EIGHTEEN:

We recommend that the grounds of appeal for formal disciplinary action be the same as those that govern an appeal from the decision of the presiding officer to the police board, but in addition to those, be expanded to include a ground that the Police Conduct Review Board erred in law, and that there was insufficient evidence on an essential element of the case against the member.

RECOMMENDATION NUMBER NINETEEN:

We recommend that the chief be given rights of appeal from the decision of a presiding officer that the breach was not established against a member, but that the chief not be allowed to appeal the penalty imposed by the Police Conduct Review Board.

RECOMMENDATION NUMBER TWENTY:

We recommend that appeals from the decision of the presiding officer go direct to the B.C. Police Commission, and that further appeal from the decision of the B.C. Police Commission be taken to the Supreme Court of British Columbia.

RECOMMENDATION NUMBER TWENTY-ONE:

We recommend that all decisions fo the Police Conduct Review Board be filed with the offices of the B.C. Police Commission.

(3) FINAL COMMENT

In arriving at the foregoing recommendations, four very distinct models were drafted and fully considered. We are confident that, of the models considered, the one recommended comes closest to answering the primary concerns and addressing the legitimate interests of the individuals and groups involved in police discipline. However, we also know that, because the model takes into account competing and divergent interests, it will not be entirely satisfactory to all of the policy community. However, it is our considered opinion that a true consensus within the police community on the issues covered by this report and addressed in the recommended regulation cannot be reached. Since, however, none of the community has had the opportunity to examine and comment on the final model recommended, such a consultation may be desirable.

TERRENCE L. ROBERTSON, Q.C.

APPENDIX "A"

1988

POLICE
(Replacing RS1979, c. 331)

SBC CHAP. 53
INDEX CHAP. 331.1

POLICE ACT

CHAPTER 53

[See status sheet following this Act.]

[Consolidated November 3, 1989]

Assented to June 29, 1988.

Contents

PART 1

INTERPRETATION
Section

- Section
1. Interpretation

PART 2

THE MINISTER

- | | |
|---|---|
| 2. Adequate level of policing | 8. Auxiliary constables |
| 3. Responsibilities of Provincial and municipal governments for providing policing services | 9. Special provincial constables |
| 4. Minister may provide policing | 10. Jurisdiction and power of provincial constable |
| 5. Provincial police force | 11. Ministerial liability for torts of provincial police force and municipal constables |
| 6. Constables and employees | 12. Assistance for costs of criminal proceedings |
| 7. Duties and functions of commissioner and police force | 13. Aid to dependants — auxiliaries |

PART 3

AGREEMENTS TO USE R.C.M.P.

14. Royal Canadian Mounted Police as provincial police force

PART 4

MUNICIPALITIES

- | | |
|---|--|
| 15. Duties of a municipality | 19. Aid to dependants |
| 16. Municipal policing by R.C.M.P. | 20. Municipal liability for torts |
| 17. Failure of municipality to police | 21. Personal liability |
| 18. Amalgamation of municipal police forces | 22. Assistance for costs of criminal proceedings |

PART 5

POLICE BOARDS

- | | |
|---|-------------------------------------|
| 23. Establishment of boards | 27. Estimates and expenditures |
| 24. Membership of boards | 28. Rules |
| 25. Chairman and quorum | 29. Studies |
| 26. Board to establish municipal police force | 30. Keeping of provincial prisoners |

PART 6

POLICE COMMITTEES

- | | |
|-----------------------------|-----------------------------|
| 31. Local police committees | 33. Functions of committees |
| 32. Chairman and quorum | |

PART 7

MUNICIPAL POLICE FORCE

- | | |
|--|--|
| 34. Duties and functions of chief constable and municipal police | 36. Bylaw enforcement officers |
| 35. Special municipal constables | 37. Enforcement officers — provincial enactments |
| | 38. Jurisdiction of municipal constables |

PART 8

POLICE COMMISSION

- | | |
|----------------------------|----------------------------|
| 39. Commission continued | 44. Research studies |
| 40. Chairman and quorum | 45. Inquiries |
| 41. Employees | 46. Special investigations |
| 42. Function of commission | 47. Delegation |
| 43. Practice and procedure | 48. Annual report |

PART 9

CITIZEN COMPLAINT PROCEDURE

- | | |
|---|--|
| 49. Interpretation | 58. Frivolous and vexatious complaints |
| 50. Duties of complaint commissioner | 59. Notice of results of investigation |
| 51. Application of this Part | 60. Request for inquiry |
| 52. Complaint made | 61. Inquiries open to public |
| 53. Complaint form/information to complainant | 62. Inquiries respecting provincial constables |
| 54. Complaint commissioner to monitor | 63. Inquiries respecting municipal constables |
| 55. Status reports to be given | 64. Leave to appeal to the commission |
| 56. Informal disposition of complaints | 65. Appeal to commission |
| 57. Investigation of complaints | 66. Powers and privileges at inquiries |

PART 10

GENERAL

- | | |
|---|------------------------|
| 67. Evidentiary effect of orders | 73. Service of notices |
| 68. Request for assistance of other police forces | 74. Regulations |
| 69. Meetings and hearings open to public | 75. <i>Offence Act</i> |
| 70. Oaths and affirmations | 76. [Spent] |
| 71. Minutes and records | 77. Commencement |
| 72. Ombudsman | |

PART 1

INTERPRETATION

Interpretation

1. In this Act

- “auxiliary constable” means a constable appointed under section 8 (1);
- “board” means a municipal police board established under section 23;
- “bylaw enforcement officer” means a bylaw enforcement officer appointed under section 36;
- “chief constable” means the chief constable of a municipal police force;
- “commission” means the British Columbia Police Commission continued under section 39;
- “commissioner” means the commissioner of the provincial police force;
- “committee” means a local police committee established under section 31;
- “enforcement officer” means an enforcement officer appointed under section 37;
- “municipal constable” means a constable appointed under section 26;
- “municipal police force” means a municipal police force established under section 26;
- “municipality” includes the City of Vancouver, but does not include a regional or improvement district;
- “provincial constable” means a constable who is a member of the provincial police force continued under section 5, or who is appointed a constable under section 6;
- “provincial police force” means the provincial police force continued under section 5;
- “special municipal constable” means a constable appointed under section 35;
- “special provincial constable” means a constable appointed under section 9.

1988-53-1.

PART 2
THE MINISTER**Adequate level of policing**

2. The minister shall ensure that an adequate and effective level of policing is maintained throughout the Province.

1988-53-2.

Responsibilities of Provincial and municipal governments for providing policing services

3. (1) The government shall provide policing services for the following:

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

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

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

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

1988-53-3.

Minister may provide policing

4. (1) Notwithstanding section 3, where the minister considers that it is necessary or desirable, he may, on terms approved by the Lieutenant Governor in Council, provide or reorganize the policing

- (a) in a municipality to which section 3 (2) applies, or
- (b) in an area or region of the Province.

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

1988-53-4.

Provincial police force

5. The provincial police force is continued.

1988-53-5.

Constables and employees

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

(2) The Lieutenant Governor in Council may appoint to the provincial police force the constables and other employees he considers necessary to carry out the force's business.

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

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

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

1988-53-6.

Duties and functions of commissioner and police force

7. (1) The commissioner, under the minister's direction, has general supervision over the provincial police force and shall perform the other functions and duties assigned to him under the regulations or under this or any other Act.

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

1988-53-7.

Auxiliary constables

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

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

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

1988-53-8.

Special provincial constables

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

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

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

1988-53-9.

Jurisdiction and power of provincial constable

10. (1) Subject to the regulations, a provincial constable, an auxiliary constable or a special provincial constable has, while carrying out the duties of his appointment, jurisdiction throughout the Province to exercise and carry out the powers, duties, privileges and responsibilities that a police constable or peace officer is entitled or required to exercise or carry out at law or under an enactment.

(2) Where a provincial constable, auxiliary constable or special provincial constable exercises his jurisdiction under subsection (1) in a municipality having a municipal police force, he shall, if possible, notify the municipal police force in advance, but in any case shall promptly after exercising his jurisdiction notify the municipal police force of the municipality.

1988-53-10.

Ministerial liability for torts of provincial police force and municipal constables

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

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

(2) Notwithstanding that a constable referred to in subsection (1) (a) or (b) is not found liable for a tort allegedly committed by him in the performance of his duties, the minister may pay the amount he considers necessary to

- (a) settle a claim against a constable for a tort allegedly committed by him in the performance of his duties, or
- (b) reimburse a constable for reasonable costs incurred by him in defending a claim against him for a tort allegedly committed in the performance of his duties.

(3) The Minister of Finance and Corporate Relations shall pay out of the consolidated revenue fund, on the requisition of the minister, sums required for the purposes of subsection (2).

1988-53-11.

Assistance for costs of criminal proceedings**12.** Where

- (a) an auxiliary constable, or
- (b) a municipal constable or a special municipal constable acting in other than the municipality in which he normally performs his duties

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

1988-53-12.

Aid to dependants — auxiliaries

13. Notwithstanding any other Act, the minister may grant pecuniary aid to the spouse or children of an auxiliary constable who is killed or injured in the performance of his duties.

1988-53-13.

PART 3

AGREEMENTS TO USE R.C.M.P.

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

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

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

- (a) the Royal Canadian Mounted Police shall, subject to the agreement, be deemed a provincial police force,
- (b) every member of the Royal Canadian Mounted Police shall, subject to the agreement, be deemed a provincial constable,
- (c) the provisions of this Act respecting the powers and duties of the provincial police force and provincial constables shall apply, subject to the agreement, and with the necessary changes and insofar as applicable, to the Royal Canadian Mounted Police and its members, and
- (d) the officer commanding the division of the Royal Canadian Mounted Police referred to in the agreement and the second in command of the division shall be deemed the commissioner and deputy commissioner, respectively, appointed under this Act.

(3) Where a power or duty given under the regulations or under any Act to the provincial police force or a provincial constable is expressly excluded from the powers and duties given by agreement under subsection (1) to the Royal Canadian Mounted Police or its members, the Lieutenant Governor in Council may make the regulations he considers necessary to authorize or require, as the case may be, a member of the public service of the Province to carry out the power or duty.

(4) This section applies to an agreement made under the *Police Act*, R.S.B.C. 1979, c. 331, that was in force on April 1, 1981, and every order made or act done by the commanding officer of the division referred to in the agreement, or the second in command,

- (a) as commissioner or deputy commissioner, respectively, or
- (b) in the exercise or purported exercise of the powers and duties of a commissioner or deputy commissioner

under this Act and the Act repealed by this Act, is hereby confirmed and validated.

1988-53-14.

PART 4
MUNICIPALITIES**Duties of a municipality**

15. (1) Subject to subsection (2), a municipality having a population of more than 5 000 persons shall provide, in accordance with this Act and the regulations,

- (a) policing in the municipality with a police force of sufficient numbers
 - (i) to adequately enforce municipal bylaws, the criminal law and the laws of the Province, and
 - (ii) to maintain law and order in the municipality, and
- (b) adequate accommodation and materiel for
 - (i) the operations of and use by the police force required under paragraph (a), and
 - (ii) the detention of persons required to be held in custody.

(2) Where, due to special circumstances or abnormal conditions in a municipality, the minister believes it is unreasonable to require a municipality to provide policing under subsection (1), he may, subject to the terms the Lieutenant Governor in Council approves, provide policing in the municipality.

1988-53-15.

Municipal policing by R.C.M.P.

16. Where, under an agreement made under section 3 (2) (b), members of the Royal Canadian Mounted Police provide policing in a municipality, the municipality shall

- (a) pay to the Province, or
- (b) on the direction of the minister, pay directly to Canada

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

1988-53-16.

Failure of municipality to police

17. (1) Where the commission considers that a municipality to which section 15 (1) applies is not complying with that section, the commission shall send to it and to its board, if any, a notice that

- (a) identifies the non-compliance,
- (b) directs the municipality to correct the failure to comply, and
- (c) specifies the manner in which and the time within which the failure is to be corrected.

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

- (a) appoint persons as constables to police the municipality,
- (b) use the provincial police force to police the municipality, or
- (c) take other steps he considers necessary.

(3) All costs of policing incurred under subsection (2) shall be paid by the municipality, and costs incurred by the Province under that subsection constitute a debt due to and recoverable by the Province from the municipality.

1988-53-17.

Amalgamation of municipal police forces

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

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

(3) An agreement under subsection (1) shall contain terms respecting a municipal police force and policing by a municipal police force, the establishment of a joint board, membership on the joint board and division of expenditures by the municipal councils.

(4) An agreement under subsection (2) shall contain terms respecting the provision of policing in the municipalities by the provincial police force and division of expenditures by the municipal councils.

1988-53-18.

Aid to dependants

19. Notwithstanding any other Act, a municipal council, or a regional board, in the case of an enforcement officer employed by it, may, in its discretion, grant pecuniary aid to the spouse or children of a municipal constable, special municipal constable, auxiliary constable, enforcement officer or bylaw enforcement officer who is killed or injured in the performance of his duties.

1988-53-19.

Municipal liability for torts

20. (1) Subject to an agreement under section 18 (1) and 23 (2), a municipality, or a regional district, in the case of an enforcement officer employed by it, is jointly and severally liable for a tort committed in the performance of his duties by a municipal constable, special municipal constable, enforcement officer, bylaw enforcement officer or employee of the board employed by the board on behalf of the municipality.

(2) Where it is alleged or established that a municipal constable, special municipal constable, enforcement officer, bylaw enforcement officer or employee of a board has committed a tort in the performance of his duties, the board and members of the board are not liable for the claim, but the municipality, or the regional district, in the case of an enforcement officer employed by it, in which he is employed may, in the discretion of the council of the municipality, or the board of the regional district, as the case may be, pay an amount it considers necessary to

- (a) settle the claim or a judgement against him, and
- (b) reimburse him for reasonable costs incurred by him in opposing the claim.

1988-53-20.

Personal liability

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

(2) In this section "police officer" means a person holding an appointment as a constable under this Act.

(3) Subsection (1) does not provide a defence where

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

(4) Subsection (1) does not absolve

- (a) a municipality, in the case of a constable, or other person appointed under this Act, who is employed by a board on behalf of the municipality,
- (b) a regional district, in the case of an enforcement officer employed by it, or
- (c) the minister in a case to which section 11 applies

from vicarious liability arising out of a tort committed by the constable or other person appointed under this Act for which the municipality, the regional district or the minister, as the case may be, would have been liable had this section not been in force.

1988-53-21.

Assistance for costs of criminal proceedings

22. Notwithstanding section 262 of the *Municipal Act*, where a municipal constable, special municipal constable, enforcement officer, bylaw enforcement officer or employee of a board has been charged with an offence against an enactment of the Province or Canada or a municipal or regional district bylaw in connection with the performance of his duties, the council of the municipality, or the board of a regional district, in the case of an enforcement officer employed by it, in which he is employed may,

- (a) on the recommendation of its board where the person is an employee of the board, and
- (b) to the extent that it considers appropriate in the circumstances,

pay the costs incurred and not recovered by him in the proceedings following or otherwise connected with the charge.

1988-53-22.

PART 5

POLICE BOARDS

Establishment of boards

23. (1) The council of a municipality required to provide policing under section 15 may, subject to the minister's approval, provide policing by means of a municipal police force governed by a municipal police board consisting of the mayor of the council, one person appointed by the council and not more than 5 persons appointed, after consultation with the commission, by the Lieutenant Governor in Council.

(2) The councils of 2 or more municipalities may, subject to the approval of the minister, enter into an agreement to establish a joint municipal police board under subsection (1).

(3) An agreement under subsection (2) shall contain terms respecting the establishment of the board, membership on the board and division of expenditures.

1988-53-23.

Membership of boards

24. (1) A person who is an alderman on council or, except the mayor, is ineligible to be elected as an alderman on council shall not be appointed to a board.

(2) A person appointed to a board shall hold office for a term, not exceeding 4 years, that the Lieutenant Governor in Council determines, and may be reappointed; but a person shall not hold office for a period of more than 6 successive years.

1988-53-24.

Chairman and quorum

25. (1) The mayor of the council shall be chairman of the board.

(2) Where the mayor is absent, the other board members present shall elect from among themselves a chairman to preside at the meeting.

(3) In case of a tie vote, the chairman shall have a second or casting vote.

1988-53-25.

Board to establish municipal police force

26. (1) A board shall establish a municipal police force and appoint a chief constable and other constables and employees the board considers necessary to provide policing in the municipality.

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

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

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

(c) prevent crime.

(3) Subject to a collective agreement as defined in the *Industrial Relations Act*, the chief constable and every constable and employee of a municipal police force shall be

(a) employees of the board,

(b) provided with the accommodation and materiel the board considers necessary for his duties and functions, and

(c) paid the remuneration the board determines.

(4) Part 6 of the *Industrial Relations Act* does not apply to discipline or dismissal of a constable appointed under this Act.

(5) The board shall, in consultation with the chief constable, determine the priorities, goals and objectives of the municipal police force, and the chief constable shall report to the board each year on the implementation of programs and strategies to achieve the priorities, goals and objectives.

1988-53-26.

Estimates and expenditures

27. (1) Every board shall, on or before November 30 in each year, prepare and submit to the council for its approval a provisional budget for the following year to provide policing in the municipality.

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

(3) Where a council does not approve an item in the budget, the commission, on application by the council or the board, shall determine whether the item or amount should be included in the budget, and shall report its findings to the board, the council and the minister.

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

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

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

1988-53-27.

Rules

28. (1) Every board shall make rules not inconsistent with this Act and the regulations respecting the

- (a) standards, guidelines and policies for the administration of the municipal police force,
- (b) prevention of neglect and abuse by its municipal constables, and
- (c) efficient discharge of duties and functions by the municipal police force and municipal constables.

(2) A rule under subsection (1) shall not be enforceable against any person until it is filed with the commission.

1988-53-28.

Studies

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

(2) A board shall submit its report of a study under subsection (1),

- (a) on request, to the commission,
- (b) where the report suggests a breach of discipline by a municipal constable, special municipal constable, enforcement officer or bylaw enforcement officer, to the chief constable, and
- (c) where the report suggests criminal liability of a municipal constable, special municipal constable, enforcement officer or bylaw enforcement officer, to the minister.

1988-53-29.

Keeping of provincial prisoners

30. The minister may, out of monies appropriated for the purpose, make payments to municipalities having a population of more than 5 000 persons in order to reimburse the municipalities to the extent he considers appropriate in each case, for the expenses incurred under section 702 of the *Municipal Act* and section 481 of the *Vancouver Charter*, as the case may be, for the care and custody of persons who are detained in a place of detention.

1988-53-30.

PART 6

POLICE COMMITTEES

Local police committees

31. (1) The Lieutenant Governor in Council, after consulting the councils of municipalities situated in whole or in part in the area of the Province in which the committee is to have jurisdiction, may establish a local police committee consisting of not less than 3 members appointed by the Lieutenant Governor in Council.

(2) A member of a committee shall be appointed for a term not exceeding 3 years that the Lieutenant Governor in Council determines, and may be reappointed; but a person shall not be a member of a committee for a period of more than 5 successive years.

(3) A member of a committee shall not be a judge of a court.

1988-53-31.

Chairman and quorum

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

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

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

(4) In case of a tie vote, the chairman shall have a second or casting vote.

1988-53-32.

Functions of committees

33. It is the duty of a committee

(a) to promote a good relationship between the provincial police force and residents of the area of the Province in which the committee has jurisdiction,

(b) to bring to the attention of the minister and the provincial police force matters respecting the adequacy of policing in the area of the Province in which the committee has jurisdiction, and to make recommendations to the minister and the provincial police force respecting those matters, and

(c) perform such other duties as the minister may specify.

1988-53-33.

PART 7
MUNICIPAL POLICE FORCE

Duties and functions of chief constable and municipal police

34. (1) The chief constable of a municipal police force has, under the direction of the board, general supervision and command over the municipal police force and shall perform the other functions and duties assigned to him under the regulations or under any Act.

(2) The municipal police force, under the chief constable's direction, shall perform the duties and functions respecting the preservation of peace, the prevention of crime and offences against the law and the administration of justice assigned to it or generally to peace officers by the chief constable, under the regulations or under any Act.

1988-53-34.

Special municipal constables

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

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

(3) Subject to a collective agreement as defined in the *Industrial Relations Act*, a special municipal constable may be paid the remuneration and shall be appointed for the term the board determines.

(4) Subject to the restrictions the board specifies in the appointment, a special municipal constable has, while carrying out the duties of his appointment, the powers, duties and immunities of a municipal constable.

1988-53-35.

Bylaw enforcement officers

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

(a) by a board, or

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

(2) A bylaw enforcement officer shall be paid the remuneration and shall be appointed for the term that the board or municipal council, as the case may be, determines.

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

1988-53-36.

Enforcement officers provincial enactments

37. (1) Subject to the approval of the minister, a board, municipal council or board of a regional district may appoint, in writing, one or more of its employees to

enforce one or more provincial enactments, specified in the appointment, within the boundaries of the municipality or regional district, as the case may be.

(2) A person appointed as an enforcement officer shall meet the standards for training specified by the minister.

(3) An enforcement officer is a peace officer for the purposes of enforcing the enactments specified in his appointment within the jurisdiction for which he is appointed.

1988-53-37.

Jurisdiction of municipal constables

38. (1) A municipal constable or a special municipal constable has jurisdiction throughout the Province while carrying out the powers, duties, privileges and responsibilities that a police constable or peace officer is entitled or required to exercise or carry out at law or under any Act.

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

(3) Where the minister makes a direction under subsection (2), the Minister of Finance and Corporate Relations shall pay, from the consolidated revenue fund, the salary and other expenses of the municipal constable or special municipal constable during the period he is performing duties in the part of the Province in which the emergency exists.

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

1988-53-38.

PART 8

POLICE COMMISSION

Commission continued

39. (1) The British Columbia Police Commission is continued and consists of not less than 3 members appointed by the Lieutenant Governor in Council to hold office during a term, not exceeding 5 years, determined by him.

(2) In addition to persons appointed to the commission under subsection (1), the Lieutenant Governor in Council may appoint persons to the commission limited to the purpose of serving on panels established by the chairman to hear applications for leave to appeal under section 64 and appeals under section 65.

(3) Each member of the commission shall be reimbursed for reasonable travelling or out of pocket expenses necessarily incurred by him in discharging his duties, and in addition shall be paid the remuneration for his services the Lieutenant Governor in Council determines.

(4) The minister, on behalf of the government, may enter into an agreement with a member of the commission containing terms of employment.

1988-53-39.

Chairman and quorum

40. (1) The Lieutenant Governor in Council shall designate one member of the commission as chairman and one member as deputy chairman.

(2) Any 2 members of the commission constitute a quorum, and a vacancy in the membership of the commission does not impair the authority of the other members to act.

(3) In case of a tie vote, the chairman shall have a second or casting vote.

(4) The chairman may appoint a panel for hearing an application for leave to appeal under section 64 or an appeal under section 65.

(5) A panel shall consist of 3 members of the commission, at least one of whom shall be a person appointed under section 39 (1).

(6) The chairman shall designate the person to act as chairman of the panel.

(7) The quorum for a panel shall be 3.

(8) The member of the commission appointed by the minister to perform the duties of the complaint commissioner shall not be a member of a panel.

1988-53-40.

Employees

41. (1) The commission may, subject to the *Public Service Act*, employ or retain the persons it considers necessary to carry out the commission's business.

(2) The commission may, subject to the *Public Service Act*, designate the title, office and responsibilities of persons employed or retained under subsection (1).

(3) The commission may, notwithstanding the *Public Service Act* but subject to the approval of the minister, engage and retain persons it considers necessary as consultants, experts or specialists.

1988-53-41.

Function of commission

42. (1) It is the commission's function to

(a) administer, pursuant to Part 9, complaints about the conduct of provincial and municipal constables,

(b) hear appeals from decisions of police boards in disciplinary matters as provided by the regulations,

(c) inspect and report upon the quality and standard of police services delivery, including without limiting the foregoing,

(i) inspecting police operations and procedures,

(ii) evaluating programs for training persons who intend to become constables, constables who require retraining and constables who are eligible for advanced training, and

(iii) evaluating standards of policing,

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

(e) consult with and give information and advice to chief constables, boards and committees on matters related to police and policing,

(f) make recommendations to the minister in regard to the appointment of members of municipal police boards,

- (g) make recommendations to the minister on minimum standards respecting selection and training of constables, the use of firearms and equipment and any other matter relating to police and policing,
 - (h) establish and carry out, or approve and supervise, programs to promote cooperative and productive relationships between constables and the public,
 - (i) assist in the coordination of policing by the provincial police force and municipal police forces, and
 - (j) perform other functions and duties assigned to the commission pursuant to this Act or the regulations.
- (2) The commission shall submit copies of a report completed under subsection (1) (c) to
- (a) the minister, and
 - (b) the board or, where no board exists, the municipality,
- and may submit a copy to those persons the commission considers appropriate.
- (3) The commission may, after written notice to the chairman of the board and the minister, inspect the records, operations and systems of administration of a municipal police force.
- (4) If requested by the minister the commission shall, after notice to the chairman of the board, conduct the investigation under subsection (3).

1988-53-42.

Practice and procedure

43. (1) The commission shall make rules, not inconsistent with this Act and the regulations, respecting its practice and procedure and the exercise of its powers and may establish forms required to be used for those purposes.

(2) No rule under subsection (1) is binding on a person unless it is approved by the minister.

1988-53-43.

Research studies

44. (1) The commission shall, on the request of the minister, and may, on its own or on the request of a council or a board, study, investigate and prepare a report on matters respecting law enforcement, crime prevention, police and policing in the Province or in a designated area of the Province.

(2) A study under subsection (1) may be carried out by the commission or by a member or employee of the commission designated by the chairman for the purpose.

(3) Where the minister requests a study under subsection (1), the minister responsible for finance shall pay the costs of the study from the consolidated revenue fund.

(4) The commission shall submit the report under subsection (1) to the minister.

1988-53-44.

Inquiries

45. On request of the minister, the commission shall inquire into and report to the minister on matters respecting crime and its investigation and control, and of law enforcement.

1988-53-45.

Special investigations

46. (1) Notwithstanding this Act,

(a) the minister, or

(b) the commission, either on its own initiative or on receiving a request from the complaints commissioner or a board,

may at any time order an investigation to be made respecting an act or omission of any person appointed under this Act.

(2) An investigation under subsection (1) shall be made by the persons and in the manner the minister or the commission specifies in the order.

(3) Where the minister orders an investigation under subsection (1), the minister responsible for finance shall pay the costs of the investigation from the consolidated revenue fund.

1988-53-46.

Delegation

47. The chairman of the commission may authorize one or more members of the commission to exercise the powers and perform the duties and functions of the commission under sections 42 and 44 to 46.

1988-53-47.

Annual report

48. The commission shall submit annually to the minister

(a) a report of the operation of the commission for the immediately preceding fiscal year, and

(b) a financial statement showing the business of the commission for that fiscal year,

and the report and financial statement shall be laid before the Legislative Assembly within 15 days after commencement of the first session in the following year.

1988-53-48.

PART 9**CITIZEN COMPLAINT PROCEDURE****Interpretation**

49. In this Part

“complainant” means a member of the public who has submitted a complaint;

“complaint” means an allegation in writing made by a member of the public respecting the conduct of a municipal constable or a provincial constable which, if proven, would constitute a disciplinary default under a code of conduct established by regulation;

“complaint commissioner” means the member of the commission appointed by the minister to perform the duties of the complaint commissioner;

“constable” means a municipal constable, a provincial constable or both, as the context requires;

“disciplinary authority” means, where a complaint is made against

- (a) the commissioner, the minister or a person, including the commission, the minister appoints in writing,
- (b) a provincial constable, the commissioner or a member of the provincial police force the commissioner appoints in writing,
- (c) the chief constable of a municipal police force, the board responsible for the municipal police force or a person, including the commission, the board appoints by resolution, and
- (d) a municipal constable, the chief constable of that municipal police force or a member the chief constable appoints in writing;

“disciplinary tribunal” means, where an inquiry is requested under section 60 in respect of a complaint made against

- (a) a provincial constable, the disciplinary tribunal directed by the minister under section 60 (4) to hold the inquiry, or
- (b) a municipal constable, the board responsible for the municipal constable;

“municipal constable” includes a special municipal constable;

“provincial constable” includes an auxiliary constable and a special provincial constable but does not include a member of the Royal Canadian Mounted Police serving the Province.

1988-53-49.

Duties of complaint commissioner

50. (1) The duties of the complaint commissioner are

- (a) to receive complaints from the public against constables,
- (b) to record complaints received and forward them to the disciplinary authority,
- (c) to establish and maintain a record of all complaints received by municipal police forces against the conduct of municipal constables, and their disposition,
- (d) to inform, advise and assist complainants, constables complained against, disciplinary authorities, boards and the commission, in respect of the handling of citizen complaints,
- (e) to monitor the handling of complaints and act in the public interest to ensure complaints are handled in the manner specified by this Act and the regulations,
- (f) to inspect annually, or as required, the records, operations and systems of administration for handling of citizen complaints by municipal police forces, and
- (g) to publicize the function and duties of the complaint commissioner.

(2) In exercising his duties under this section, the complaint commissioner may receive and obtain information respecting a complaint from the parties and the disciplinary authority in the manner he considers appropriate and, without limiting the generality of the foregoing, shall have access to any files or other material relating to a complaint and may interview and take statements from the disciplinary authority, the complainant and the constable complained against.

(3) Subject to subsection (4), no oral or written statement made to the complaint commissioner shall be used or received as evidence in any civil or administrative proceeding and the complaint commissioner or a person to whom he delegates his powers

shall not be required to give testimony or to produce a statement obtained in exercising his powers under this section.

(4) Subsection (3) does not apply to a proceeding under a prescribed code of discipline respecting an allegation that, with intent to mislead, a constable made a statement to the complaint commissioner, or person to whom the complaint commissioner delegated his powers, knowing that it was false.

(5) Where the complaint commissioner as a result of information obtained under subsection (2) believes there has been an inadequacy in the investigation of the complaint, he may advise the disciplinary authority and request a reinvestigation of the complaint.

(6) The complaint commissioner may delegate, in writing, his powers under subsection (2) subject to such conditions as he may specify.

1988-53-50.

Application of this Part

51. (1) Subject to subsection (2), this Part does not preclude the taking or continuing of

- (a) civil or criminal proceedings against a constable,
- (b) internal disciplinary proceedings under a prescribed code of discipline, or
- (c) proceedings under the *Industrial Relations Act* as to the interpretation, application or operation of a collective agreement.

(2) Notwithstanding a contrary provision in another Act or in a collective agreement, where a complainant requests an inquiry under section 60, the provisions of this Act apply to the complaint, inquiry and disposition of the complaint.

1988-53-51.

Complaint made

52. A person having a complaint against a constable shall complain to one of the following:

- (a) the disciplinary authority;
- (b) the complaint commissioner;
- (c) in the case of a municipal constable, the senior constable on duty at the time the complaint is made.

1988-53-52.

Complaint form/information to complainant

53. The person who receives the complaint shall record the complaint in the prescribed form and shall furnish the complainant with a prescribed statement that sets out the procedures that will be followed respecting the complaint and the rights of the complainant, together with a copy of the complaint form.

1988-53-53.

Complaint commissioner to monitor

54. Where a complaint is made to

- (a) the disciplinary authority or he receives a complaint under paragraph (c), he shall forthwith send a copy of it to the complaint commissioner,

- (b) the complaint commissioner, he shall forthwith send a copy of it to the disciplinary authority, or
- (c) the constable in charge of a municipal police force, he shall forthwith send a copy to the disciplinary authority.

1988-53-54.

Status reports to be given

55. In the case of a complaint against a constable, the disciplinary authority shall notify, in writing, the complainant, the constable complained against and the complaint commissioner of the status of the complaint not later than 45 days after the date the complaint is recorded by the person who received it and every 30 days thereafter during the course of the investigation unless, in the disciplinary authority's opinion, to do so might adversely affect or hinder any investigation in respect of the complaint, in which case he shall, on request, notify the complaint commissioner of the reasons for his decision.

1988-53-55.

Informal disposition of complaints

56. (1) The disciplinary authority receiving a complaint may informally hear and attempt to resolve the complaint.

(2) Where a complaint is resolved informally, a record shall be made of the manner in which the complaint was resolved.

(3) The disciplinary authority shall notify the complainant, the constable complained against and the complaint commissioner of the results of the attempt at informal resolution, if any.

1988-53-56.

Investigation of complaints

57. (1) Where the disciplinary authority does not attempt to resolve the complaint informally, he shall forthwith conduct an investigation into the complaint.

(2) Where the disciplinary authority receiving a complaint is unsuccessful in resolving the complaint informally, the complainant may, in writing, request that the complaint be investigated by the disciplinary authority, who shall notify the constable complained against and the complaint commissioner and forthwith comply with the request.

1988-53-57.

Frivolous and vexatious complaints

58. (1) The disciplinary authority may refuse to investigate or further investigate a complaint against a constable where the disciplinary authority is satisfied that

- (a) the complaint is frivolous, vexatious, not made in good faith or concerns a trivial matter,
- (b) the conduct complained of primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in the subject matter of the complaint, or

- (c) the complainant knew or ought to have known, more than 6 months before making the complaint, of the act or omission to which his complaint refers.
- (2) Where the disciplinary authority refuses to investigate or to further investigate a complaint against a constable,
- (a) the disciplinary authority shall, in writing, promptly notify the complainant, the constable complained against and the complaint commissioner of the disciplinary authority's refusal to investigate or further investigate, the reasons for the refusal and the recourse under this section that is available to the complainant, and
 - (b) the complainant may, within 10 days after he receives the notification referred to in paragraph (a), by written request delivered to the disciplinary authority, require a review of the disciplinary authority's decision.
- (3) On receipt of the complainant's written request under subsection (2) (b), the disciplinary authority shall notify the complaint commissioner and the constable complained against of the request and shall, where the complaint is against
- (a) a provincial constable, deliver to the commission, or
 - (b) a municipal constable, deliver to the board responsible for the municipal constable
- a copy of the complainant's written request for a review together with particulars of the complaint and the disciplinary authority's reasons for the refusal and, where the complaint is against
- (c) a provincial constable, the chairman of the commission shall appoint 2 persons he considers suitable, or
 - (d) a municipal constable, the chairman of the board shall appoint 2 of the board's members
- as a review panel to review the disciplinary authority's decision.
- (4) The review panel shall consider the complaint and the reasons for the disciplinary authority's decision and shall, not more than 30 days after its appointment,
- (a) unanimously confirm the decision of the disciplinary authority,
 - (b) unanimously direct the disciplinary authority to cause the complaint to be investigated under section 57, or
 - (c) where the review panel is unable to reach a unanimous decision, so signify and shall promptly give written notice of the result of its considerations to the complainant, the complaint commissioner, the constable complained against and the disciplinary authority, giving its reasons where it has confirmed a decision under paragraph (a) or made a direction under paragraph (b).
- (5) Where a review panel makes a unanimous direction under subsection (4) (b) or signifies under subsection (4) (c) its inability to reach a unanimous decision, the disciplinary authority shall promptly cause the complaint to be investigated.
- (6) Where a review panel makes a unanimous confirmation under subsection (4) (a), no further action shall be taken on the complaint and the decision of the review panel is final and binding.
- (7) Before unanimously confirming the decision of a disciplinary authority, the review panel shall give the complainant an opportunity to be heard.

1988-53-58.

Notice of results of investigation

59. Where a disciplinary authority has investigated a complaint, he shall, not more than 7 days after the investigation is completed, send a notice to the complainant, the complaint commissioner and the constable against whom the complaint is made, setting out

- (a) a summary of the investigation and the results of the investigation,
- (b) any disciplinary action intended to be taken by the disciplinary authority, and
- (c) the right of the complainant or constable against whom the written complaint is made to request an inquiry.

1988-53-59.

Request for inquiry

60. (1) A complainant who alleges he is personally affected by an act or omission set out in the complaint, or a constable against whom the complaint is made, may, not more than 30 days after the date he receives a notice under section 59, send the disciplinary authority a notice requesting an inquiry.

(2) Where a notice requesting an inquiry is not sent within the time limited by subsection (1), the disciplinary authority may deal with the complaint as an internal disciplinary proceeding under a prescribed code of discipline.

(3) Subject to subsection (2), the disciplinary authority shall promptly submit a copy of the notice to the complaint commissioner, the minister and, where the inquiry is requested in respect of a complaint against a municipal constable, the disciplinary tribunal responsible for the municipal police force.

(4) Where the minister receives a copy of a notice requesting an inquiry in respect of a complaint against a provincial constable, the minister shall direct that the inquiry be held by a disciplinary tribunal consisting of the commission, a committee the minister designates or jointly by the commission and a committee the minister designates and shall give a copy of the notice to the tribunal.

(5) A disciplinary tribunal shall, forthwith after it receives a copy of a notice requesting an inquiry, send a notice specifying the date and place of the inquiry to

- (a) the complainant,
- (b) the constable against whom the complaint is made,
- (c) the disciplinary authority, and
- (d) the complaint commissioner,

and the disciplinary tribunal shall hold the inquiry on the date and at the place specified in the notice.

(6) An inquiry shall be a new hearing at which the persons referred to in subsection (5) (a), (b) and (c) may, and shall if required by the disciplinary tribunal, give evidence viva voce.

1988-53-60.

Inquiries open to public

61. An inquiry by a disciplinary tribunal shall be open to the public.

1988-53-61.

Inquiries respecting provincial constables

62. A disciplinary tribunal holding an inquiry respecting a complaint against a provincial constable shall

- (a) review the complaint,
- (b) review the investigation made, and any disciplinary action intended to be taken by the disciplinary authority,
- (c) determine whether the complaint is justified, and
- (d) not more than 10 days after it concludes the inquiry, submit its findings and recommendations to the complainant, the provincial constable against whom the complaint is made, the minister, the disciplinary authority and the complaint commissioner.

1988-53-62.

Inquiries respecting municipal constables

63. (1) After holding an inquiry respecting a complaint against a municipal constable, the disciplinary tribunal shall

- (a) approve, or approve subject to the terms it specifies, the disciplinary action intended to be taken by the disciplinary authority,
- (b) reject the disciplinary action intended to be taken by the disciplinary authority and order that it take the disciplinary action the disciplinary tribunal specifies,
- (c) request the commission to order that a further investigation be made of the complaint, or
- (d) make an order it considers appropriate in the circumstances.

(2) The disciplinary tribunal shall, not more than 10 days after the date it makes its decision under subsection (1), serve a notice of its decision on the complainant, the municipal constable against whom the complaint was made, the disciplinary authority and the complaint commissioner.

(3) For the purposes of this section, "disciplinary action" includes a decision not to take disciplinary action.

1988-53-63.

Leave to appeal to the commission

64. (1) A complainant or municipal constable affected by a decision of a disciplinary tribunal may, not more than 30 days after the date he receives notice of the decision, serve on the commission a notice of application for leave to appeal all or part of the decision to the commission.

(2) An application under subsection (1) shall be in writing and shall set out the reasons for requesting leave to appeal.

(3) The disciplinary tribunal that made the decision appealed from shall, on the request of the commission, submit to the commission the record of the inquiry and every report or other information considered by the disciplinary tribunal during the inquiry.

(4) The commission shall grant leave to appeal where, after considering the record, report and other information, and calling witnesses and hearing evidence it considers necessary, the commission has reasonable doubt of the thoroughness or fairness of the investigation by the disciplinary authority or the inquiry by the disciplinary tribunal, or

believes the disciplinary action imposed is not comparable to disciplinary action imposed in respect of similar complaints.

1988-53-64.

Appeal to commission

65. (1) Where the commission grants leave to appeal, it shall serve a notice specifying the date and place of the appeal on the complainant, the municipal constable against whom the complaint was made, the disciplinary authority and the disciplinary tribunal, all of whom shall be parties to the appeal.

(2) An appeal shall be a new hearing at which the persons referred to in subsection (1) may, and shall if required by the commission, give evidence viva voce.

(3) After holding an inquiry respecting a complaint against a municipal constable, the commission shall

(a) approve, or approve subject to the terms it specifies, the disciplinary action intended to be taken by the disciplinary authority or disciplinary tribunal,

(b) reject the disciplinary action intended to be taken by the disciplinary authority or disciplinary tribunal and order that the disciplinary authority take such disciplinary action as the commission may specify, or

(c) make an order it considers appropriate in the circumstances.

(4) The hearing of an appeal under this section shall be open to the public.

(5) A decision or order of the commission under subsection (3) is final and binding.

(6) For the purposes of this section, "disciplinary action" includes a decision not to take disciplinary action.

1988-53-65.

Powers and privileges at inquiries

66. (1) The following bodies have and may exercise the powers of a commissioner under sections 15 and 16 of the *Inquiry Act*:

(a) the commission,

(i) for the purposes of a study under section 44 or an inquiry under section 45 or 60,

(ii) for the purposes of an investigation under section 46,

(iii) during the hearing of an application for leave to appeal under section 64, and

(iv) during the hearing of an appeal under section 65;

(b) a committee designated by the minister to hold an inquiry under section 60;

(c) a disciplinary tribunal, for the purposes of an inquiry under section 60;

(d) a board, for the purposes of a study under section 29.

(2) Every person required to attend and give evidence before a body that is exercising its powers under subsection (1) has a right to

(a) be represented by counsel, and

(b) call and examine witnesses.

(3) On the request of, or with the consent of, a person required by the commission to attend and give evidence at an inquiry under section 45, the commission may take his evidence in private.

(4) Where evidence is taken in private under subsection (3), no person shall, without the consent of the commission, disclose or communicate the evidence to another person.

(5) At the hearing of internal disciplinary proceedings and appeals under a prescribed code of discipline, the presiding officer, the board and the commission have power to

- (a) hear and receive evidence on oath, and
- (b) compel witnesses to attend by notice in writing, and to pay those witnesses to the extent that witnesses are remunerated for attendance at a County Court.

(6) A witness who fails, without reasonable excuse, to attend the proceedings after service on him of notice in writing under subsection (5) requiring his attendance, commits an offence.

1988-53-66.

PART 10 GENERAL

Evidentiary effect of orders

67. An order, rule, report, record or certificate signed by a disciplinary authority or by a member of the commission or a board, committee or disciplinary tribunal that made the order, rule, report or certificate is, in any proceeding, evidence of the facts stated in the order, rule, report or certificate, and of the authority of the member or disciplinary authority without proof of his appointment, authority or signature.

1988-53-67.

Request for assistance of other police forces

68. The provincial police force or a municipal police force, on receiving a request for temporary assistance made by another police force, shall assign to the police force making the request the constables it is practicable to assign for the purpose.

1988-53-68.

Meetings and hearings open to public

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

(2) Where the commission or a board or committee believes, in respect of a meeting or hearing held by it, that

- (a) a matter respecting public security will arise, and its disclosure could reasonably be expected to seriously impair effective law enforcement,
- (b) a financial or personal matter respecting a person will arise, and his interest in the matter outweighs the public's interest in the matter,
- (c) a matter respecting labour contract discussions, labour management relations, layoffs or another personnel matter will arise, or

(d) a matter will arise respecting information a person has requested he be allowed to give in private to the commission, board or a committee, the commission, board or committee, as the case may be, may order that the portion of the meeting or hearing during which the matter will arise shall be held in camera.

(3) Where the commission, or a board or committee makes an order under subsection (2), it shall forthwith submit to the minister a copy of the minutes of the meeting or hearing and a statement of the reasons for holding the meeting or hearing in camera.

1988-53-69.

Oaths and affirmations

70. (1) A person shall not assume office or exercise any powers or perform any duties as a provincial constable, auxiliary constable, municipal constable, special municipal constable, special provincial constable, enforcement officer, bylaw enforcement officer or member of the commission or a board or committee unless he takes, before he assumes office, an oath or affirmation in the prescribed form and manner.

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

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

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

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

1988-53-70.

Minutes and records

71. The commission and every board, committee and disciplinary tribunal shall keep minutes of its meetings and hearings and records of its inquiries.

1988-53-71.

Ombudsman

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

1988-53-72.

Service of notices

73. (1) Every notice required under this Act shall be in writing and shall be served personally or mailed by registered mail.

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

1988-53-73.

Regulations

74. The Lieutenant Governor in Council may make regulations and, without limiting the foregoing, the Lieutenant Governor in Council may make regulations

- (a) providing for or granting financial aid to the administration and course of study in a police training school or other educational institution,
- (b) developing procedures for the handling of complaints from members of the public against police constables,
- (c) for the government of police forces and governing the qualifications, ranks, conduct, training, duties, suspension, promotion, dismissal and punishment of members of police forces,
- (d) prescribing the minimum salary or other remuneration and allowances to be paid to members of police forces,
- (e) prescribing the minimum remuneration to be paid to the members of boards or committees who are designated by the Lieutenant Governor in Council or appointed by the minister,
- (f) prescribing the minimum number of members of police forces that shall be employed either on a basis of population, area, property assessment or a combination of them, or on another basis,
- (g) prescribing requirements respecting offices, buildings, places of detention and materiel to be provided by municipalities,
- (h) prescribing or regulating the number of meetings to be held by boards and committees, the times and places they are to be held and the public notices and methods to be employed regarding the meetings,
- (i) prescribing the records, returns, books and accounts to be kept and made by police forces or the members,
- (j) prescribing the method of accounting for fees, costs and other money that comes into the hands of members of police forces,
- (k) providing for the payment of fees and expenses to witnesses at hearings or appeals under this Act,
- (l) prescribing the deployment, deportment, discipline and training of auxiliary constables,
- (m) prescribing the administration of rewards offered in respect of an offence, and
- (n) providing for the disposal of property where the provincial police force obtains custody of stolen or abandoned personal property.

1988-53-74.

Offence Act

75. (1) Section 5 of the *Offence Act* does not apply to this Act or the regulations.
(2) A person who contravenes section 66 (4) commits an offence.

1988-53-75.

76. [Repeal. Spent. 1988-53-76.]

Commencement

77. This Act comes into force by regulation of the Lieutenant Governor in Council.

1988-53-77.

[Note: Act, except section 26 (4), effective July 1, 1989 (B.C. Reg. 141/89).]

Queen's Printer for British Columbia©
Victoria, 1990

B

B.C. Reg. 330/75
O.C. 1402/75

Filed April 22, 1975

Police Act

POLICE (DISCIPLINE) REGULATION

[effective April 30, 1975]

[includes amendments up to B.C. Reg. 142/89, eff. July 1, 1989]

[Consolidated June 30, 1989]

1. In this regulation, unless the context otherwise requires,

"**Act**" means the *Police Act*;

"**agent**" means a member of a municipal police force in the Province;

"**charge**" means a charge laid under section 13 respecting a disciplinary default contained in the code;

"**chief constable**" includes a member acting as such;

"**code**" means the list of disciplinary defaults set out in Appendix A;

"**counsel**" means a member in good standing of the Law Society of British Columbia;

"**deputy chief constable**" includes an acting deputy chief constable;

"**disciplinary default**" means a disciplinary default set out in the code;

"**hearing**" means proceedings under sections 17 to 35;

"**inspector**" includes a subinspector;

"**investigating officer**" means a member appointed under section 8 or 9;

"**member**" means a member of a municipal police force, by whatever rank or title he may be designated in the Province, who has been sworn in as a peace officer;

"**presenting officer**" means the member appointed under section 18;

"**presiding officer**" means the chief constable or a person authorized to act under section 5 or 6;

"**service record of discipline**" means that portion of a member's personal file which shall contain only details of disciplinary punishments imposed under the Act or this regulation.

PART 1

INTERNAL DISCIPLINE

2. Except as provided in Part 3, this Part applies to municipal forces and supersedes all regulations governing those municipal forces in matters covered by this regulation and all such regulations are repealed.

3. The chief constable shall be the disciplinary authority for his municipal force.

4. A report or complaint respecting internal disciplinary matters arising in a municipal force shall be filed with the chief constable, or an officer not below the rank of inspector delegated for the purpose by the chief constable, and the chief constable or other officer shall determine what action should be taken.

5. (1) The chief constable may hear and decide internal disciplinary matters personally or may delegate an officer, not below the rank of inspector, to hear the charge.

(2) No officer having any connection with an alleged disciplinary matter shall be appointed under subsection (1).

6. Where the chief constable is a material witness, the chairman of the board, or a chief constable from another municipal force appointed by that chairman, shall perform the functions required of a chief constable or his delegate under this regulation.

7. (1) A high standard of police discipline shall be consistently maintained throughout the Province.

(2) All senior and supervisory ranks are expected to set an example to all members in carrying out their assignments and in displaying a strict sense of duty and impartiality in dealing with subordinates.

(3) Any member who commits any of the disciplinary defaults included in the code shall be dealt with in the manner provided for by this regulation.

(4) Notwithstanding subsections (1) to (3), minor breaches of discipline may be dealt with by verbal reprimand given by a member not below the rank of corporal.

(5) Both the member reprimanded and the member giving the reprimand shall sign a record of the incident in each other's official police notebook.

(6) A reprimand made under subsection (4) shall not be entered on a member's service record of discipline.

(7) Where a member, not below the rank of corporal, considers that a breach of discipline has occurred which, subject to subsection (8), calls for a reprimand to be entered on a member's service record of discipline, he shall, forthwith, serve a written notice of the reprimand in Form 1 on the member reprimanded and shall forward a copy to the chief constable or his delegate.

(8) On receipt of a written reprimand under subsection (7), a member may within 7 days give notice, in writing, to the chief constable or his delegate that the reprimand is disputed, and, in that event, the chief constable or his delegate shall deal with the matter under section 8 or 9.

(9) If no written notice of dispute is filed under subsection (8), the chief constable or his delegate may enter the reprimand on the member's service record of discipline.

8. (1) On receipt of a written notice of dispute under section 7 (8) or upon receipt of any other allegation that a disciplinary default under the code has been committed, the chief constable or his delegate shall, except in cases under section 7 (9), order an investigation by a member not below the rank of corporal but who is above the rank of the member against whom the reprimand notice is filed or allegation is made.

(2) No member having any connection with the alleged disciplinary default shall be appointed under subsection (1).

9. If the chief constable or his delegate is unable to appoint an investigating officer unconnected with the alleged disciplinary default from within that municipal force, or if, for any reason, he considers it advisable, he may order the investigation to be undertaken by a member of another municipal force whose rank complies with the requirements of section 8 and who shall, subject to the consent of his chief constable, discharge the duties placed upon him by this regulation.

10. (1) The investigating officer shall obtain written statements from all witnesses to the alleged disciplinary default, serve notice of the alleged disciplinary default in Form 2 upon the accused member, and ensure that any statement the member may wish to make in reply to the allegation is recorded in writing.

(2) Where the matter being investigated may be both an offence punishable on indictment or on summary conviction and a disciplinary default under the code, an interview with an accused member respecting the alleged offence shall first be completed in compliance with the usual investigative procedures respecting offences punishable on indictment or on summary conviction before service of Form 2 and compliance with the requirements of this regulation are carried out.

(3) Where a member has been prosecuted in respect of an offence punishable on indictment or on summary conviction and has been acquitted, no disciplinary proceedings shall be taken under this regulation arising out of the same facts and circumstances.

(4) Subsection (3) does not apply where the disciplinary proceedings relate to separate and distinct issues from those tried in the criminal proceedings.

11. (1) The investigating officer shall complete a report of his investigation and forward it, together with statements of witnesses and any statement made by an accused member upon being served with Form 2, to the chief constable or his delegate.

(2) The investigating officer shall make a recommendation whether the matter should be disposed of

- (a) by laying disciplinary charges,
- (b) by advising the member who is alleged to have committed a disciplinary default as to his future conduct, or
- (c) by taking no further action.

(3) In the event that the investigating officer recommends laying disciplinary charges, he shall further recommend the maximum penalty in respect of each charge.

(4) In particular, the investigating officer shall identify such organizational or administrative practices of the municipal force as may have caused, or contributed to the creation of, the disciplinary default.

12. (1) On receipt of the investigating officer's report and recommendations, the chief constable or his delegate shall decide on appropriate action.

(2) The chief constable or his delegate shall consider independently of disposition of the individual case all matters of a purely organizational or administrative nature which the case indicates may need further consideration.

(3) If no matters referred to in subsection (2) arise, the chief constable or his delegate shall specifically endorse this fact on the report of the investigating officer.

13. (1) If the chief constable or his delegate considers that a disciplinary charge should be laid, he shall prepare a charge in Form 3 setting out therein the precise disciplinary default alleged to have been committed, the maximum penalty applicable having regard to all the circumstances, and the date, time and place of the first hearing.

(2) Unless an accused member is absent without leave or otherwise avoiding service, the chief constable or his delegate shall serve Form 3 upon the accused member not less than 14 days before the first date of hearing accompanied by copies of the statements made by witnesses, a copy of the statement, if any, made by the member upon being served with Form 2, and the names of those witnesses to be called in support of any charges.

(3) The accused member shall not be entitled to a copy of the report or recommendations of the investigating officer.

14. Where the chief constable or his delegate considers that the member should be advised as to his future conduct without resort to formal disciplinary action, he should refer the case papers to the member's immediate supervisor in order that the member may be so advised.

15. A case in which a member has been advised as to his future conduct shall not be referred to as a disciplinary default for discipline purposes and it shall not be entered on the member's service record of discipline.

16. Where the chief constable or his delegate considers that no further action should be taken, the member against whom the allegation is made shall be informed forthwith in writing and such a disposition shall not be entered on the member's service record of discipline.

17. (1) The chief constable or his delegate under section 5, or the chairman of the board or chief constable under section 6, shall preside over disciplinary charges laid under section 13 and the hearing shall not be open to the public.

(2) The presiding officer may command the attendance of witnesses by notice in Form 4.

(3) The proceedings shall be recorded verbatim by some reliable means.

(4) Police members shall attend the hearing in uniform or plain clothes as the chief constable or his delegate directs, and shall be entitled to remuneration in

the same manner as any relevant collective agreement provides in respect of attendance at court.

18. (1) Where the maximum penalty as shown on Form 3 is a recommendation for dismissal, or requirement to resign from the municipal force, or reduction in rank,

- (a) presentation of the case against an accused member may be by counsel or a presenting officer appointed for the purpose by the chief constable or his delegate,
- (b) presentation of the defence may be by the accused member in person or by counsel or agent of his choice, and
- (c) the presiding officer may be assisted by counsel appointed by the chief constable or his delegate for the purpose of assisting the presiding officer respecting any points of law.

(2) Where the maximum penalty as shown on Form 3 is any punishment other than those mentioned in subsection (1),

- (a) presentation of the case against an accused member shall be by a presenting officer who shall not be below the rank of the accused member or above the rank of the presiding officer,
- (b) presentation of the defence may be by the accused member in person or an agent of his choice, and
- (c) the presiding officer shall not be assisted by counsel.

(3) Notwithstanding section 17 (4), an agent may attend the hearing in plain clothes if he so desires.

(4) Where a member

- (a) is in confinement pursuant to the decision of a court or other lawful authority,
- (b) is absent without leave, or
- (c) is otherwise avoiding the proceedings,

the hearing may proceed in his absence by the entry of a formal denial to any charges but no decision against the accused member shall be made unless the charges are strictly proved.

(5) An accused member who is absent may be represented by counsel or agent in accordance with the provisions of this section.

(6) At the commencement of the hearing, the presenting officer or counsel shall provide the presiding officer with details of any charge in Form 3 and the record of proceedings in Form 5.

19. (1) Subject to section 32, the presiding officer shall read the charges to the accused member and shall inquire whether each charge is admitted or denied.

(2) Any reply obtained under subsection (1) shall be entered on the record of proceedings in Form 5.

20. (1) Where the member admits a charge, then the facts shall be read to the presiding officer, who shall determine if the facts as outlined justify the admission, and, where he determines otherwise, he shall enter a formal denial.

(2) Where the admission is accepted by the presiding officer, the details of any previous disciplinary defaults within the meaning of section 33 (2) shall be read to the presiding officer and the accused member, his counsel, or agent shall be given an opportunity to make representations on the accused member's behalf.

(3) The presiding officer shall dispose of each disciplinary default by imposing one of the punishments set out in section 33.

21. Where the member denies a charge or the presiding officer orders a formal denial to be entered, the presiding officer shall, subject to section 32, fix a trial date.

22. The presenting officer or counsel and the accused member or his counsel or agent may, by agreement, permit certain of the facts in the case to be admitted in evidence without strict proof and the presiding officer may inquire of the existence of any areas of agreement as to the facts before evidence is called.

23. (1) The presenting officer or counsel shall bear the burden of proof, which shall be proof beyond a reasonable doubt.

(2) Except as otherwise provided in this regulation, the rules of evidence and procedure in summary conviction proceedings apply to a hearing.

24. The presenting officer or counsel shall call evidence of all those facts which are not the subject of agreement under section 22.

25. At the end of the case of the presenting officer or counsel, the presiding officer shall decide whether a prima facie case has been made out.

26. Where, at the end of the case of the presenting officer or counsel, the presiding officer decides that no prima facie case is made out on any particular charge, he shall dismiss any such charge against the accused member.

27. Where the presiding officer decides that a prima facie case has been made out, he shall call upon the accused member or his counsel or agent to answer the case.

28. At the end of the case for the accused member, the presiding officer shall hear submissions first from the presenting officer or counsel and then from the accused member, his counsel or agent.

29. Subject to section 32, the presiding officer shall, after considering all the facts and submissions in respect of each charge, decide whether any charge has been proved or should be dismissed.

30. (1) Subject to subsection (2), the presiding officer shall, after hearing details of any previous disciplinary defaults, impose one of the penalties in section 33 in respect of each charge proved against the accused member.

(2) Counsel appointed to assist a presiding officer with points of law shall take no part in the decision as to punishment.

(3) The penalty imposed shall not, in any event, be greater than that set out in Form 3 but may, in the discretion of the presiding officer, be less.

(4) No record of charges that have been dismissed shall be entered on a member's service record of discipline.

(5) A finding that a disciplinary default has been proved and any punishment awarded shall be entered on a member's service record of discipline

(a) where no appeal is filed within the appeal period, or

(b) where an appeal is dismissed and any further appeal period has expired.

31. Where a disciplinary charge is proved or an accused member admits a charge, a copy of the presiding officer's finding and punishment, in Form 6, shall be served on the accused member within 48 hours of the punishment being awarded, unless the member is absent without leave or otherwise avoiding the proceedings.

32. (1) The presiding officer may adjourn the hearing from time to time and may adjourn at the close of submissions and before deciding on a finding or punishment.

(2) No adjournment between a decision and an award of a punishment shall be for more than 8 days.

(3) Except where criminal proceedings arising out of the same facts or circumstances or an inquiry under section 45 of the Act are pending, adjournment shall be to a date certain.

(4) Where criminal proceedings arising out of the same facts or circumstances or an inquiry under section 45 of the Act necessitate adjournment under this section, the adjournment may be sine die.

33. (1) Upon finding a charge proven, the presiding officer may impose one or more of the following punishments:

(a) recommendation to the board that the member be dismissed from the municipal force;

(b) recommendation to the board that the member be required to resign from the municipal force;

(c) reduction in rank;

(d) fine, not to exceed \$200, and with time to pay, if any, at the discretion of the presiding officer;

(e) suspension without pay for not more than 5 days;

(f) reprimand.

(2) For the purposes of this regulation, a previous disciplinary default shall be any valid unexpunged entry made under this regulation on a member's service record of discipline.

(3) Recommendations under subsection (1) (a) or (b) shall be submitted to the board for consideration after expiry of the appeal period in those cases in which there is no further appeal.

(4) Fines imposed upon an accused member under this section are payable to the Minister of Finance.

34. No proceedings for an alleged disciplinary default under the code shall be commenced more than 6 months after the occurrence of the disciplinary default, or more than 3 months after the discovery that an alleged disciplinary default has occurred, whichever is the later.

35. For the purpose of this regulation, proceedings are commenced at the time Form 3 is served on an accused member, or in the case of a member who is absent without leave, or otherwise avoiding service, at the time Form 3 is signed by the chief constable or his delegate.

36. (1) Where, under section 6, the chairman of the board presides at the hearing, there is a right of appeal against the decision or punishment, or both, to the board; but the chairman shall not sit upon such an appeal.

(2) Where the presiding officer is a chief constable, there is a right of appeal against the decision or punishment, or both, to the board.

(3) There is no appeal against the dismissal of a charge.

37. (1) Where the presiding officer is a delegate of the chief constable, the chief constable shall, within 7 days after the decision is made by the delegate, consider the penalty imposed and may confirm or reduce, but not increase, the punishment.

(2) There is a right of appeal against the decision or punishment as confirmed or reduced, or both, by the member to the board.

(3) Where, within 7 days of a disposition by a delegate of the chief constable, no action under subsection (1) has been taken by the chief constable, the decision and punishment awarded by the presiding officer is confirmed.

38. (1) Notice of appeal, in writing and containing the grounds of appeal, shall be given to the board and to the chief constable or his delegate within 30 days after a decision under section 36, or a confirmation or reduction under section 37, unless the board, in the exercise of its discretion, grants an extension of time for the appeal.

(2) The only grounds of appeal shall be

(a) that there was no evidence on an essential element of the case against the accused member,

(b) that the accused member was deprived of a fair trial in accordance with the principles set out in the Act and this regulation,

(c) that the facts as found by the presiding officer did not amount to a disciplinary default under the code,

(d) that new evidence that could not have been discovered by reasonable diligence by or on behalf of the appellant has been discovered that renders the decision or punishment, or both, unjust or unsatisfactory, or

(e) that the punishment inflicted was unreasonable having regard to all the circumstances of the case.

(3) On receipt of notice of appeal to the board, the chief constable or his delegate shall ensure that a transcript of the hearing and the record of proceedings in Form 5 are forwarded to the board as soon as practicable.

39. (1) An appeal to the board shall be by argument on the record of the proceedings at the hearing, a transcript of which shall be supplied, on application and without charge, to the appellant.

(2) The proceedings before the board shall be recorded by some reliable means.

(3) The proceedings are not open to the public.

(4) The appellant may be represented by the member personally or by a counsel or agent of his choice and the respondent may be represented by counsel or agent appointed by the chief constable or his delegate.

40. (1) Subject to section 39, the board may make any finding or order and, where appropriate, impose any punishment that the presiding officer may have awarded at the hearing, except that the board, as employer, may dismiss a member or require resignation from the municipal force, or the board may order a new hearing and, in that event, sections 17 to 35 apply.

(2) The appellant member shall be served within 48 hours after the decision of the board with written notice in Form 7 of the decision.

(3) There is no appeal against the dismissal of a charge by the board.

41. (1) Following the decision of the board, an aggrieved member may further appeal to the commission against the decision or punishment, or both.

(2) Notice of appeal, in writing and containing the grounds of appeal, shall be given, within 30 days after the decision of the board is made, to the commission and the board unless the commission, in the exercise of its discretion, grants an extension of time for the appeal.

(3) The only grounds of appeal shall be

(a) that the board came to a wrong conclusion on one or more of the grounds of appeal set out in section 38 (2), or

(b) that new evidence that could not have been discovered by reasonable diligence by or on behalf of the appellant has been discovered that renders the decision or punishment, or both, unjust or unsatisfactory.

42. (1) An appeal to the commission shall be by argument on the record of the hearing before the presiding officer as affirmed or varied by the decision of the board, and both the appellant and respondent may be represented by counsel or agent.

(2) The proceedings are not open to the public.

(3) Where an appeal is taken to the commission, the chairman of the board shall ensure that transcripts of the hearing before the presiding officer, the proceedings before the board on appeal therefrom, and the record of proceedings in Form 5 are forwarded to the commission as soon as practicable.

(4) At the conclusion of the appeal, the commission may make any finding or order, and, where appropriate, impose any punishment that may have been awarded by the board, or the commission may order a new hearing and, in that event, sections 17 to 35 apply.

(5) The decision of the commission is final.

43. (1) Notwithstanding this regulation and unless the presiding officer, chief constable, board or commission then seized of the case otherwise directs, any disciplinary proceedings may be disposed of by

- (a) agreement,
- (b) consent order, or
- (c) a decision of the person or body seized of the case made
 - (i) without a hearing, or
 - (ii) without compliance with any other requirements of this regulation

where the parties have waived a hearing or compliance.

(2) For the purposes of subsection (1), the expression "parties" means the presenting officer or counsel, the accused member, his counsel or agent, and, where a disciplinary charge is laid as the result of a complaint from an identifiable member of the public, that member of the public.

(3) The presiding officer, chief constable, board or commission approving a disposition under subsection (1) shall declare whether or not the disposition is to be considered a disciplinary default for the purposes of this regulation.

44. (1) Notwithstanding this regulation, a chief constable may suspend any member from duty who, on reasonable and probable grounds, he believes to have committed an offence under a Federal or Provincial statute or a disciplinary default under the code that, in the opinion of the chief constable, renders the member unfit for duty.

(2) The chief constable may, at any time, revoke a suspension and order that the member be returned to duty.

(3) During a period of suspension from duty, a member shall not exercise his powers as a peace officer or police member and shall not wear or use the uniform or equipment of the municipal force.

45. (1) An officer of and above the rank of inspector, or a member specially delegated by the chief constable for this purpose, may exercise the power of suspension exercisable by the chief constable under section 44.

(2) The officer or member shall inform the chief constable forthwith after action is taken under subsection (1) and the chief constable shall in turn forthwith inform the board.

46. (1) At the earliest opportunity, and in any event within 72 hours of the original suspension, the chief constable shall decide whether the suspension is to continue in effect or be rescinded with or without conditions.

(2) In the event that the chief constable decides that the suspension is to continue, he shall report this fact forthwith to the board, and the suspension continues only if the decision is confirmed by the board within 72 hours after it is made.

47. (1) Where a member is under suspension under section 44, he shall receive pay and allowances for at least 30 days during the period of his suspension and thereafter at the discretion of the chief constable and the board.

(2) Written notice of a decision under subsection (1) by the chief constable and the board to discontinue a member's pay and allowances shall be given forthwith to the member who may thereafter appear personally or by counsel or agent before the board for a review of the decision.

(3) A member acquitted of all charges in proceedings before a criminal court and against whom no disciplinary proceedings are taken arising out of the same facts and circumstances shall receive full pay and allowances for any unpaid period of suspension.

(4) A member who has been suspended during an investigation which results in no disciplinary action or criminal proceedings shall receive full pay and allowances for any unpaid period of suspension.

(5) The presiding officer, at a hearing under sections 17 to 35,

(a) may, if he finds that a disciplinary default which caused the decision to suspend the member has been proved, make such order as to full or partial pay and allowances for any unpaid period of suspension as he considers proper, and

(b) shall, if he dismisses all of the alleged disciplinary defaults which caused the decision to suspend the member, order that the member receive full pay and allowances for any unpaid period of suspension.

48. (1) Subject to the provisions of this section, a service record of discipline shall be maintained in respect of each member against whom a disciplinary default has been registered under section 7 (9) or 33.

(2) Upon the application of a member who has an entry on his service record of discipline in accordance with section 7 (9) or 33 (1) (c), (d), (e) or (f), a chief constable shall order that the entry be expunged where, in the case of an entry

(a) under section 7 (9), one year has expired from the date of the punishment,

(b) under section 33 (1) (f), 2 years have expired from the date of the punishment,

(c) under section 33 (1) (d) or (e), 3 years have expired from the date of the punishment, or

(d) under section 33 (1) (c), 5 years have expired from the date of the punishment,

and in each case there have been no further entries on the service record of discipline since the date of the punishment.

(3) For the purposes of this section, the date of punishment is,

- (a) in the case of a written reprimand, the date of entry on the service record of discipline in accordance with section 7 (9), or
- (b) in the case of a punishment under section 33, the date of entry on the service record of discipline in accordance with section 30 (5).

(4) A member shall, on notice to the chief constable or his delegate, have the right to inspect his service record of discipline.

49. The chief constable shall supply to the commission at the end of each calendar year statistics on disciplinary defaults, within the meaning of Parts 1 and 2, in Form 8.

PART 2

DISCIPLINARY ACTION AGAINST CHIEF CONSTABLES AND DEPUTY CHIEF CONSTABLES

50. (1) Except as provided in Part 3, this Part applies to municipal forces and supersedes all regulations governing those municipal forces in matters covered by this regulation, and all such regulations are repealed.

(2) The general principles contained in this regulation apply to disciplinary action against chief constables and deputy chief constables with the following special provisions:

- (a) the report of an alleged disciplinary default by a chief constable or deputy chief constable under the code shall be reported to the chairman of the board;
- (b) the chairman of the board shall appoint one of the following to investigate the matter:
 - (i) a chief constable from another municipal force;
 - (ii) a counsel;
 - (iii) an investigator attached to or appointed by the Ministry of Attorney General;
- (c) the investigation shall be carried out in accordance with sections 10 and 11;
- (d) the report of the investigation shall be made to the chairman of the board, who shall decide whether a disciplinary hearing should be held or whether no further action should be taken;
- (e) in the event of a decision to lay charges under the discipline code, the hearing shall be before the board and the proceedings shall be recorded verbatim by some reliable means;
- (f) the case shall be presented by counsel or agent and a chief constable or deputy chief constable may appear personally or be represented by counsel or agent of his choice;

- (g) in the case of a chief constable, where a disciplinary default is proved, only the penalties in sections 33 (1) (a), (b) or (f) shall be applied;
- (h) in the case of a deputy chief constable, where a disciplinary default is proved, any of the penalties mentioned in section 33 (1) may be applied;
- (i) there is no appeal to the commission in the event that charges before the board are dismissed;
- (j) in the event of a finding by the board that a disciplinary default has been proved, the chief constable or deputy chief constable has the right of appeal to the commission, and, in that event, section 38 (2) governs the grounds of appeal and sections 41 and 42 apply, with the necessary changes and so far as they are applicable.

PART 3 CITIZEN COMPLAINTS

51. The person to whom a complaint is made shall record the complaint in Form 9 and shall furnish the complainant with a copy of Form 9 and a statement in Form 10 that sets out the procedures that will be followed respecting the complaint and the rights of the complainant.

[en. B.C. Reg. 142/89, s. 1, eff. July 1/89.]

52. (1) A complaint is resolved informally where a resolution of the complaint is proposed with which the complainant agrees.

(2) A complaint may be resolved informally at any time during the course of an investigation.

(3) Where a complaint is resolved informally, the complaint shall not appear in the service record of the constable complained against.

(4) Where a complaint is not resolved informally, a statement made by the constable complained against or another constable involved in the complaint, during the course of an attempt at informal resolution, shall not be admissible as evidence in a proceeding under the Act or regulations arising out of the complaint except a proceeding under this regulation respecting an allegation that, with intent to mislead, the constable made a statement to the disciplinary authority or a person appointed by the disciplinary authority to investigate the complaint, knowing it was false.

(5) Nothing in this section shall be construed as preventing a disciplinary authority from acting under Part 1 or 2, as the case may be, with respect to the same complaint but in that case the constable complained against is entitled to the protection provided under subsection (4) as though the complaint had not been resolved informally.

[en. B.C. Reg. 142/89, s. 1, eff. July 1/89.]

53. (1) For the purposes of the investigation of complaints pursuant to section 57 of the Act, the following procedures apply:

- (a) an investigating officer shall be appointed in accordance with the principles enunciated in section 8, 9 or 50 (2) (b), as the case may be;
 - (b) the investigating officer shall apply sections 10 and 11, so far as they are applicable.
- (2) On completion of an investigation, the disciplinary authority shall
- (a) in the case of a municipal constable, decide appropriate action in accordance with the provisions of sections 12 to 16,
 - (b) in the case of an auxiliary constable, decide appropriate action in accordance with the divisional operational policy, and
 - (c) in the case of a special Provincial constable, notify the employer of the results of the investigation conducted.
- (3) Where the decision under subsection (2) (a) involves conducting disciplinary procedures, the appropriate steps shall be taken under Part 1 or 2.
[en. B.C. Reg. 142/89, s. 1, eff. July 1/89.]

54. (1) For the purposes of section 59 of the Act, an investigation is completed on the date on which

- (a) a decision was taken that no further action is required following investigation of the complaint,
 - (b) a decision was taken that the member be advised as to his future conduct,
 - (c) the decision of a presiding officer or service court was made to dismiss the disciplinary charges laid against a member arising out of the complaint, or
 - (d) punishment was imposed by a presiding officer or service court in respect of a charge arising out of the complaint, or was confirmed or amended by the chief constable or other appropriate senior officer,
- as the case may be.

(2) Where the time has elapsed under section 60 (1) of the Act and no request for an inquiry has been received, a disposition referred to in subsection (1) (a), (b) or (c) becomes final, and only then may an appeal against a punishment referred to in subsection (1) (d) be proceeded with.

(3) Where an appeal has become final under subsection (2) and no notice of appeal has been given within 30 days of its becoming final, punishment may be imposed.

(4) Section 38 applies to an appeal.

[en. B.C. Reg. 142/89, s. 1, eff. July 1/89.]

55. The disciplinary authority shall supply to the commission at the end of each calendar year statistics in Form 11 on citizen complaints against members and the disposition of them.

[en. B.C. Reg. 142/89, s. 1, eff. July 1/89.]

56 to 58. Repealed. [B.C. Reg. 142/89, s. 1, eff. July 1/89.]

APPENDIX A

Discipline Code

Any member of a municipal force commits a disciplinary default if he engages in any one or more of the following:

1. Discreditable conduct, that is, if he
 - (a) acts in a disorderly manner or in a manner prejudicial to discipline or reasonably likely to bring discredit upon the reputation of the police force,
 - (b) assaults any other member of a police force,
 - (c) uses oppressive or abusive conduct or language towards any other member of a police force, or
 - (d) contravenes the provisions of the Act or any rule or regulation made or enacted in accordance with the Act.
2. Insubordination, that is, if he
 - (a) is insubordinate by word or action, or
 - (b) without lawful excuse, disobeys, omits or neglects to carry out a lawful order.
3. Neglect of duty, that is, if he
 - (a) neglects, or, without lawful excuse, omits promptly and diligently to perform a duty as a member of the police force,
 - (b) fails to work in accordance with orders, or leaves an area, detail or other place of duty without due permission or sufficient cause, or, having left his place of duty with such permission or cause, fails to return thereto without undue delay, or
 - (c) is absent from, or is late for, duty without reasonable excuse.
4. Deceit, that is, if he
 - (a) wilfully or negligently makes or signs a false, misleading or inaccurate oral or written statement or entry in any official document or record, or otherwise pertaining to official duties, or
 - (b) without lawful excuse destroys, mutilates or conceals any official document or record, or alters, erases or adds to any entry therein.
5. Improper disclosure of information, that is, if he
 - (a) without proper authority communicates to any person any information which he has in his possession as a member of a police force to the detriment of effective police operations,
 - (b) makes any anonymous communication to any police authority or any member of a police force, or
 - (c) signs or circulates a petition or statement in respect of a matter concerning the police force, except through the proper official channel of correspondence or established grievance procedure or in the bona

ful performance of his duties, as a representative of a certified police union, association or federation.

6. Corrupt practice, that is, if he
 - (a) fails properly to account for, or to make a prompt and true return of, any money or property received by him in the course of his duty,
 - (b) places himself under a pecuniary or other obligation to any person in such a manner as might affect the proper performance of his duties as a member of the police force, or
 - (c) improperly uses his position as a member of the police force for private advantage.

7. Abuse of authority, that is to say, if he
 - (a) without good or sufficient cause, makes an arrest,
 - (b) uses any unnecessary violence to any prisoner or other person with whom he may be brought into contact in the execution of his duty, or
 - (c) is discourteous or uncivil to any member of the public, having regard to all the circumstances of the case.

8. Improper use of firearms, that is, if he
 - (a) without proper authorization, carries, when on duty, any firearm other than one issued to him by the force,
 - (b) having discharged a firearm when on duty, other than on firearm training exercise, fails to report such incident to his senior officer as soon as practicable thereafter, or
 - (c) fails to exercise discretion and restraint in the use and care of firearms.

9. Damage to police property, that is, if he
 - (a) wilfully or by carelessness causes any waste, loss or damage to any police property or other property entrusted to his care, or
 - (b) fails to report any loss of or damage to any such property as above, however caused.

10. Misuse of intoxicating liquor or drugs in a manner prejudicial to duty, that is, if he,
 - (a) upon reporting for or while on duty, is unfit for duty as a result of drinking intoxicating liquor or the non-medical use of a drug, or
 - (b) without proper authority, makes any use of, or receives from any other person, any intoxicating liquor or a non-medical drug when on duty.

11. Improper dress or untidiness, that is, if he, while on duty, or while off duty but wearing uniform in a public place, is improperly dressed or is untidy in his appearance.

12. Criminal conduct, that is, if he is found guilty of an indictable offence or an offence punishable on summary conviction under any statute of Canada or any province or territory in Canada which renders him unfit to perform his duties.

13. Being an accessory to a disciplinary default, that is, if he aids, abets, connives at or is knowingly an accessory to a disciplinary default under the code.

14. Attempting to commit a disciplinary default, that is, if he attempts, by any means, to commit a disciplinary default under the code.

PROVINCE OF BRITISH COLUMBIA
NOTICE OF ALLEGED DISCIPLINARY DEFAULT

[Police (Discipline) Regulation, s. 10 (1)]

Police Force:

Date:

TO:¹

Take notice that you are alleged to have committed a disciplinary default under the Code by²

You are not obliged to say anything about this matter but, if you do wish to give your version, it will be taken down in writing and may be used in any subsequent disciplinary proceedings.

(Signed) _____

Rank _____

Force _____

Investigating Officer

¹Insert here the full name, rank and service number of accused member.

²Insert here, in ordinary language, details of the act or omission which is alleged to be a disciplinary default. At this stage a specific disciplinary default, in technical language and referring to the Code, is not required.

I acknowledge service of this form:

(Signed) _____

(Accused Member)

Date _____

PROVINCE OF BRITISH COLUMBIA
NOTICE OF FORMAL DISCIPLINE PROCEEDINGS
[Police (Discipline) Regulation, s. 13]

Police Force:

Date:

TO:¹

Pursuant to section 74, *Police Act*, and the Police (Discipline) Regulation made thereunder, you are alleged to have committed a

Disciplinary default, viz:²

Contrary to³

Particulars of disciplinary default⁴

Maximum penalty:⁵

You are required to appear at _____ on _____ at _____
(Place) (Date)
_____ to answer to this matter.
(Time) (Signed) _____
Chief Constable, Delegate or Chairman of Board

I acknowledge service of this form:
(Signed) _____
(Accused Member)

Date _____

¹Insert here the full name, rank and service number of accused member.
²Insert appropriate heading from the Discipline Code.
³Insert appropriate section from the Discipline Code.
⁴Insert date, time, place of alleged disciplinary default and sufficient particulars to identify the nature of the allegation. If there is more than one charge, each should appear as a separately numbered paragraph, or on a new Form 3.
⁵In the event of an accepted admission or finding of a disciplinary default, the penalty imposed shall not be greater than that set out above but may, in the discretion of the presiding officer, be less. (Police (Discipline) Regulation, s. 30 (3).)

330/75

POLICE ACT
POLICE (DISCIPLINE) - Appendix B

Form 4

PROVINCE OF BRITISH COLUMBIA
NOTICE TO WITNESS IN FORMAL
DISCIPLINE HEARING

[Police Act, S.B.C. 1988, c. 53, s. 66]

Police Force:

Date:

To:

Address:

Take notice that you are to be called as a witness in discipline proceedings being taken against

1

to be heard on _____ at _____ at _____ and your
(Date) (Time) (Place)
attendance is hereby required.

(Signed) _____
2Presiding Officer
2Chairman, Police Board / B.C. Police Commission

I acknowledge receipt of this notice:

(Signed) _____
Witness

Date _____

1Insert name, rank and service number of accused member.

2Delete, as applicable.

PROVINCE OF BRITISH COLUMBIA
RECORD OF FORMAL DISCIPLINE PROCEEDINGS

Police Force:

Details of accused member¹

Details of alleged disciplinary default:²

Reply to allegations: Admit:
Deny:

TRIAL

| Date(s) of Hearing | Disposition | Reason (e.g., for adjournment) |
|--------------------|-------------|--------------------------------|
| | | |

Finding:

Punishment:

(Signed) _____
Presiding Officer

Date _____

CONFIRMATION/AMENDATION BY CHIEF CONSTABLE

³I hereby confirm the above punishment.

³I hereby amend the above punishment by substituting the following:

(Signed) _____
Chief Constable

Date _____

cont'd

APPEAL TO POLICE BOARD

| Date of Hearing | Disposition | Reason |
|-----------------|-------------|--------|
| | | |

(Signed) _____
 Chairman, Police Board

Date _____

APPEAL TO B.C. POLICE COMMISSION

| Date of Hearing | Disposition | Reason |
|-----------------|-------------|--------|
| | | |

(Signed) _____
 Chairman, B.C. Police Commission

Date _____

¹Enter full name, rank and service number of accused member.

²This section shall contain the charges as drafted on Form 3.

³Delete as applicable.

PROVINCE OF BRITISH COLUMBIA
NOTICE OF PROOF OF DISCIPLINARY DEFAULT

[Police (Discipline) Regulation, s. 31]

Police Force:

Date:

To:¹

Take notice that on _____ the following disciplinary default(s)
(Date)

was/were proved against you:

Punishment:

²This finding and punishment shall be forwarded to the Chief Constable for confirmation or amendment.

³You have a right of appeal to the Police Board under the Police (Discipline) Regulation.

⁴This finding and penalty is subject to section 60 et seq. of the *Police Act*, which permits requests for a public inquiry, either by a municipal constable or by a citizen, in citizen complaint cases. If no such request is made by any party, you have a right of appeal to the Police Board under the Police (Discipline) Regulation.

(Signed) _____
Presiding Officer

I acknowledge service of this form:

(Signed) _____
Member.

Date _____

¹Show full name, rank and service number of member.

²Delete if not applicable (i.e., where Chief Constable is presiding officer).

Delete in citizen-complaint cases.

⁴Delete if not a citizen-complaint case.

330/75

POLICE ACT
POLICE (DISCIPLINE) - Appendix B

Form 7

PROVINCE OF BRITISH COLUMBIA
NOTICE OF RESULT OF APPEAL TO POLICE BOARD
[Police (Discipline) Regulation, s. 40 (2)]

Police Force: _____

Date: _____

To: ¹_____

On _____ the following disciplinary default(s) under the code
(Date)

was/were proved against you:

and you were ordered to be punished as follows:

Take notice that on _____ before the Police Board for
(Date)

_____ your appeal was dealt with as follows:
(Place)

Finding: _____

Punishment (if applicable): _____

(Signed) _____
Chairman, Police Board

I acknowledge service of this form:

(Signed) _____
Member

Date _____

¹Insert full name, rank and service number of appellant member.

PROVINCE OF BRITISH COLUMBIA
STATISTICAL INFORMATION ON
INTERNAL POLICE DISCIPLINE

[Police (Discipline) Regulation, s. 49]

Police Force:

Year ending December 31, 19 _____

| Subject | Number |
|--|--------|
| 1. Written reprimands issued | |
| 2. Written reprimands not disputed | |
| 3. Members formally investigated (including disputed written reprimands) | |
| 4. Decision following investigation: | |
| (a) Discipline | |
| (b) Advice | |
| (c) No action | |
| (d) Pending | |
| 5. Findings in formal discipline cases: | |
| (a) Disciplinary default proved | |
| (b) Case dismissed | |
| (c) Pending | |
| 6. Appeals to Police Board: | |
| Result - | |
| (a) Disciplinary default proved | |
| (b) Case dismissed | |
| (c) New hearing | |
| (d) Punishment sustained | |
| (e) Punishment altered | |
| (f) Pending | |
| 7. Appeals to Police Commission: | |
| Result - | |
| (a) Disciplinary default proved | |
| (b) Case dismissed | |
| (c) New hearing | |
| (d) Punishment sustained | |
| (e) Punishment altered | |
| (f) Pending | |

Date _____

(Signed) _____

Chief Constable

FORM 9
B.C. POLICE ACT - CITIZEN COMPLAINT FORM

(For complaints against Provincial Constables or Municipal Constables under the B.C. Police Act, S.B.C. 1988, Chapter 53)

| | | | |
|--|------------|---|------------------------|
| | | COMPLAINT FILE No. | |
| A. DEPARTMENT: | | CONNECTING CASE No. | |
| COMPLAINT RECEIVED | | HOW RECEIVED | COMPLAINT RECEIVED BY: |
| DATE | TIME (hrs) | __ Telephone __ Mail __ In Person | |
| Y M D | | | |
| B. COMPLAINANT'S SURNAME | | FULL GIVEN NAMES | MR. MRS./MISS |
| | | | AGE |
| ADDRESS—HOME | | POSTAL CODE | TELEPHONE No. |
| ADDRESS—BUSINESS | | POSTAL CODE | TELEPHONE No. |
| C. DETAILS OF COMPLAINT | | 2. WHEN OCCURRED | |
| 1. LOCATION OF INCIDENT | | Day of Week | Date Y M D |
| | | | Time (hrs.) |
| 3. WHAT HAPPENED | | ATTACHMENTS LETTER OF COMPLAINT: _____ OTHER: _____ | |
| IF ADDITIONAL SPACE IS REQUIRED, USE CONTINUATION REPORT) _____ | | (Signature of Complainant) | |
| 4. NAME OF MEMBER(S) INVOLVED | | ASSIGNMENT/DISTRICT | RANK |
| | | | P.I.N. |
| 5. DISCIPLINARY AUTHORITY RECEIVING COMPLAINT: _____ | | DATE: _____ | |
| (Name/Rank) | | (Complaint Received) | |
| COMMENT: | | | |
| D. INFORMAL RESOLUTION (pursuant to section 56) | | | |
| CONDUCTED BY: _____ | | DATE: _____ | |
| (Name/Rank) | | (Commenced) | |
| COMMENT/RESULT: | | DATE: _____ | |
| | | (Completed) | |
| E. RESOLUTION | | | |
| <input type="checkbox"/> I am satisfied with the results of the informal resolution of my complaint and I consider this matter to be resolved. | | | |
| <input type="checkbox"/> I am not satisfied with the results of the informal resolution of my complaint and I hereby request an investigation pursuant to section 57 (2) of the B.C. Police Act. | | | |
| Date: _____ | | (Signature of Complainant) | |
| Date: _____ | | (Signature of Discipline Authority or Delegate) | |

[en. B.C. Reg. 142/89, s. 2, eff. July 1, 1989.]

FORM 10
CITIZEN COMPLAINT PROCEDURE
BRITISH COLUMBIA POLICE ACT AND
DISCIPLINE REGULATIONS

"Complaint" means an allegation in writing made by a member of the public respecting the conduct of a municipal constable or a Provincial constable which, if proven, would constitute a disciplinary default under a code of conduct established by regulation.

A. COMPLAINTS AGAINST MUNICIPAL CONSTABLES

1. The British Columbia *Police Act* sets out the manner in which complaints against members of municipal police forces are to be handled. There are 4 possible steps in the complaint process. These are an **INFORMAL RESOLUTION** and an **INVESTIGATION**, which are conducted by the police department concerned, a **PUBLIC INQUIRY** before the Police Board, and an **APPEAL** and further inquiry conducted by the B.C. Police Commission.
2. Complaints against municipal constables should be directed to the **DISCIPLINARY AUTHORITY**, usually the chief constable, of the municipal police department concerned. However, complaints may also be received by the **COMPLAINT COMMISSIONER** who is a member of the B.C. Police Commission, or, in the absence of the disciplinary authority, by the **SENIOR CONSTABLE** on duty. The complaint commissioner or senior constable will forward your complaint to the appropriate disciplinary authority.
3. Upon receipt of a complaint, the disciplinary authority is responsible to attempt to resolve it **INFORMALLY** or to commence an **INVESTIGATION**.
4. A complaint is **INFORMALLY RESOLVED** where a resolution is proposed and agreed to by the complainant.
5. Where an attempt to **INFORMALLY RESOLVE** a complaint is unsuccessful the complainant may, in writing, request an **INVESTIGATION** by the disciplinary authority.
6. A disciplinary authority may **REFUSE TO INVESTIGATE OR TO FURTHER INVESTIGATE** a complaint if he is satisfied that it is (a) frivolous, vexatious, not made in good faith or concerns a trivial matter, or (b) the complaint primarily affects a third party, or (c) more than 6 months have passed since the incident occurred, or since the complainant first became aware of the incident which causes him to complain.
7. Where a disciplinary authority refuses to investigate a complaint, the complainant can within 10 days of being notified, submit a written request for his decision to be **REVIEWED** by the Police Board for the police department concerned. If this happens, 2 members of the Board will be assigned to **REVIEW** the complaint and the chief constable's decision to refuse to investigate.
8. The disciplinary authority must inform the complainant and the member complained against of the status of a complaint not later than 45 days

after it is initially recorded, and every 30 days thereafter until it is INFORMALLY RESOLVED or an INVESTIGATION is concluded.

9. Where a disciplinary authority has investigated a complaint, he shall, not more than 7 days after the investigation is completed, inform the complainant and the constable against whom the complaint is made of
 - (a) a summary of the investigation and the results of the investigation,
 - (b) any disciplinary action intended to be taken by the disciplinary authority, and
 - (c) the right of the complainant or constable against whom the written complaint is made to request an inquiry.
10. If the complainant or constable complained against is not satisfied with the results of the INVESTIGATION, he may request a PUBLIC INQUIRY. This request must be in writing to the disciplinary authority and must be made within 30 days of the date when the notice of the results of the investigation was received.

If a public inquiry is requested, the Police Board will, within 14 days of its receipt of the request, notify the complainant and the member complained against of the date and place of the inquiry.

After holding the inquiry, the Board will decide whether to approve or reject the action intended to be taken by the disciplinary authority, or it may request that the complaint be investigated further. The complainant and the member complained against will be notified of that decision within 10 days.

11. If the complainant or constable complained against is still dissatisfied with the decision of the Police Board, he may apply in writing to the Police Commission for PERMISSION TO APPEAL that decision. The Commission can, on certain grounds, refuse a request, but if it does decide to hold a second public inquiry, its decision after that inquiry is final and binding. There is no further appeal.

B. COMPLAINTS AGAINST PROVINCIAL CONSTABLES

12. The procedure for the receipt and handling of complaints against Provincial Constables is the same as for municipal constables except for the process of conducting the public inquiry. Please refer to the *Police Act*, sections 60 to 62 for information about this process.

C. GENERAL

13. For further information about the Citizen Complaint Procedure, please refer to the B.C. *Police Act*, sections 49 to 65 and the B.C. Police (Discipline) Regulations - Part 3.

You can also obtain information from your local police department or by contacting the B.C. Police Commission at the following locations:

In Victoria:
 B.C. Police Commission
 408, 3960 Quadra Street
 Victoria, B.C. V8X 4A3
 Telephone: (604) 387-0020

In Vancouver:
 B.C. Police Commission
 405, 815 Hornby Street
 Vancouver, B.C. V6Z 1E6
 Telephone: (604) 660-2385

[en. B.C. Reg. 142/89, s. 2, eff. July 1, 1989.]

PROVINCE OF BRITISH COLUMBIA
STATISTICAL INFORMATION ON PUBLIC COMPLAINTS
AGAINST POLICE

[Police (Discipline) Regulation, s. 55]

To British Columbia Police Commission.
Police Force:

Year ending December 31, 19____

| Subject | Number |
|--|--------|
| 1. Complaints against police: | |
| (a) Incidents | |
| Type of complaint - | |
| (i) Excessive force | |
| (ii) Disrespectful behaviour | |
| (iii) Neglect of duty | |
| (iv) Other | |
| (b) Citizens involved | |
| (c) Police involved | |
| Nature of duty - | |
| (i) Uniform patrol | |
| (ii) Detective | |
| (iii) Traffic duty | |
| (iv) Other | |
| 2. Informally resolved | |
| 3. Not proceeded with by citizen | |
| 4. Formal investigation carried out on receipt of written complaint | |
| 5. Decision following investigation: | |
| (a) Discipline | |
| (b) Advice | |
| (c) No action | |
| (i) Unsubstantiated | |
| (ii) Other | |
| (d) Pending | |
| 6. Applications for public inquiry by members of public | |
| 7. Applications for public inquiry by police (municipal only) | |
| 8. Disposition at public inquiry: | |
| (a) Action of disciplinary authority upheld | |
| (b) Action of disciplinary authority rejected | |
| (c) Request for further investigation by Commission | |
| (d) Pending | |

cont'd

330/75

POLICE ACT
POLICE (DISCIPLINE) - Appendix B

| Subject | Number |
|--|--------|
| 9. Application for leave to appeal to Commission | |
| 10. Disposition on appeal to Commission: | |
| (a) Public inquiry decision upheld | |
| (b) Public inquiry decision rejected | |
| (c) Pending | |

Date _____

(Signed) _____
Chief Constable

[Provisions of the *Police Act* (S.B.C. 1988, c. 53) relevant to the enactment of this regulation: sections 53, 74 (c)]

Queen's Printer for British Columbia ©
Victoria, 1990

APPENDIX "C"

ROBERTSON, PECK, THOMPSON

Barristers & Solicitors

TERRENCE L. ROBERTSON, Q.C.
RONALD K. GUTKIN
JACQUELINE C. MORRIS

RICHARD C.C. PECK, Q.C.*
GURMAIL S. GILL
CAROLYN P. BOUCK

BRUCE A. THOMPSON
MICHAEL J. MacLEOD
MICHAEL TAMMEN

*also of the Yukon Bar

1811 - 808 Nelson Street
P.O. Box 12149
Vancouver, B.C.
Canada
V6Z 2H2
Fax: (604) 669-0738
Telephone: (604) 669-1277

File No.: 7848

Reply to: Terrence L. Robertson, Q.C.

June 1, 1989

TO INTERESTED PARTIES:

Dear Sir or Madam:

re: Review of the Police (Discipline) Regulations

As you are no doubt aware, the new Police Act comes into force on July 1, 1989. As part of the legislative review that resulted in changes to the Police Act, the Solicitor General has appointed me to undertake a review of the Police (Discipline) Regulations. My task includes:

1. A review the work of the Discipline Regulation Review Committee, chaired by Mary Saunders, which has completed its work;
2. Consultation with chiefs of police, municipal police boards, police unions, the B. C. Federation of Police Officers, special interest groups and individuals with knowledge of or experience in the operation of the Police (Discipline) Regulations;
3. The development of specific legislative recommendations to amend and update the Police (Discipline) Regulations, and to provide for the dismissal of members for reasons other than discipline and the termination of probationary members.

The Solicitor General has asked me to complete my review and report to him with recommendations by November 1, 1989.

I intend to conduct my review in two stages, the first of which is to seek comment from your organization on the matters set out in this letter. Please make your submission in writing to me by August 1, 1989. If you wish to discuss your written submission, I will be available to meet with you or your representatives.

After receipt of submissions I will prepare a first draft of regulations and circulate them for comment. I would like to have the draft regulations circulated by September 1 and receive comments and complete the second stage by October 1.

The issues and procedures on which I am seeking your comments are under three main headings:

1. Probationary Constables;
2. Dismissal for reasons other than Discipline;
3. Internal Discipline.

I. Probationary Constables

Although some collective agreements between municipal police boards and their associations deal with probationary employees and such matters as the length of the probationary period and the grounds for termination, the current legislation is silent as to the status of probationary employees, and a strict interpretation would indicate that a probationary constable cannot presently be dismissed for other than disciplinary reasons.

1. Should there be regulations to the Police Act clarifying that probationary constables may be terminated during their probation or terminated at the expiry of their probationary period without the necessity of a breach of the Discipline Code?
2. If such a regulation were enacted, should the probationary constable be given a right of appeal and, if so, should that appeal be to:
 - (a) the police board that employs him;
 - (b) a statutory tribunal established under the regulations,
 - (c) an arbitrator selected by the parties pursuant to the collective agreement, or
 - (d) some other form of tribunal?
3. Should the length of the probationary period be set out by regulation or left to be determined between the parties in the collective agreement?

II. Dismissal for Reasons other than Discipline

It is my intention to recommend procedures allowing for the dismissal of police members for reasons other than discipline, such as physical incapability, mental illness or alcoholism. At this point, I see two options: leaving the matter to the collective bargaining process or codifying a procedure in the Police (Discipline) Regulations. A further consideration is whether there should be a right of appeal in such cases and, if so, to which body should the appeal lie?

III. Internal Discipline

There are numerous features to the current discipline regulations that are unique to police organizations. Some of the more significant of these features and the questions that arise are:

1. The use of quasi-criminal terminology and procedure, including a criminal standard of proof and criminal rules of evidence:

Is a quasi-criminal hearing or indeed, any hearing at all, necessary for all types of disciplinary infractions? Why retain the criminal standard of proof? If an officer is acquitted of a criminal charge related to or on the same facts as the disciplinary infraction, should this acquittal necessarily bar disciplinary proceedings?

2. The hearing and appeal process:

The member's actions are currently adjudicated by the chief constable and the appeal against the adjudication is to the police board who is the employer of the member and the chief constable. Does this process afford the member a fair hearing? How many levels of appeal should a member have and on what grounds? Should the appeal take the form of a new hearing or of a review of the record? Should the appeal body have the right to vary the discipline assessed?

3. The type of discipline:

The existing regulations prescribe the punishments that may be either recommended or imposed by the "presiding officer" upon a finding of a breach of the Discipline Code. There is no provision to assess forms of discipline not specifically set out. The same restrictions apply to the body hearing the appeal. Are such restrictions on the presiding officer and the appeal body necessary or desirable?

I look forward to receiving your comments and suggestions, all of which will be thoughtfully considered.

Yours truly,

ROBERTSON, PECK, THOMPSON

Terrence L. Robertson, Q.C.

TLR:sa

APPENDIX "D"

INTERESTED PARTIES:

President
Vancouver Policemen's Union
Local #1
111 Main Street
Vancouver, B. C.
V6A 2S5

President
Victoria City Policemen's Union
Local #2
Post Office Box 1536
Victoria, B. C.
V8W 2X7

President
New Westminster Policemen's Association
Post Office Box 368
New Westminster, B. C.
V6L 4Y7

President
Saanich Police Association
Local #4
Post Office Box 4023
Station A
Victoria, B. C.
V8X 3X4

President
Victoria Police Officers' Association
625 Fisgard Street
Victoria, B. C.
V8W 1R7

President
Oak Bay Police Association
Local #5
1703 Monterey Avenue
Oak Bay, B. C.
V8R 4V6

President
Esquimalt Police Union
Local #6
c/o 1229 Esquimalt Road
Victoria, B. C.
V8Z 3V1

President
West Vancouver Policemen's Association
Local #8
Post Office Box 91074
West Vancouver, B. C.
V7V 3N3

President
Vancouver Police Officers' Association
c/o Vancouver Police Department
312 Main Street
Vancouver, B. C.
V6A 2T2

President
Delta Municipal Police Association
4455 Clarence Taylor Crescent
Delta, B. C.
V4K 3E1

President
Port Moody Policemen's Union
Post Office Box 72
Port Moody, B. C.
V3H 3E1

President
Nelson Police Association
Local #11
Post Office Box 459
Nelson, B. C.
V1L 5R3

President
Central Saanich Policemen's Association
7856 East Saanich Road
Saanich, B. C.
VOS 1MO

B. C. Federation of Police Officers
603 - 190 Alexander Street
Vancouver, B. C.
V6A 1B7

President
Matsqui Policemen's Association
Local #7
Post Office Box 261
Abbotsford, B. C.
V2T 1W6

John Westwood
Executive Director
B. C. Civil Liberties Association
518 - 119 West Pender Street
Vancouver, B. C.
V6B 1S5

His Worship Mayor Gerald Rotering
Chairman
Nelson Police Board
502 Vernon Street
Nelson, B.C.
V1L 4E8

His Worship Mayor David T. Driscoll
Chairman
Port Moody Police Board
425 St. John's Street
Port Moody, B. C.
V3H 3E1

Her Worship Mayor Gretchen Brewin
Chairman
Victoria Police Board
1 Centennial Square
Victoria, B. C.
V8W 1P6

His Worship Mayor Douglas Husband
Chairman
Delta Police Board
4450 Clarence Taylor Crescent
Delta, B. C.
V4K 3E2

His Worship Mayor Dave Kandal
Chairman
Matsqui Police Board
220 - 32315 S. Fraser Way
Clearbrook, B. C.
V2T 1W7

Phil Crosby-Jones
Director
Police Academy
Justice Institute of British Columbia
4180 West 4th Avenue
Vancouver, B. C.
V6R 4J5

His Worship Mayor Thomas C. Baker
Chairman
New Westminster Police Board
511 Royal Avenue
New Westminster, B. C.
V3L 1H9

His Worship Mayor Gordon Campbell
Chairman
Vancouver Police Board
453 West 12th Avenue
Vancouver, B. C.
V5Y 1V4

His Worship Mayor Ron Cullis
Chairman
Central Saanich Police Board
1903 Mt. Newton X Road
Saanichton, B. C.
VOS 1M0

His Worship Mayor Ron Warder
Chairman
Esquimalt Police Board
1229 Esquimalt Road
Victoria, B. C.
V9A 3P1

Her Worship Mayor Susan Brice
Chairman
Oak Bay Police Board
2168 Oak Bay Avenue
Victoria, B. C.
V8R 1G2

His Worship Mayor Howard Sturrock
Chairman
Saanich Police Board
770 Vernon Avenue
Victoria, B. C.
V8X 2W7

Chief Constable P. Wilson
Delta Police Department
4455 Clarence Taylor Crescent
Delta, B. C.
V4K 3E1

Chief Constable Barry Daniel
Matsqui Police Service
2838 Park Street
Clearbrook, B. C.
V2T 3P5

Chief Constable K. Brown
New Westminster Police Department
511 Royal Avenue
New Westminster, B. C.
V3L 1H9

Chief Constable G. W. G. Laughy
Port Moody Police Department
3051 St. John's Street
Port Moody, B. C.
V3H 2C4

Chief Constable R. L. Miles
Central Saanich Police Department
1903 Mt. Newton X Road
Saanichton, B. C.
VOS 1M0

Chief Constable H. A. Jenkins
West Vancouver Police Department
1330 Marine Drive
West Vancouver, B. C.
V7T 1B5

Deputy Commissioner D. K. Wilson
Commanding Officer
"E" Division
Royal Canadian Mounted Police
657 West 37th Avenue
Vancouver, B. C.
V5Z 1K6

His Worship Mayor Donald Lanskaill
Chairman
West Vancouver Police Board
750 - 17th Street
West Vancouver, B. C.
V7V 3T3

Chief Constable P. J. Marriott
Esquimalt Police Department
500 Park Place
Victoria, B. C.
V9A 6Z9

Chief Constable R. Brock
Nelson Police Department
601B Vernon Street
Post Office Box 285
Nelson, B. C.
V1L 5P9

Chief Constable S. C. Anderson
Oak Bay Police Department
1703 Monterey Avenue
Victoria, B. C.
V8R 5V6

Chief Constable W. O. Nixon
Saanich Police Department
760 Vernon Avenue
Victoria, B. C.
V8X 2W6

Chief Constable R. J. Stewart
Vancouver Police Department
312 Main Street
Vancouver, B. C.
V6A 2T2

Chief Constable W. J. Snowdon
Victoria Police Department
625 Fisgard Street
Victoria, B. C.
V8W 1R7

David Edgar
Chairman
B. C. Police Commission
408 - 3960 Quadra Street
Victoria, B. C.
V8X 4A3

Constable Peter Martin
Central Saanich Police Department
1903 Mt. Newton X Road
Saanichton, B. C.
VOS 1MO

Corporal Paul Battershill
B. C. Federation of Police Officers
605 - 190 Alexander Street
Vancouver, B. C.
V6A 1B3

Mr. Don A. Farquhar, Q. C.
Pearlman and Lindholm
Barristers and Solicitors
Post Office Box 1327
Victoria, B. C.
V8W 2W6

Ms. M. Keating
2658 West 34th Avenue
Vancouver, B. C.
V6N 2J2

Mr. Maurice Shaw
Police Services Branch
205 - 815 Hornby Street
Vancouver, B. C.
V6Z 2E6

Mr. Bill Beamish
B. C. Police Commission
408 - 3960 Quadra Street
Victoria, B. C.
V8X 4A3

Ms. Mary Saunders
B. C. Police Commission
405 - 815 Hornby Street
Vancouver, B. C.
V6Z 2E6

Chief Constable P. J. Marriot
B. C. Association of Chiefs of Police
c/o Esquimalt Police Department
1229 Esquimalt Road
Victoria, B. C.
V9A 3P1

APPENDIX "E"

ROBERTSON, PECK, THOMPSON

Barristers & Solicitors

TERRENCE L. ROBERTSON, Q.C.
RONALD K. GUTKIN
MICHAEL J. MacLEOD
MICHAEL TAMMEN

RICHARD C.C. PECK, Q.C.*
ROBERT A. DORAN
JACQUELINE C. MORRIS

BRUCE A. THOMPSON
GURMAIL S. GILL
CAROLYN P. BOUCK

*also of the Yukon Bar

1811 - 808 Nelson Street
P.O. Box 12149
Vancouver, B.C.
Canada
V6Z 2H2
Fax: (604) 669-0738
Telephone: (604) 669-1277

File No.: 7848

Reply to: Terrence L. Robertson, Q.C.

August 31, 1989

TO INTERESTED PARTIES:

Dear Sir or Madam:

re: Review of the Police (Discipline) Regulations

Further to my letter of June 1, 1989, I am enclosing a preliminary draft of one proposal for amending the Police (Discipline) Regulations and a brief explanation of the proposal. I must emphasize that the proposal containing some detail is only one of the several under consideration. We ask for your comments as to the draft of the model proposal but also seek your input as to the other alternatives that have not yet been detailed.

Two possible variations are set out below. If either of these variations are preferable to the enclosed proposal, please advise me, setting out your reasons. The possible variations will be clearer after you have read and considered the enclosed material.

VARIATION 1: The enclosed draft proposal calls for discipline to be dealt with under two separate procedures. Conduct dealing with employee/employer matters is dealt with through the labour relations model, and alleged breaches of the Code of Police Conduct involve a hearing process prior to discipline being imposed.

While I feel the procedures built into the model are sufficient to address any difficulties involved in having two streams of disciplinary conduct, another option would be to allow only conduct that warranted certain penalties to be dealt with under the labour relations model. Dismissal and major suspensions for cause would necessitate a formalized hearing process prior to discipline being imposed even if the Code of Police Conduct were not breached.

VARIATION 2: A second option is to make the Industrial Relations Act inapplicable to all types of discipline and to legislate a scheme that allows the chief to take unilateral action for certain types of conduct, or where the penalty is less than a certain amount. Conduct for which a chief could impose unilateral discipline could be determined either by the nature of the conduct or by the nature of the penalty sought to be imposed. Either way, the regulation could incorporate a statutory grievance procedure to an arbitrator, with a limited appeal similar in

scope to that provided by s. 108 of the Industrial Relations Act. More serious conduct, or conduct deserving of a greater penalty, would continue to be dealt with by way of a hearing prior to discipline being imposed.

I look forward to receiving your comments. I assure you that no decisions whatsoever have yet been made, and the enclosed proposed draft is not necessarily the one that will ultimately be recommended to the Solicitor General. It has been drafted in legislative language in the hope that it will serve as a basis for productive discussion.

In addition to welcoming your written submissions, I would be pleased to meet with you or your representatives any time during September to discuss the enclosed proposal. I am receptive to new approaches and wish to hear from you.

Yours truly,

ROBERTSON, PECK, THOMPSON

Terrence L. Robertson, Q.C.

TLR:sa

APPENDIX "F"

August 31, 1989

"POLICE ADMINISTRATION REGULATIONS"

PRELIMINARY DRAFT

PART 1

MANAGEMENT OF THE FORCE,
INCLUDING NON-CULPABLE DISCHARGE
AND DISCHARGE OF PROBATIONARY MEMBERS

PART 2

COMPLAINTS AGAINST POLICE

PART 3

CONDUCT OF MEMBERS

PART 4

CONDUCT OF CHIEF CONSTABLES AND
DEPUTY CHIEF CONSTABLES

1. In these regulations:

"Act" means the Police Act;

"agent" means a member of a municipal police force in the Province;

"association" means an association of members employed by a board and certified under the Industrial Relations Act to bargain collectively for those members;

"board" means the police board of the municipality that employs the member;

"chief" means chief constable of the municipal police force to which the member belongs and includes a member acting as such and a member to whom the chief constable has delegated his powers under this regulation;

"collective agreement" means a collective agreement as defined in the Industrial Relations Act between a board and an association;

"counsel" means a member in good standing of the Law Society of British Columbia;

"hearing" means a hearing under Part 3;

"member" means a member of a municipal police force, by whatever rank or title he may be designated in the Province, who has been sworn in as a peace officer;

"probationary member" means a member, whether or not a qualified municipal constable, who has not completed the term of probation as defined in the collective agreement governing his employment;

"service record of discipline" means that portion of a member's personnel file which shall contain only details of disciplinary punishment imposed under the Act or Parts 1 or 3 of this regulation or imposed under the Police (Discipline) Regulation, B.C. Reg. 330/75;

"Supreme Court" means the Supreme Court of British Columbia.

2. Except as provided in Part 2, these regulations apply to the municipal police forces and supersede all regulations governing them in matters covered by this regulation and all such regulations are repealed.
3. Where there is a conflict between a collective agreement and these regulations, these regulations shall govern.

PART 1

MANAGEMENT OF THE FORCE, INCLUDING NON-CULPABLE DISCHARGE AND DISCHARGE OF PROBATIONARY MEMBERS

4. In this Part,

"discipline" includes discharge for just and reasonable cause;

"non-culpable discharge" means discharge under section 12;

"member" includes probationary member;

5. The Industrial Relations Act applies to this Part.

6. This Part applies to:

(1) the discipline of a member for just and reasonable cause;

(2) the non-culpable discharge of a member;

(3) the discharge for unsuitability of a probationary member during a term of probation;

but does not apply to an allegation that a member has breached the Code of Police Conduct.

7. The chief may impose discipline on a member for just and reasonable cause provided the conduct giving rise to the discipline does not constitute an allegation that the member has breached the Code of Police Conduct.
8. The chief may take action under this Part for conduct for which the member has been charged with an offence punishable on indictment or on summary conviction.
9. In proceedings under this Part, an arbitrator when considering the appropriateness of the discipline imposed by the chief may consider the service record of discipline of the member.
10.
 - (1) Where a member is disciplined under this Part and the association alleges that the conduct giving rise to the disciplinary action is such that the matter should be dealt with pursuant to Part 3 of these regulations, the association may file a grievance under the collective agreement on the grounds that the true nature of the conduct for which discipline was imposed constituted a breach of the Code of Police Conduct.
 - (2) Where an arbitrator reviewing action taken pursuant to this Part determines, upon application by an association, that the true nature of the matters before him involve an alleged breach of the Code of Police Conduct he shall allow the grievance and set aside the discipline imposed by the chief.
11. The chief may recommend to the board that a member be discharged or be placed on retirement, if he is entitled thereto, where the chief is of the opinion that the member is, due to:
 - (1) a physical, mental or psychological disability; or
 - (2) addiction to alcohol or a drug; or
 - (3) any other reason;incapable of performing the duties of a member.
12. Where the chief makes a recommendation to the board under section 11, the board may discharge a member or place him on retirement.
13. The chief may recommend to the board that a probationary member be discharged where the chief is of the opinion that the probationary member is unsuitable to perform the duties of a member.
14. Where the chief makes a recommendation to the board under section 13, the board may discharge a probationary member pursuant to the collective agreement.

PART 2
CITIZEN COMPLAINTS

15. The person to whom a complaint is made shall record the complaint in Form 9 and shall furnish the complainant with a copy of Form 9 and a statement in Form 10 that sets out the procedures that will be followed respecting the complaint and the rights of the complainant.
16.
 - (1) A complaint is resolved informally where a resolution of the complaint is proposed with which the complainant agrees.
 - (2) A complaint may be resolved informally at any time during the course of an investigation.
 - (3) Where a complaint is resolved informally, the complaint shall not appear in the service record of the constable complained against.
 - (4) Where a complaint is not resolved informally, a statement made by the constable complained against or another constable involved in the complaint, during the course of an attempt at informal resolution, shall not be admissible as evidence in a proceeding under the Act or regulations arising out of the complaint except a proceeding under this regulation respecting an allegation that, with intent to mislead, the constable made a statement to the disciplinary authority or a person appointed by the disciplinary authority to investigate the complaint, knowing it was false.
 - (5) Nothing in this section shall be construed as preventing a disciplinary authority from acting under Part 3 with respect to the same conduct which formed the basis of the complaint but in that case the constable complained against is entitled to the protection provided under subsection (4) as though the complaint had not been resolved informally.
17.
 - (1) For the purposes of the investigation of complaints pursuant to section 57 of the Act, the following procedures apply:
 - (a) an investigating officer shall be appointed in accordance with the principles enunciated in sections 22, 23 or 68 (1) (b), as the case may be;
 - (b) the investigating officer shall apply sections 24 and 26, so far as they are applicable.
 - (2) On completion of an investigation, the disciplinary authority shall
 - (a) in the case of a municipal constable, decide appropriate action in accordance with the provisions of sections 27 or 37,
 - (b) in the case of an auxiliary constable, decide appropriate action in accordance with the divisional operational policy, and

- (c) in the case of a special Provincial constable, notify the employer of the results of the investigation conducted.
- (3) Where the decision under subsection (2) (a) involves conducting disciplinary procedures, the appropriate steps shall be taken under Part 3 or 4.
18. (1) For the purposes of section 59 of the Act, an investigation is completed on the date on which
- (a) a decision was made that no further action is required following investigation of the complaint,
 - (b) a decision was made that the member be advised as to his future conduct;
 - (c) the decision of a presiding officer or service court was made to dismiss the disciplinary charges laid against a member arising out of the complaint, or
 - (d) punishment was imposed by a presiding officer or service court in respect of a charge arising out of the complaint, or was confirmed or amended by the chief constable or other appropriate senior officer,
- as the case may be.
- (2) Where the time has elapsed under section 60 (1) of the Act and no request for an inquiry has been received, a disposition referred to in subsection (1) (a), (b) or (c) becomes final, and only then may an appeal against a punishment referred to in subsection (1) (d) be proceeded with.
- (3) Where a disposition has become final under subsection (2) and no notice of appeal has been given within 30 days of it becoming final, punishment may be imposed.
- (4) Sections 54 and 55 apply to an appeal.
- (5) Where an inquiry is held under section 60 or 65 of the Act any evidence given by a member pursuant to an order of the board or the commission shall not be admitted in evidence at a hearing held under Part 3 or 4 to determine whether the member breached the Code of Police Conduct.
19. The disciplinary authority shall supply to the commission at the end of each calendar year statistics in Form 11 on citizen complaints against members and the disposition of them.

PART 3

CONDUCT OF MEMBERS

20. In this Part,
- "breach" means breach of the Code of Police Conduct;
- "Code of Police Conduct" means Appendix A;
- "investigating officer" means a member appointed under sections 22 or 23;
- "member" includes a probationary member;
- "presenting officer" means counsel or agent appointed by the chief to present the case against a member alleged to have committed a breach of the Code of Police Conduct;
- "presiding officer" means the chief or a person delegated by the chief to preside over a hearing under section 43;
21. (1) A member may be disciplined for a breach of the Code of Police Conduct only through proceedings conducted under this Part.
- (2) The chief may delegate his power under this Part.
- (3) The Industrial Relations Act does not apply to this Part.

INVESTIGATIONS

22. (1) On receipt of an allegation that the Code of Police Conduct has been breached, the chief shall order an investigation by a member not below the rank of corporal but who is above the rank of the member against whom the allegation is made.
- (2) No member having any connection with the alleged breach of the Code of Police Conduct shall be appointed under subsection (1).
23. If the chief is unable to appoint an investigating officer unconnected with the alleged breach of the Code of Police Conduct from within the municipal force, or if, for any reason, he considers it advisable, he may order the investigation to be undertaken by a member of another municipal force whose rank complies with the requirements of section 22 and who shall, subject to the consent of his chief constable, discharge the duties placed upon him by this regulation.
24. (1) The investigating officer shall obtain written statements from all witnesses to the alleged breach of the Code of Police Conduct, serve notice of the alleged breach in Form 2 upon the member, and ensure that any statement the member may wish to make in reply to the allegation is recorded in writing.

- (2) Where the matter being investigated may be both an offence punishable on indictment or on summary conviction and a breach of the Code of Police Conduct, an interview with a member respecting the alleged breach shall first be completed in compliance with the usual investigative procedures respecting offences punishable on indictment or on summary conviction before service of Form 2 and compliance with the requirements of this regulation are carried out.
25. At any time the member may, but is not required to, make a written or oral statement concerning the matter or matters under investigation, but no such statement made prior to the service on him of Form 2 shall be admitted in evidence at his hearing.
26. (1) The investigating officer shall complete a report of his investigation and forward it, together with statements of witnesses and any statement made by a member upon being served with Form 2, to the chief.
- (2) The investigating officer shall make a recommendation whether the matter should be disposed of
- (a) by commencing proceedings against the member for a breach of the Code of Police Conduct;
 - (b) by advising the member who is alleged to have committed a breach of the Code of Police Conduct as to his future conduct, or
 - (c) by taking no further action.
- (3) In the event that the investigating officer recommends commencing proceedings against the member for a breach of the Code of Police Conduct, he shall further recommend the maximum penalty in respect of each alleged breach.
- (4) In particular, the investigating officer shall identify such organizational or administrative practices of the municipal force as may have caused, or contributed to the creation of, the alleged breach.
27. (1) On receipt of the investigation officer's report and recommendations, the chief shall decide on appropriate action.
- (2) The chief shall consider independently of the individual case all matters of a purely organizational or administrative nature which the case indicates may need further consideration.
- (3) If no matters referred to in subsection (2) arise, the chief shall specifically endorse this fact on the report of the investigating officer.
- (4) Where the chief considers that a member shall be advised as to his future conduct, the alleged breach of the Code of Police Conduct shall not be entered on the member's service record of discipline.
- (5) Where the chief considers that no further action should be taken, the member against whom the allegation is made shall be informed forthwith in writing and such a disposition shall not be entered on the member's service record of discipline.

SUSPENSIONS

28. (1) Notwithstanding this regulation, the chief may suspend a member from duty who, on reasonable grounds, he believes to have committed an offence under a Federal or Provincial statute or a breach of the Code of Police Conduct that, in the opinion of the chief, renders the member unfit for duty.

(2) During a period of suspension from duty, a member shall not exercise his powers as a peace officer or police member and shall not wear or use the uniform or equipment of the municipal force.
29. The chief shall forthwith report a suspension made under section 28 to the board and the board shall confirm or rescind the suspension at the earliest opportunity, and in any event within seven days of receiving the report from the chief.
30. Where the board confirms the suspension made pursuant to section 28 it shall determine whether to discontinue a member's pay and allowances for the duration of his suspension.
31. Where the board decides to discontinue a member's pay and allowances it shall give notice forthwith to the member who may thereafter appear personally or by counsel or agent before the board for a review of the decision.
32. Where a member is under suspension, he shall receive pay and allowances for at least 30 days during the period of his suspension.
33. Upon recommendation by the chief, the board may, at any time, revoke a suspension and order that the member be returned to duty.
34. Where a member has been suspended during an investigation and proceedings against him are not commenced for a breach of the Code of Police Conduct and he is not charged with an offence punishable on indictment or on summary conviction he shall receive full pay and allowances for any unpaid period of suspension.
35. A member acquitted of all offences punishable on indictment or on summary conviction and against whom no disciplinary proceedings are taken shall receive full pay and allowances for any unpaid period of suspension.
36. Where a breach of the Code of Police Conduct is admitted to by or proven against a member any unpaid period of suspension shall be taken into account by the presiding officer in determining punishment for the breach.

COMMENCEMENT OF PROCEEDINGS

37. When the investigation of the alleged breach of the Code of Police Conduct is complete, the chief shall review the results of the investigation and shall decide whether to commence proceedings against the member for a breach of the Code of Police Conduct.

38. (1) Where the chief decides to commence proceedings against the member pursuant to section 37, the member shall, not less than 14 days before the hearing commences, be served with
- (a) Form 3, setting out therein the breach or breaches of the Code of Police Conduct alleged to have been committed and the maximum penalty applicable having regard to all the circumstances,
 - (b) a copy of every document which the presiding officer intends to tender in evidence;
 - (c) a copy of any statement made by a person whom the presiding officer intends to call as a witness;
 - (d) a copy of the statement, if any, made by the member upon being served with Form 2;
 - (e) the names of those witnesses to be called to prove the alleged breach.
- (2) More than one breach of the Code of Police Conduct may be alleged on Form 3 and where "breach" is used in this Part it refers to all the breaches alleged on Form 3.
- (3) The member shall not be entitled to a copy of the report or recommendations of the investigating officer.
- (4) Where personal service cannot be effected, delivery of Form 3 and other documents set out in (1) to the last known address of the member contained in police board files shall be service under this Part.
39. Where the chief considers that the member should be advised as to his future conduct without resort to formal disciplinary action, he should refer the case papers to the member's immediate supervisor in order that the member may be so advised.
40. A case in which a member has been advised as to his future conduct shall not be entered on the member's service record of discipline.
41. Where the chief considers that no further action should be taken, the member against whom the allegation is made shall be informed forthwith in writing and such a disposition shall not be entered on the member's service record of discipline.

HEARINGS

42. A member against whom a breach of the Code of Police Conduct is alleged is entitled to a hearing in accordance with sections 42 to 51.
43. (1) The chief may hear and decide internal disciplinary matters personally or may delegate an officer, not below the rank of inspector, to hear the charges;

(2) Where the chief is a material witness, the chairman of the board or a chief constable from another municipal force appointed by that chairman, shall perform the functions required of a chief or his delegate under this Part;

(3) The chief or his delegate under subsection (1) or the chairman of the board or chief constable under subsection (2) shall preside over the hearing under this Part, and is referred to as the "presiding officer";

(4) The presiding officer may command the attendance of witnesses by notice in Form 4;

(5) The hearing shall not be open to the public.

44. (1) Where a member

(a) is in confinement pursuant to the decision of a court or other lawful authority, or

(b) is absent without leave, or

(c) is otherwise avoiding the proceedings,

the hearing may proceed in his absence by the entry of a formal denial to any charges but no decision against the member shall be made unless the breach is proved in accordance with the provisions of this Part.

(2) A member who is absent may be represented by counsel or agent.

45. In hearings under this Part:

(1) A member against whom a breach is alleged

(a) may be represented by counsel or agent and shall bear the costs of his own representation;

(b) is not a compellable witness but may give evidence under oath;

(c) may call witnesses on his own behalf and has the right to cross-examine any witnesses called by the presenting officer.

(2) All proceedings shall be recorded verbatim by some reliable means.

(3) Presentation of the case against a member may be by agent or counsel appointed by the chief for the purpose.

(4) Unless the presiding officer orders otherwise, witnesses called by the presenting officer shall testify first, followed by witnesses called by the member.

(5) Subject to the exceptions set out in this Part, rules of evidence applicable in civil proceedings including the rule against admission of hearsay evidence apply to hearings under this Part.

(6) The presenting officer or counsel shall bear the burden of proof which shall not be a mere preponderance of probabilities but a high standard of proof to reflect that the member's professional integrity is at stake.

46. The presiding officer

(1) may from time to time adjourn the hearing;

(2) may accept any written statement of agreed facts executed by both the member or member's counsel or agent and by the presenting officer.

(3) may admit evidence tendered in a form which is agreed to by both the member or member's counsel or agent and by the presenting officer.

(4) may accept an admission by the member that he committed the breach or breaches alleged.

47. Following completion of the evidence, the presiding officer shall

(1) invite the presenting officer and counsel or agent acting on behalf of the member to make submissions as to whether a breach of the Code of Police Conduct has been proven.

(2) make his findings as to whether a breach of the Code of Police Conduct has been proven.

48. Where the presiding officer makes a finding that a breach of the Code of Police Conduct has been proven against the member, he shall

(1) consider the member's service record of discipline,

(2) invite the presenting officer and the member or counsel or agent acting on his behalf to make submissions as to penalty,

(3) impose one or more of the penalties in section 49 in respect of each charge proved against the member,

(4) prepare and deliver to the member written reasons for decision and penalty imposed under this Part.

49. (1) Upon a finding of a breach of the Code of Police Conduct, the presiding officer may impose, but is not limited to, one or more of the following penalties in respect of each breach of the Code of Police Conduct:

(a) written reprimand,

(b) suspension with or without pay for any length of time,

(c) demotion,

(d) recommendation to the board that the member be discharged from the force,

but in no event shall the penalty imposed be greater than the maximum penalty set out in Form 3.

(2) In addition to, or as an alternative to, the imposition of the penalty under subsection (1), the presiding officer may, following a request by the member to that effect, order the member to participate in such program or activity as the presiding officer finds appropriate.

(3) Where the presiding officer is a delegate of the chief constable, the chief constable shall, within 7 days after the decision is made by the delegate, consider the penalty imposed and may confirm or reduce, but not increase, the punishment.

(4) Where, within 7 days of a disposition by a delegate of the chief constable, no action under subsection (1) has been taken by the chief constable, the decision and punishment awarded by the presiding officer is confirmed.

(5) Recommendations under section 49 (1) (d) shall be submitted to the board for consideration after expiry of the appeal period.

50. For the purposes of proceedings under this Part, where a member has been convicted of an offence punishable on indictment or on summary conviction he shall be deemed to have committed a breach of the Code of Police Conduct.

51. Where a member is charged with an offence punishable on indictment or on summary conviction and acquitted, proceedings under this Part may be taken against the member notwithstanding that the facts and circumstances alleged in the offence are the same facts and circumstances that are alleged to be the breach of the Code of Police Conduct.

52. Form 5 and a copy of the decision of the presiding officer shall be filed with the commission.

53. (1) Where a breach has been proven against a member, the finding and any punishment awarded shall be entered on a member's service record of discipline:

(a) where no appeal is filed within the appeal period, or

(b) where an appeal is dismissed and any further appeal period has expired.

(2) Where a breach has been proved or a member has admitted to the breach, a copy of the presiding officer's finding and punishment, in Form 6, shall be served on the member within 48 hours of the punishment being imposed.

APPEALS TO THE BOARD

54. A decision of the presiding officer as confirmed or reduced under section 49 may be appealed to the board by a member who has been found by the presiding officer to have breached the Code of Police Conduct.

55. (1) Where, under section 43, the chairman of the board presides at the hearing, there is a right of appeal against the decision or punishment, or both, to the board; but the chairman shall not sit upon such an appeal.
- (2) Where the presiding officer is the chief, there is a right of appeal against the decision or punishment, or both, to the board.
- (3) There is no appeal against a finding that a breach of the Code of Police Conduct was not proved against a member.
56. (1) Notice of appeal, in writing and containing the grounds of appeal, shall be given to the board and to the chief within 30 days after a decision under sections 48 and 49, or a confirmation or reduction under section 49 (3), unless the board, in the exercise of its discretion, grants an extension of time for the appeal.
- (2) The only grounds on which a member may appeal shall be:
- (a) that there was insufficient evidence on an essential element of the case against the member;
 - (b) that the member was deprived of a fair hearing in accordance with the principles set out in the Act and this Part;
 - (c) that the facts as found by the presiding officer did not amount to a breach of the Code of Police Conduct;
 - (d) that new evidence that could not have been discovered by reasonable diligence by or on behalf of the appellant has been discovered that renders the decision or punishment, or both, unjust or unsatisfactory, or
 - (e) that the punishment inflicted was unreasonable having regard to all the circumstances of the case.
- (3) On receipt of notice of appeal to the board, the chief shall ensure that a transcript of the hearing and the record of proceedings in Form 5 are forwarded to the board as soon as practicable.
57. (1) An appeal to the board shall be by argument on the record of the proceedings at the hearing, a transcript of which shall be supplied, on application and without charge, to the appellant.
- (2) The proceedings before the board shall be recorded by some reliable means.
- (3) The proceedings are not open to the public.
- (4) The appellant and the respondent may appear personally or be represented by agent or counsel.
58. (1) Subject to section 57, the board may make any finding or order and, where appropriate, impose any punishment that the presiding officer may have awarded at the hearing, except that the board, as employer, may dismiss a

member or require resignation from the municipal force, or the board may order a new hearing and, in that event, sections 39 to 52 apply.

(2) The appellant member shall be served within 48 hours after the decision of the board with written notice in Form 7 of the decision.

(3) There is no appeal against the dismissal of a charge by the board.

APPEALS TO THE SUPREME COURT

59. (1) Following the decision of the board, an aggrieved member may further appeal to the Supreme Court against the decision or punishment, or both, within 30 days after the decision of the board, or within such further period as the Supreme Court may allow;

(2) Appeal is taken within the meaning of (1) when notice of appeal is filed in a registry of the Supreme Court and a copy of the notice of appeal is served on the respondent;

(3) The only grounds of appeal shall be

(a) that the board came to a wrong conclusion on one or more of the grounds of appeal set out in section 56 (2), or

(b) that new evidence that could not have been discovered by reasonable diligence by or on behalf of the appellant has been discovered that renders the decision or punishment, or both, unjust or unsatisfactory.

60. (1) The appellant is entitled to obtain from the board one or more certified copies of the decision or direction and of all oral and documentary evidence on which the board acted in making the decision, on payment of the cost of the copies.

(2) The appellant shall deposit in the same court registry one certified copy of the evidence and the decision complained of for the use of the court hearing the appeal. The appeal shall be heard and determined thereon.

(3) The appellant shall give the respondent at least 7 clear days' notice in writing of the time and place for the appeal.

61. (1) An appeal to the Supreme Court shall be by argument on the record of the hearing before the presiding officer as affirmed or varied by the decision of the board.

(2) At the conclusion of the appeal, the Supreme Court may make any finding or order, and, where appropriate, impose any punishment that may have been awarded by the board, or the Supreme Court may order a new hearing and, in that event, sections 42 to 51 apply.

(3) The decision of the Supreme Court is final.

LIMITATIONS

62. Subject to sections 64 and 65, no proceedings for an alleged breach of the Code of Police Conduct shall be commenced more than 6 months after the occurrence of an alleged breach or more than 3 months after the discovery that an alleged breach of the Code of Police Conduct has occurred, whichever is later.
63. For the purpose of this regulation, proceedings are commenced at the time Form 3 is served on the member, or in the case where personal service cannot be effected, on the date that a copy of Form 3 is delivered to the last known address of the member contained in the police board files.
64. Where
- (1) an arbitrator allows a grievance on the grounds that the true nature of the conduct for which discipline was imposed under Part 1 of these regulations constituted an allegation of a breach of the Code of Police conduct or,
 - (2) an appeal from the decision of an arbitrator allowing such a grievance is made to the Industrial Relations Council,
- no proceedings may be commenced under this Part more than 3 months after the award by the arbitrator or the decision of the Industrial Relations Council, as the case may be.
65. Where the chief is ordered pursuant to sections 63 or 65 of the Act to take disciplinary action against a member for a breach of the Code of Police Conduct, no proceeding shall be commenced under this Part more than 3 months after the date of such order.

GENERAL

66. (1) A service record of discipline shall be maintained in respect of each member against whom discipline is imposed under Part 1 or who admits to a breach of the Code of Police Conduct or who has been found to have breached the Code of Police Conduct.
- (2) The service record of discipline shall include the service record of discipline under the Police (Discipline) Regulation, B.C. Reg 330/75.
67. Conduct for which discipline may be imposed under these regulations includes:
- (1) conduct that occurred while the member was off duty,
 - (2) conduct that occurred outside of the municipal limits of the municipality by which the member is employed.

PART 4

CONDUCT OF CHIEF CONSTABLES AND
DEPUTY CHIEF CONSTABLES

68. (1) The general principles contained in this regulation apply to disciplinary action against chief constables and deputy chief constables with the following special provisions:
- (a) the report of an alleged breach of the Code of Police Conduct by a chief constable or deputy chief constable shall be reported to the chairman of the board;
 - (b) the chairman of the board shall appoint one of the following to investigate the matter:
 - (i) a chief constable from another municipal force;
 - (ii) a counsel;
 - (iii) an investigator appointed by the minister;
 - (c) the investigation shall be carried out in accordance with sections 24 and 26;
 - (d) the report of the investigation shall be made to the chairman of the board, who shall decide whether proceedings for a breach of the Code of Police Conduct should be held or whether no further action should be taken;
 - (e) in the event of a decision to take proceedings for a breach of the Code of Police Conduct, the hearing shall be before the board;
 - (f) the case shall be presented on behalf of the board by counsel or agent and a chief constable or deputy chief constable may appear personally or be represented by counsel or agent of his choice;
 - (g) the provisions of Part 3 relating to procedure and the conduct of hearings apply to this Part;
 - (h) in the case of a chief constable, where a breach of the Code of Police Conduct is proved, only the penalties mentioned in section 49 (1) (a) and 49 (1) (d) may be applied;
 - (i) in the case of a deputy chief constable, where a breach of the Code of Police Conduct is proved, any of the penalties mentioned in section 49 (1) may be applied;
 - (j) in the event of a finding by the board that a breach of the Code of Police Conduct has been proved, either the chief constable or deputy chief constable against whom the breach has been proved or the board has the right of appeal to the Supreme Court of

British Columbia and section 56 governs the grounds of appeal and sections 59 to 61 apply, with the necessary changes and so far as they are applicable.

APPENDIX

CODE OF POLICE CONDUCT

A municipal constable has a position of authority and has a duty not to abuse the authority given to him. He shall not use his position to private advantage. He shall have good and sufficient cause for arrest and shall use only the degree of force necessary to accomplish his lawful purposes.

A municipal constable has a position of trust and is expected to respect that trust. When entrusted with confidential information he shall make every effort to ensure that it is not improperly disclosed. When entrusted with the property of another person he shall make every effort to ensure its safety.

A municipal constable is an officer of the law and has a duty to obey all provincial and federal laws in his private and public life. In this regard his duty is higher than it is for others. He is expected to be totally honest and incorruptible. He must never mislead the court, make a false statement or destroy, conceal or alter an official document or record.

A municipal constable is a defender of the public safety and is expected to assist any person in circumstances where there is a clear danger to the safety of that person or the security of that person's property.

A municipal constable is expected, even under difficult circumstances, to respect the rights of members of the public with whom he has contact, to be civil and polite in the execution of his duties, and to treat all persons fairly regardless of their race, nationality, religious belief, sex, physical or mental handicap, age, source of income, political belief or national origin.

A municipal constable, if aware of another municipal constable's breach of this Code of Police Conduct, has a duty to bring the alleged breach to the attention of the chief.

APPENDIX "G"

POLICE ACT

"POLICE ADMINISTRATION REGULATIONS"

ANNOTATED DRAFT

Prepared by:

**Terrence L. Robertson, Q.C.
Jill McIntyre**

November 30, 1989

INDEX

"Police Administration Regulations", Annotated Draft 1

Executive Summary 2

November 30, 1989

DRAFT

ANNOTATIONS FOR REGULATIONS

NOTE: where "current Regulation" is used in this annotation, it refers to the Police (Discipline) Regulation, B. C. Reg. 330/75, as amended by B. C. Reg. 142/89

1. Many of these definitions are the same as contained in the current Regulation. The definitions of "association" and "collective agreement" were added because of the provisions in Part 1 allowing for dismissal of members and probationary members for reasons other than discipline. The "Police Conduct Review Board" will review informal disciplinary action and adjudicate on breaches of the Code of Conduct that are proceeded with formally. "Chief" is defined as chief constable to avoid the repetition of the word "constable" throughout the Regulation. The definition of "service record of discipline" is amended to ensure that the current service record of discipline under the current Regulation will be continued.

NOTE: These regulations are prepared in Draft Form and have not been reviewed by legislative counsel

November 30, 1989

DRAFT PROPOSAL

"POLICE ADMINISTRATION REGULATIONS"

PART 1

**NON-CULPABLE DISMISSAL
AND DISMISSAL OF PROBATIONARY MEMBERS**

PART 2

COMPLAINTS AGAINST POLICE

PART 3

CONDUCT OF MEMBERS

PART 4

**CONDUCT OF CHIEF CONSTABLES AND
DEPUTY CHIEF CONSTABLES**

1. In these regulations:

"Act" means the Police Act;

"agent" means a member of a municipal police force in the Province;

"association" means an association of members employed by a board and certified under the Industrial Relations Act to bargain collectively for those members;

"board" means the police board of the municipality that employs the member or probationary member;

"chief" means chief constable of the municipal police force to which the member belongs and includes a member acting as such and a member to whom the chief constable has delegated his powers under this regulation;

"collective agreement" means a collective agreement as defined in the Industrial Relations Act between a board and an association;

2. This is a copy of section 3 in the current Regulation.

3. This section is intended to clarify that if there is a conflict between the collective agreement and the regulation, the regulation will prevail.

"counsel" means a member in good standing of the Law Society of British Columbia;

"informal disciplinary action" means action taken against a member by the chief under section 23;

"member" means a member of a municipal police force, by whatever rank or title he may be designated in the Province, who has been sworn in as a peace officer and includes a probationary member;

"Police Conduct Review Board" means a board appointed under sections 27 or 48;

"probationary member" means a member, whether or not a qualified municipal constable, who has not completed the probationary period as defined in the collective agreement between the association to which the member belongs and the board that employs the member;

"service record of discipline" means that portion of a member's personnel file which shall contain only details of discipline imposed under the Act or this regulation or under the Police (Discipline) Regulation, B.C. Reg. 330/75;

"Supreme Court" means the Supreme Court of British Columbia.

2. Except as provided in Part 2, these regulations apply to the municipal police forces and supersede all regulations governing them in matters covered by this regulation and all such regulations are repealed.
3. Where there is a conflict between a collective agreement and these regulations, these regulations shall prevail.

PART 1

DISMISSAL FOR NON-DISCIPLINARY REASONS

4. This section confirms that the police board has the power to dismiss a member or probationary member for reasons other than disciplinary reasons. The terms of the collective agreement will govern the grounds and procedure for such dismissal.

5. This section was added for certainty.

6. This section recognizes that a non-culpable dismissal may be predicated in part on conduct that has been established to be, or could possibly be, a breach of the Code of Conduct. It should not be possible for a member whose dismissal is sought on non-culpable grounds to prohibit the consideration of any evidence that is or could be construed to be a breach of the Code of Conduct. For example, where a member's dismissal is sought because he cannot conquer a severe addiction to alcohol, much of the evidence that would justify the dismissal could fall into section 3 of the Code of Conduct (which includes being absent from or late for duty without reasonable excuse) or section 10 (misuse of intoxicating liquor). We believe that the section as drafted will allow the consideration of matters where dismissal for such grounds is sought but will not allow the non-culpable process to be substituted for dismissal for disciplinary reasons.

PART 1

DISMISSAL FOR NON-DISCIPLINARY REASONS

4. (1) A board may dismiss a member or a probationary member for reasons other than disciplinary reasons.
(2) Where a collective agreement provides a process for dismissing a member or a probationary member for reasons other than disciplinary reasons, that process shall be used for dismissing a member under subsection (1).
(3) Part 3 does not apply to a member dismissed under subsection (1).
5. A member or probationary member who is dismissed ceases to be a member of the police force and ceases to be a peace officer in relation to his capacity as a member of the force.
6. Where a member or a probationary member is dismissed for reasons other than disciplinary reasons:
 - (1) the service record of discipline of the member or probationary member,
 - (2) conduct that is established to be a breach of the Code of Conduct,may be considered if the record or conduct is relevant to establish the reasons for dismissal, but in no event shall:
 - (1) informal disciplinary action taken under section 23 and overturned on review under section 28,
 - (2) an alleged breach of the Code of Conduct that was found by the Police Conduct Review Board not to have been established,
 - (3) an alleged breach of the Code of Conduct that was found by the Police Conduct Review Board to be established but which was found on appeal not to have been established,be considered.

PART 2

CITIZEN COMPLAINTS

7. The person to whom a complaint is made shall record the complaint in Form 9 and shall furnish the complainant with a copy of Form 9 and a statement in Form 10 that sets out the procedures that will be followed respecting the complaint and the rights of the complainant.
8.
 - (1) A complaint is resolved informally where a resolution of the complaint is proposed with which the complainant agrees.
 - (2) A complaint may be resolved informally at any time during the course of an investigation.
 - (3) Where a complaint is resolved informally, the complaint shall not appear in the service record of discipline of the constable complained against.
 - (4) Where a complaint is not resolved informally, a statement made by the constable complained against or another constable involved in the complaint, during the course of an attempt at informal resolution, shall not be admissible as evidence in a proceeding under the Act or regulations arising out of the complaint except a proceeding respecting an allegation that, with intent to mislead, the constable made a statement to the disciplinary authority or a person appointed by the disciplinary authority to investigate the complaint, knowing it was false.
 - (5) Nothing in this section shall be construed as preventing a disciplinary authority from acting under Part 3 with respect to the same conduct which formed the basis of the complaint but in that case the constable complained against is entitled to the protection provided under subsection (4) as though the complaint had not been resolved informally.
9.
 - (1) For the purposes of the investigation of complaints pursuant to section 57 of the Act, the following procedures apply:
 - (a) an investigating officer shall be appointed in accordance with section 31 or section 73 (1) (b), as the case may be;
 - (b) the investigating officer shall apply sections 32 through 37, so far as they are applicable.
 - (2) On completion of an investigation, the disciplinary authority shall:
 - (a) in the case of a municipal constable, decide appropriate action in accordance with the provisions of section 37;
 - (b) in the case of an auxiliary constable, decide appropriate action in accordance with the divisional operational policy, and

10. This section has been changed to incorporate the proposal to have the Police Conduct Review Board determine whether a breach of the Code of Conduct is established. The member has the option of admitting the breach to the chief and having him impose penalty, and that is reflected in section 10 (1) (d).

Subsection (2) has been changed because the chief has the right to appeal a decision of the Police Conduct Review Board that a breach was not established against a member. Further, the wording of 54 (2) in the Regulation was confusing because it referred to an appeal against "punishment", where the member has greater rights of appeal than that.

Section 54 (3) of the current Regulation has been deleted, but the concept of a "stay of punishment" is incorporated into section 62 of the proposed regulation.

Subsection (3) is the same as section 54 (4) except for changes in section numbers.

11. This section was contained in B. C. Reg. 330/75 as section 55, but was omitted from B. C. Reg. 142/89. It is re-incorporated to avoid confusion. Minor changes were made to it to incorporate the Police Conduct Review Board model.
12. This section was contained in B. C. Reg. 330/75 as section 56 and also omitted from B. C. Reg. 142/89. The reasons for re-incorporating it are as set out above.
13. This section is the same as section 55 of the current Regulation as amended by B. C. Reg. 142/89.

- (c) in the case of a special Provincial constable, notify the employer of the results of the investigation conducted.
 - (3) Where the decision under subsection (2) (a) involves taking disciplinary action, the appropriate steps shall be taken under Part 3 or 4.
10. (1) For the purposes of section 59 of the Act, an investigation is completed on the date on which:
- (a) a decision was made that no further action is required following investigation of the complaint,
 - (b) a decision was made that the member be advised as to his future conduct,
 - (c) a Police Conduct Review Board determined that a breach of the Code of Conduct was not established following a hearing under Part 3,
 - (d) a member admits to committing a breach of the Code of Conduct and penalty is imposed by the chief under section 47,
 - (e) a Police Conduct Review Board determined that a breach of the Code of Conduct was established and penalty was imposed by the Police Conduct Review Board that was confirmed or varied by the chief, as the case may be.
- (2) Where the time has elapsed under section 60 (1) of the Act and no request for an inquiry has been received
- (a) a disposition referred to in subsection (1) (a) and (b) becomes final, and
 - (b) an appeal of the decision or penalty referred to in (1) (c), (d) or (e) be taken.
- (3) Sections 63 and 64 apply to an appeal.
11. Where an inquiry has been held under section 60 of the Act and the time for leave to appeal to the commission has expired, the decision of the disciplinary authority or the Police Conduct Review Board is subject to the orders or requests of the disciplinary tribunal, which shall be ascertained before giving effect to any penalty.
12. Where an inquiry has been held under section 60 of the Act and a party has obtained leave to appeal to the commission, the decision of the disciplinary authority, the disciplinary tribunal or the Police Conduct Review Board is subject to the orders of the commission, which shall be ascertained before giving effect to any penalty.
13. The disciplinary authority shall supply to the commission at the end of each calendar year statistics in Form 11 on citizen complaints against members and the disposition of them.

Subsection (2) is intended as a guide.

17. This is generally the same position as section 48 (1) of the current Regulation.
18. This section is intended to codify the current law and practice.
19. This section replaces section 10 (3) of the current Regulation. The proposed regulation does not import the rule of *autrefois acquit*.
20. This is the same as section 3 in the current Regulation.
21. This section is a tidy way of incorporating the phrase contained in the current Regulation, "chief constable or his delegate". This phrase appears throughout the current Regulation and this section makes the proposed regulation easier to read.
22. This section contains the same concept and procedure as section 7 (4) to 7 (6) in the current Regulation.
23. This is completely new. It allows the chief to make the investigation he feels necessary in the circumstances, and to take the action set out against a member. The regulation refers to informal disciplinary action as "action" rather than as penalty or punishment, because much of the action allowed under this section is non-punitive in nature. Informal disciplinary action may not be taken where the conduct is the subject of an unresolved citizen complaint.

- (2) It is the intention of this Part that discipline be remedial in nature.

GENERAL

17. A service record of discipline shall be maintained in respect of each member against whom discipline is imposed under the Act or these Regulations.
18. Conduct for which discipline may be imposed under this Part includes:
- (1) conduct that occurred while the member was off duty
 - (2) conduct that occurred outside of the municipal limits of the municipality by which the member is employed.
19. Disciplinary action may be taken against a member under section 23 or discipline may be imposed on a member under sections 47 or 58 notwithstanding that he has been charged with an offence punishable on indictment or on summary conviction arising out of the same facts and circumstances as the alleged breach of the Code of Conduct or has been tried, acquitted, discharged, convicted or sentenced by a court in respect of such an offence.
20. The chief is the disciplinary authority for his force.
21. The chief may delegate his power under this Part, and reference in this Part to the chief shall be deemed to include reference to the officer to whom the chief has delegated his power under this Part.

VERBAL REPRIMANDS

22. (1) Notwithstanding this Part, minor breaches may be dealt with by verbal reprimand given by a member not below the rank of corporal.
- (2) Both the member reprimanded and the member giving the reprimand shall sign a record of the incident in each other's official police note book.
- (3) A reprimand made under this section shall not form part of the members service record of discipline.

INFORMAL DISCIPLINARY ACTION

23. (1) Subject to subsection (2), the following informal disciplinary action may be taken against a member in respect of a breach of the Code of Conduct:
- (a) counselling;
 - (b) recommendation for special training;
 - (c) recommendation for professional counselling;
 - (d) direction to work under close supervision;

24. Form 1 in the current Regulation is a written reprimand. That form has been replaced with a new form which will give the member notice of the informal disciplinary action taken against him.
25. This is self-explanatory.
26. Informal disciplinary action may be reviewed by the Police Conduct Review Board, upon request by the member.
27. The Police Conduct Review Board is comprised of either one person, nominated jointly by the police board and the association representing the member, or is comprised of three people, one nominated by the association, one nominated by the police board, and one jointly nominated by the police board and the association. The powers of a board sitting in review of informal disciplinary action are the same as the powers of the board sitting as an adjudicator of first instance where formal disciplinary action is involved. The cost of the board is shared between the board and the association. This is the major difference between a Police Conduct Review Board sitting in review of informal disciplinary action and a Police Conduct Review Board sitting as an adjudicator of first instance.

It should be noted that, although the association that represents the member is given the right to nominate a member to the Police Conduct Review Board, the right to seek a review of informal disciplinary action belongs to the member and not to the association. Where the member is not represented by an association, he will make the required nominations to the Police Conduct Review Board.

28. This is self-explanatory.

- (e) written reprimand;
- (f) forfeiture of less than five days off;
- (g) suspension with or without pay for less than five days.

(2) Informal disciplinary action may not be taken where the conduct is the subject of a complaint that has not been resolved under section 8.

(3) Prior to taking informal disciplinary action under this section the chief shall undertake the investigation he deems appropriate in the circumstances, and shall not be bound by sections 31 to 37.

24. Where the chief takes informal disciplinary action against a member, the member shall be served with notice of informal disciplinary action in Form 1.
25. Informal disciplinary action taken against a member by the chief under section 23 forms part of the member's service record of discipline.
26. A member against whom informal disciplinary action is taken under section 23 may appeal to a Police Conduct Review Board within 30 days of the receipt by him of Form 1 on grounds that his conduct did not constitute a breach of the Code of Conduct or that the informal disciplinary action taken was unreasonable having regard to all the circumstances of the case.
27. (1) The Police Conduct Review Board shall be constituted as provided in section 48 or 49.
- (2) The Police Conduct Review Board shall have the powers set out in sections 54 to 57 and 58 (1) and (2).
- (3) Sections 60 (2) and 61 apply to a Police Conduct Review Board under this Part.
- (4) The fees and expenses of the person nominated by the association or the member to serve on the Police Conduct Review Board shall be paid by the association or the member, as the case may be.
- (5) The fees and expenses of the person nominated by the board to serve on the Police Conduct Review Board shall be paid by the board.
- (6) The fees and expenses of the chairman of the Police Conduct Review Board shall be paid one-half by the board and one-half by the association or member as the case may be.
28. The Police Conduct Review Board may:
- (1) determine that a breach of the Code of Conduct has not been established against the member and order that the entry in the member's service record of discipline be deleted;
 - (2) determine that the action taken against the member was excessive having regard to all the circumstances and order that the chief take such other action as

29. This is self-explanatory.
30. When the Police Conduct Review Board makes a decision, it gives notice of the decision to the member and the police board, and files a copy of Form 2 with the police commission.
31. This section is generally the same as sections 8 and 9 of the current Regulation.
32. This is a new provision. It is consistent with the removal from the current Regulation of summary conviction procedures, and section 32 (2) is consistent with section 52 (4) of current Regulation as amended by B. C. Reg. 142/89).
33. This is substantially the same provision as section 11 (1) of the current Regulation.
34. This replicates, in large part, section 11 (2) of the current Regulation. The investigating officer may also recommend, after a formal investigation, that informal disciplinary action be taken against the member.

set out in section 23 as it deems appropriate in the circumstances and order that the entry in the member's service record of discipline be amended accordingly;

- (3) confirm the informal disciplinary action as taken.
29. The decision of the Police Conduct Review Board is binding on the member and the board and they shall comply in all respects with the decision.
30. A Police Conduct Review Board shall, within 10 days of issuing an award, give notice to the member and the police in Form 2 and file a copy of it in Form 2 with the offices of the commission.

INVESTIGATIONS

31. (1) On receipt of an allegation that the Code of Conduct has been breached the chief shall order an investigation by a member whose rank is above the rank of the member who is alleged to have breached the Code and not below the rank of corporal.

(2) No member having any connection with the alleged breach of the Code of Conduct shall be appointed under subsection (1).

(3) If the chief is unable to appoint an investigating officer unconnected with the alleged breach of the Code of Conduct from within that municipal force, or if, for any reason, he considers advisable, he may order the investigation to be undertaken by a member of another municipal force whose rank complies with the requirements of subsection (1) and who shall, subject to the consent of his chief, discharge the duties placed upon him by this regulation.
32. (1) In any investigation under this Part, no member shall be excused from answering any question relating to the matter being investigated when required to do so by the officer conducting the investigation on the ground that the answer to such question may tend to criminate the member or subject the member to any proceeding or penalty.

(2) No answer or statement made in response to a question described in subsection (1) shall be admissible as evidence in a proceeding under the Act or regulation other than a proceeding under this Part respecting an allegation that with intent to mislead the member gave such answer or statement knowing it to be false.
33. The investigating officer shall complete a report of his investigation and forward it, together with statements of witnesses and any statement made by a member to the chief.
34. The investigating officer shall make a recommendation whether the matter should be disposed of:
 - (1) by commencing formal disciplinary proceedings under section 46 against the member for a breach of the Code of Conduct;
 - (2) by taking informal disciplinary action under section 23 against the member for a breach of the Code of Conduct;

- (3) by advising the member who is alleged to have committed a breach of the Code of Conduct as to his future conduct, or
- (4) by taking no further action.
35. (1) In the event that the investigating officer recommends taking informal disciplinary action under section 23 against the member for a breach of the Code of Conduct, he shall further recommend the action to be taken.
- (2) In the event that the investigating officer recommends commencing proceedings under section 46 against the member for a breach of the Code of Conduct, he shall further recommend the maximum penalty in respect of each alleged breach.
36. The investigating officer shall identify such organizational or administrative practices of the municipal force as may have caused, or contributed to the creation of, the alleged breach.
37. (1) On receipt of the investigating officer's report and recommendations, the chief shall decide on appropriate action.
- (2) The chief shall consider independently of the individual case all matters of a purely organizational or administrative nature which the case indicates may need further consideration.
- (3) If no matters referred to in subsection (2) arise, the chief shall specifically endorse this fact on the report of the investigating officer.
- (4) Where the chief considers that a member shall be advised as to his future conduct he should refer the case papers to the member's immediate supervisor in order that the member may be so advised and the alleged breach of the Code of Conduct shall not be entered on the member's service record of discipline.
- (5) Where the chief considers that no further action should be taken, the member against whom the allegation is made shall be informed forthwith in writing and such a disposition shall not be entered on the member's service record of discipline.
- (6) Where the chief considers that the case should be dealt with through informal disciplinary action, he shall take informal disciplinary action in accordance with section 23 and the provisions of sections 24 through 30 apply.
- (7) Where the chief considers that the case should be dealt with through formal disciplinary action, he shall commence proceedings pursuant to section 46.

SUSPENSIONS

38. (1) Notwithstanding this regulation, the chief may suspend a member from duty who, on reasonable grounds, he believes to have committed an offence under a Federal or Provincial statute or a breach of the Code of Conduct that, in the opinion of the chief, renders the member unfit for duty.

Section 38 (2) corresponds with section 44 (3) of the current Regulation.

39. This provision is substantially the same as sections 45 (2) and 46 (2) of the current Regulation.
40. This replaces sections 47 (1) and 47 (2) of the current Regulation. Those sections were not clear as to whether the chief or the board made the decision to suspend a member's pay. We felt it was appropriate for the board to make this decision.
41. This is the same as section 47 (2) of the current Regulation.
42. This is the same as the first part of section 47 (1) of the current Regulation.
43. This is a clarification of the somewhat fuzzy interaction between section 44 (2) and 47 of the current Regulation.
44. This section does not substantially change the existing law as contained in sections 47 (3) and 47 (4) of the current Regulation.
45. Subsection (2) replaces section 47 (5) of the current Regulation.
Subsection (2) ensures that suspensions are not used to circumvent Form 3.
46. Subsection (1) corresponds with sections 17 (1) and 18 (1) and (2) of the current Regulation.

- (2) During a period of suspension from duty, a member shall not exercise his powers as a peace officer or police member and shall not wear or use the uniform or equipment of the municipal force.
39. The chief shall forthwith report a suspension made under section 38 to the board and the board shall confirm or rescind the suspension at the earliest opportunity, and in any event within seven days of receiving the report from the chief.
40. Where the board confirms the suspension made pursuant to section 38 it shall determine whether to discontinue a member's pay and allowances for the duration of his suspension.
41. Subject to section 42, where the board decides to discontinue a member's pay and allowances it shall give notice forthwith to the member who may thereafter appear personally or by counsel or agent before the board for a reconsideration of the decision.
42. Where a member is under suspension, he shall receive pay and allowances for at least 30 days during the period of his suspension.
43. Upon recommendation by the chief, the board may, at any time, revoke a suspension and order that the member be returned to duty.
44. A member shall receive full pay and allowances for any unpaid period of suspension where:
- (1) the member is not convicted of any offence punishable on indictment or on summary conviction, and
 - (2) formal proceedings against the member are not commenced for a breach of the Code of Conduct, or formal proceedings are taken, but a breach of the Code of Conduct is not established.
45. (1) The chief under section 47 and the Police Conduct Review Board at a hearing under sections 48 to 62 may make such order as to full or partial pay and allowances for any unpaid period of suspension as he or it considers proper.
- (2) Where a breach of the Code of Conduct is admitted to by or proven against a member and the penalty imposed is a suspension without pay, any unpaid period of suspension shall, when added to the penalty imposed, not exceed the maximum penalty permissible under section 59.

COMMENCEMENT OF PROCEEDINGS

46. (1) Where the chief decides to commence formal proceedings against the member for a breach of the Code of Conduct, the chief shall:
- (a) appoint counsel or agent to present the case against the member;
 - (b) prepare Form 3, setting out therein the breach or breaches of the Code of Conduct alleged to have been committed and the maximum penalty sought in respect of each breach.

Subsection (2) is substantially the same as sections 13 (1) and 13 (2) of the current Regulation.

Subsection (3) confirms that Form 3 may be utilized where multiple breaches are alleged.

Subsection (4) is the same as section 13 (3) in the current Regulation.

Subsection (5) is meant to give the member more protection than was contained in section 35 of the current Regulation.

Subsection (6) ensures that the police board will also have notice of proceedings, because the police board must appoint nominees to the Police Conduct Review Board.

47. This section allows a member to opt out of having his breach adjudicated by the Police Conduct Review Board. The chief is given power in this section to accept an admission by the member that he committed the breach and to impose penalty accordingly. The chief is limited by the penalty set out in Form 3.

(2) The member shall, within a reasonable time before the hearing commences, be served with:

- (a) Form 3;
- (b) a copy of the documents the presenting officer intends to tender in evidence;
- (c) a copy of any statement made by a person whom the presenting officer intends to call as a witness;
- (d) a copy of the statement made by the member, if any;
- (e) the names of those witnesses to be called to establish the alleged breach.

(3) More than one breach of the Code of Conduct may be alleged on Form 3 and where "breach" is used in this Part it refers to all the breaches alleged on Form 3.

(4) The member shall not be entitled to a copy of the report or recommendations of the investigating officer.

(5) Where personal service cannot be effected, delivery of Form 3 and other documents set out in subsection (1) to the last known address of the member contained in police board files shall be service under this Part.

(6) A copy of Form 3 shall be delivered forthwith to the board.

HEARINGS

47. (1) Where no complaint under Part 2 has been made against the member or where a complaint has been made and informally resolved under section 8 (4), the member may, after consulting with counsel, the association or an agent, and before a Police Conduct Review Board has been appointed under section 48, meet with the chief and admit to the chief that he committed the breach or breaches of the Code of Conduct set out in Form 3.

(2) Where a member admits to the chief that he committed the breach of the Code of Conduct, the chief may find that a breach occurred, and notwithstanding the other provisions of this Part, may impose any one or more of the penalties set out in section 59 in respect of each breach.

(3) The penalty imposed by the chief may not be greater than that set out in Form 3, but the chief may take in addition to, or as an alternative to, the imposition of penalty, any of the informal disciplinary actions referred to in section 23 (1) (a) to 23 (1) (d).

(4) Where an admission is made by the member, the admission and penalty imposed shall be entered on the member's service record of discipline and no further proceedings shall be taken against the member based on the facts and circumstances to which the member has admitted.

48. This section sets out the composition of the Police Conduct Review Board. It is the same composition as a Police Conduct Review Board sitting to review informal disciplinary action.

Where the police board and the association cannot agree on a joint nomination the Chief Justice will name a person to be appointed as chairman. The chairman of the Police Conduct Review Board must be a lawyer.

49. Subsection (1) is drafted in contemplation of a member who is avoiding the proceedings.

Subsection (2) allows the police board and the association to agree to have the matter heard by a single person.

50. Because a Police Conduct Review Board will become seized of a matter heard by it, and because criminal proceedings can sometimes substantially delay a hearing, this section provides that no Police Conduct Review Board will be appointed until criminal proceedings are complete.

(5) Where an admission is made and penalty imposed under this section, the chief shall record the admission and penalty on a Form 5 and forward it forthwith to the commission.

48. (1) Subject to sections 49 and 50, where a member is served with Form 3, the minister shall appoint a Police Conduct Review Board consisting of:

- (a) one person nominated by the association which represents the member;
- (b) one person nominated by the board, and
- (c) one person nominated jointly by the board and by the association which represents the member, or, failing such joint nomination, one person nominated in accordance with subsection (4), who shall be chairman of the board of reference.

(2) Where the member is not represented by an association, the member shall make the nomination under subsection (1) (a) or may agree with the board to nominate a single person under section 49.

(3) A nomination made under subsection (1) shall be made to the minister within 30 days after the receipt by the board and the member of Form 3, and the person or persons who are nominated at that time shall, in addition to any person who may subsequently be nominated under subsection (4), constitute the Police Conduct Review Board and shall exercise its powers.

(4) Where no joint nomination is received by the minister pursuant to subsection (1) (c) within the 30 day period mentioned in subsection (2), the Chief Justice shall name a person who shall be appointed by the minister to be chairman of the Police Conduct Review Board.

(5) The chairman of the Police Conduct Review Board shall be a member of the Law Society of British Columbia.

49. Where:

(1) the minister does not receive the nominations referred to in 48 (1) (a) or 48 (1) (c) within 30 days after service upon the board and the member of Form 3,

(2) the board and the association agree on one person,

the minister shall appoint one person who shall be a member of the Law Society of British Columbia to the Police Conduct Review Board and that person shall exercise all the powers of a Police Conduct Review Board appointed under section 48.

50. (1) Where the member is charged with an offence punishable on indictment or on summary conviction arising out of the same facts and circumstances as the alleged breach of the Code of Conduct, the time limits in section 48 do not run until:

- (a) the charges are withdrawn by crown counsel;

- (b) the charges are stayed by crown counsel;
 - (c) the member is acquitted or convicted of the charges and the time for appeal has expired; or
 - (d) appeal is taken from an acquittal or conviction and judgment rendered by an appeal court and all further appeals have been exhausted.
51. The board shall pay the fees and expenses of the persons appointed under section 48 or section 49 to a Police Conduct Review Board.
52. The date, time and place for the hearing shall be determined by the Police Conduct Review Board and the member and the chief shall be given no less than 10 days' notice of the hearing.
53. (1) Where a member:
- (a) is in confinement pursuant to the decision of a court or other lawful authority, or
 - (b) is absent without leave, or
 - (c) is otherwise avoiding the proceedings,
- the hearing may proceed in his absence by the entry of a formal denial to any charges but no decision against the member shall be made unless the breach is established in accordance with the provisions of this Part.
- (2) A member who is absent may be represented by counsel or agent.
54. The Police Conduct Review Board may:
- (1) administer oaths;
 - (2) hear and receive evidence on oath;
 - (3) command the attendance of witnesses by notice in Form 4;
 - (4) compel witnesses to give evidence under oath and to produce documents and things it considers requisite to a proper determination of the matter before it.
 - (5) admit evidence tendered in a form which is agreed to by both the member or member's counsel or agent and by the presenting officer.
 - (6) accept an admission by the member that he committed the breach or breaches alleged.
 - (7) relieve against technical defects in Form 3 and in the proceedings if the member will not be prejudiced thereby.
55. The chairman of the Police Conduct Review Board may from time to time adjourn the hearing.

56. Subsection (1) (a) is the same as section 18 (1) (b) of the current Regulation.
Subsections (1) (b) and (c) codify the current practice.

Subsection (2) is the same as section 17 of the current Regulation.

Subsections (3) and (4) replace section 17 (1) of the current Regulation.

Subsection (6) is new and replaces section 23 of the current Regulation.

57. This is a procedural section and is self-explanatory.

58. This is a procedural section. It is self-explanatory and codifies the existing practice.

56. In hearings under this Part:

- (1) A member against whom a breach is alleged:
 - (a) may be represented by counsel or agent;
 - (b) may give evidence under oath;
 - (c) may call witnesses on his own behalf and has the right to cross-examine any witnesses called by the presenting officer.
- (2) All proceedings shall be recorded verbatim by some reliable means.
- (3) A hearing shall be open to the public but the Police Conduct Review Board may exclude members of the public in any circumstances it considers appropriate.
- (4) The Police Conduct Review Board may, upon application, and for the purpose of protecting the interests of any person or for the purpose of protecting an ongoing police investigation into alleged criminal conduct by any person or persons, order that:
 - (a) specific information not be disclosed, and
 - (b) the hearing be conducted so as to implement that order.
- (5) Unless the Police Conduct Review Board orders otherwise, witnesses called by the presenting officer shall testify first, followed by witnesses called by the member.
- (6) Rules of evidence and the standard of proof applicable in civil proceedings before a court in the Province of British Columbia apply to hearings under this Part.
- (7) The presenting officer shall bear the burden of proof.

57. Following completion of the evidence, the Police Conduct Review Board shall:

- (1) invite the presenting officer and counsel or agent acting on behalf of the member to make submissions as to whether a breach of the Code of Conduct has been established.
- (2) by majority decision make its findings as to whether a breach of the Code of Conduct has been established.

58. Where the Police Conduct Review Board makes a finding that a breach of the Code of Conduct has been established against the member, he shall:

- (1) consider the member's service record of discipline,
- (2) invite the presenting officer and the member or counsel or agent acting on his behalf to make submissions as to penalty,

59. This section corresponds with section 33 (1). Deleted from section 33 of the current Regulation are the recommendations that the member be required to resign, and the fine provision. The maximum penalty cannot go above that set out in Form 3, but the chief may take, in addition or in substitution for, the penalties set out in this section, any of the informal disciplinary actions set out in sections 23 (1) (a) through 23 (1) (d).

Subsection (3) gives the chief constable the same power as he has now under section 37 (1) to confirm or reduce the punishment imposed by the presiding officer.

Similarly, section 59 (4) corresponds with section 37 (3) of the current Regulation, and

Section 59 (5) is the same as section 33 (3).

60. A comparable provision is found in section 38 (3) of the current Regulation, but the recommended regulation requires that Form 5 be filled out in all cases, not only those that are appealed to the commission.

Subsection (2) is a procedural safeguard.

61. This section clarifies that proceedings before the Police Conduct Review Board are not governed by the Commercial Arbitration Act.

62. This section is basically the same as sections 30 (5) and 53 (3) of the current Regulation.

(3) impose one or more of the penalties in section 59 in respect of each breach established against the member,

(4) by majority decision prepare and deliver to the member in Form 6 written reasons for decision and penalty imposed under this Part.

59. (1) Upon a finding of a breach of the Code of Conduct, the Police Conduct Review Board may impose one or more of the following penalties in respect of each breach of the Code of Conduct:

- (a) reprimand,
- (b) suspension with or without pay for a maximum of three months,
- (c) demotion,
- (d) recommendation to the board that the member be dismissed from the force,

but subject to subsection (2) the penalty imposed shall not be greater than the maximum penalty set out in Form 3.

(2) In addition to, or as an alternative to, the imposition of the penalty under subsection (1), the Police Conduct Review Board may take any one or more of the informal disciplinary actions referred to in sections 23 (1) (a) through 23 (1) (d).

(3) The chief constable shall, within 7 days after the decision is made by the Police Conduct Review Board, consider the penalty imposed and may confirm or reduce, but not increase, the penalty.

(4) Where, within 7 days of a disposition by the Police Conduct Review Board, no action under subsection (1) has been taken by the chief constable, the decision and penalty awarded by the Police Conduct Review Board is deemed confirmed by the chief.

(5) Recommendations under section 59 (1) (d) shall be submitted to the board for consideration after expiry of the appeal period as provided in section 64.

60. (1) The Police Conduct Review Board shall record the decision and penalty imposed on Form 5 and forward it forthwith to the commission.

(2) A certified copy of the decision of the Police Conduct Review Board under this Part may be filed in the office of a local registrar of the Supreme Court and is then enforceable as a judgment or order of that court in the same manner as any other judgment or order of that court.

61. The Commercial Arbitration Act does not apply to a hearing by the Police Conduct Review Board.

62. (1) Where a breach has been established against a member, the finding and any penalty imposed shall be effected against a member and entered on a member's service record of discipline:

Subsection (2) clarifies the existing procedure where a citizen complaint proceeds to public inquiry.

63. Appeal is allowed from a decision of the Police Conduct Review Board to the police commission by the member. The chief may appeal to the Police Conduct Review Board a finding that a breach of the Code of Conduct was not established, but may not appeal penalty.

64. The grounds on which a member may appeal have been expanded somewhat in section 64 (2) (a) and (b) from those in section 38 (2) (a) of the current Regulation. The other grounds of appeal for the member are substantially as contained in section 38 (2).

The appeal by the chief contained in section 64 (3) is new and replaces section 36 (3).

- (a) where no appeal is filed within the appeal period as provided in section 64, or
 - (b) where no public inquiry under Section 60 of the Act is held; or
 - (c) where an appeal is dismissed and any further appeal period has expired.
- (2) where a public inquiry has been held pursuant to Section 60 or 64 of the Act, the decision of the Police Conduct Review Board and the penalty imposed on the member is subject to the orders of the board or the commission; as the case may be, and any penalty imposed by the board or the commission shall be entered on the member's service record of discipline.

APPEALS TO THE COMMISSION

63. (1) A decision of the Police Conduct Review Board as to whether or not a breach of the Code of Conduct has been established may be appealed to the commission by a member or by the chief.
- (2) The penalty imposed by the chief under section 47 may be appealed to the commission by the member.
- (3) The penalty imposed by the Police Conduct Review Board as confirmed or reduced under section 59 (3) may be appealed to the commission by the member.
64. (1) Notice of appeal, in writing and containing the grounds of appeal, shall be filed with the commission and served on the chief or the member within 30 days after a decision under sections 57 and 58 or section 47, or a confirmation or reduction under section 59 (3) or (4), unless the commission grants an extension of time for the appeal.
- (2) The grounds on which a member may appeal shall be:
- (a) that the Police Conduct Review Board erred in law;
 - (b) that there was insufficient evidence on an essential element of the case against the member;
 - (c) that the member was deprived of a fair hearing in accordance with the principles set out in the Act and this Part;
 - (d) that the facts as found by the Police Conduct Review Board did not amount to a breach of the Code of Conduct;
 - (e) that new evidence that could not have been discovered by reasonable diligence by or on behalf of the appellant has been discovered that renders the decision or penalty, or both, unjust or unsatisfactory, or
 - (f) that the penalty imposed was unreasonable having regard to all the circumstances of the case.

- (3) The grounds upon which the chief may appeal are:
 - (a) that the Police Conduct Review Board erred in law;
 - (b) that there was sufficient evidence to establish the breach against the member;
 - (c) that the chief was deprived of a fair hearing in accordance with the principles set out in the Act and this Part;
 - (d) that the facts as found by the Police Conduct Review Board constituted a breach of the Code of Conduct.
 - (4) The appellant is entitled to obtain from the Police Conduct Review Board a copy of all oral and documentary evidence on which the Police Conduct Review Board acted in making the decision, on payment of the cost of the copies.
 - (5) The appellant shall file with the commission a transcript of the hearing of the proceedings before the Police Conduct Review Board.
65. (1) An appeal to the commission shall be by argument on the record of the proceedings at the hearing, a transcript of which shall be supplied to the commission by the appellant.
- (2) The proceedings before the commission shall be recorded by some reliable means.
 - (4) The appellant and the respondent may appear personally or be represented by agent or counsel.
66. (1) The commission may make any finding or order and, where appropriate, impose any penalty that the Police Conduct Review Board may have imposed at the hearing, or the commission may order a new hearing and, in that event, sections 47 to 62 apply.
- (2) The appellant and respondent shall be given written notice in Form 7 of the decision within 48 hours after the decision of the commission.

APPEALS TO THE SUPREME COURT

67. (1) The member or the chief may appeal to the Supreme Court from the decision of the commission under section 66 or within 30 days after the decision of the commission, or within such further period as the Supreme Court may allow.
- (2) Appeal is taken within the meaning of (1) when notice of appeal is filed in a registry of the Supreme Court and a copy of the notice of appeal is served on the respondent.

- (3) The grounds of appeal shall be:
 - (a) that the commission came to a wrong conclusion on one or more of the grounds of appeal set out in section 64, or
 - (b) that new evidence that could not have been discovered by reasonable diligence by or on behalf of the appellant has been discovered that renders the decision or penalty, or both, unjust or unsatisfactory.
68. (1) The appellant is entitled to obtain from the commission one or more certified copies of the decision or direction and of all oral and documentary evidence on which the commission acted in making the decision, on payment of the cost of the copies.
 - (2) The appellant shall deposit in the registry of the Supreme Court where notice of appeal was filed:
 - (a) one certified copy of the decision appealed from;
 - (b) the record of proceedings before the Police Conduct Review Board;
 - (c) the record of proceedings before the commission.

The appeal shall be heard and determined thereon.

- (3) The appellant shall give the respondent at least 7 clear days' notice in writing of the time and place for the appeal.
69. (1) At the conclusion of the appeal, the Supreme Court may make any finding or order, and, where appropriate, impose any penalty that may have been awarded by the commission, or the Supreme Court may order a new hearing and, in that event, sections 47 to 62 apply.
 - (2) The decision of the Supreme Court is final.

EXPUNGEMENT OF RECORDS

70. Upon the application of a member who has an entry on his service record of discipline in accordance with this Part, a chief constable shall order that the entry be expunged where 3 years have expired from the date of the entry on the service record of discipline.
- 70A. The chief constable shall supply to the commission at the end of each calendar year statistics on disciplinary breaches in Form 8.

LIMITATIONS

71. (1) Subject to section 72, informal disciplinary action may not be taken and formal disciplinary proceedings may not be commenced under this Part for an alleged breach of the Code of Conduct commenced more than 6 months after the

Subsection (2) corresponds with section 35, and no significant changes have been made.

72. This is new. It allows time limits to be extended after a public inquiry.

occurrence of an alleged breach or more than 3 months after the discovery that an alleged breach of the Code of Conduct has occurred, whichever is later.

(2) For the purpose of this regulation, formal disciplinary proceedings are commenced at the time Form 3 is served on the member, or in the case where personal service cannot be effected, on the date that a copy of Form 3 is delivered to the last known address of the member contained in the board files.

72. Where the chief is ordered pursuant to sections 63 or 65 of the Act to investigate a complaint or to take disciplinary action against a member for a breach of the Code of Conduct, no proceeding shall be commenced under this Part more than 3 months after the date of such order.

73. This section corresponds to section 50 of the current Regulation, and aside from consequential changes resulting from the adoption of the Police Conduct Review Board and changes to section numbers, no changes have been made.

PART 4

CONDUCT OF CHIEF CONSTABLES AND
DEPUTY CHIEF CONSTABLES

73. (1) The general principles contained in this regulation apply to disciplinary action against chief constables and deputy chief constables with the following special provisions:
- (a) the report of an alleged breach of the Code of Conduct by a chief constable or deputy chief constable shall be reported to the chairman of the board;
 - (b) the chairman of the board shall appoint one of the following to investigate the matter:
 - (i) a chief constable from another municipal force;
 - (ii) a counsel;
 - (iii) an investigator appointed by the minister;
 - (c) the investigation shall be carried out in accordance with sections 31 to 37;
 - (d) the report of the investigation shall be made to the chairman of the board, who shall decide whether proceedings for a breach of the Code of Conduct should be taken or whether no further action should be taken;
 - (e) in the event of a decision to take proceedings for a breach of the Code of Conduct, the hearing shall be before a Police Conduct Review Board;
 - (f) the case shall be presented on behalf of the board by counsel or agent and a chief constable or deputy chief constable may appear personally or be represented by counsel or agent of his choice;
 - (g) the provisions of sections 48 to 62 relating to procedure and the conduct of hearings before the Police Conduct Review Board apply to this Part;
 - (h) in the case of a chief constable, where a breach of the Code of Conduct is established, only the penalties mentioned in section 59 (1) (a) or (d) may be imposed;
 - (i) in the case of a deputy chief constable, where a breach of the Code of Conduct is established, any of the penalties mentioned in section 59 may be imposed;

- (j) in the event of a finding by the board that a breach of the Code of Conduct has been established, either the chief constable or deputy chief constable against whom the breach has been established or the board has the right of appeal to the commission and section 64 governs the grounds of appeal and sections 65 and 66 apply, with the necessary changes and so far as they are applicable.

- (k) in the event that the commission confirms the finding of the board that a breach of the Code of Conduct has been established, the chief or deputy chief against whom the breach has been established or the board has a further right of appeal to the Supreme Court of British Columbia and section 67 governs the grounds of appeal and sections 68 and 69 apply with the necessary changes and so far as they are applicable.

No changes have been made from the existing Discipline Code contained in the current Regulation other than to re-name it.

APPENDIX "A"
CODE OF CONDUCT

Any member of a municipal force breaches this Code of Conduct if he engages in any one or more of the following:

1. Discreditable conduct, that is, if he:
 - (a) acts in a disorderly manner or in a manner prejudicial to discipline or reasonably likely to bring discredit upon the reputation of the police force,
 - (b) assaults any other member of a police force,
 - (c) uses oppressive or abusive conduct or language towards any other member of a police force, or
 - (d) contravenes the provisions of the Act or any rule or regulation made or enacted in accordance with the Act.
2. Insubordination, that is, if he:
 - (a) is insubordinate by word or action, or
 - (b) without lawful excuse, disobeys, omits or neglects to carry out a lawful order.
3. Neglect of duty, that is, if he:
 - (a) neglects, or, without lawful excuse, omits promptly and diligently, to perform a duty as a member of the police force, or
 - (b) fails to work in accordance with orders, or leaves an area, detail, or other place of duty without due permission or sufficient cause, or, having left his place of duty with such permission or cause, fails to return thereto without undue delay.
4. Deceit, that is, if he:
 - (a) wilfully or negligently makes or signs a false, misleading or inaccurate oral or written statement or entry in any official document or record, or otherwise pertaining to official duties, or
 - (b) without lawful excuse destroys, mutilates or conceals any official document or record, or alters, erases or adds to any entry therein.

5. Improper disclosure of information, that is, if he:
 - (a) without proper authority communicates to any person any information which he has in his possession as a member of a police force to the detriment of effective police operations,
 - (b) makes any anonymous communication to any police authority or any member of a police force,
 - (c) signs or circulates a petition or statement in respect of a matter concerning the police force, except through the proper official channel of correspondence or established grievance procedure or in the bona fide performance of his duties, as a representative of a certified police union, association or federation.

6. Corrupt practice, that is, if he:
 - (a) fails properly to account for, or to make a prompt and true return of, any money or property received by him in the course of his duty,
 - (b) places himself under a pecuniary or other obligation to any person in such a manner as might affect the proper performance of his duties as a member of the police force, or
 - (c) improperly uses his position as a member of the police force for private advantage.

7. Abuse of authority, that is, if he:
 - (a) without good or sufficient cause, makes an arrest,
 - (b) uses any unnecessary violence to any prisoner or other person with whom he may be brought into contact in the execution of his duty, or
 - (c) is discourteous or uncivil to any member of the public, having regard to all the circumstances of the case.

8. Improper use of firearms, that is, if he:
 - (a) without proper authorization, carries, when on duty, any firearm other than one issued to him by the force,
 - (b) having discharged a firearm when on duty, other than on firearm training exercise, fails to report such incident to his senior officer as soon as practicable thereafter, or
 - (c) fails to exercise discretion and restraint in the use and care of firearms.

9. Damage to police property, that is, if he:
 - (a) wilfully or by carelessness, causes any waste, loss or damage to any police property or other property entrusted to his care, or

- (b) fails to report any loss of or damage to any such property as above, however caused.
10. Misuse of intoxicating liquor or drugs in a manner prejudicial to duty, that is, if he:
- (a) upon reporting for work or while on duty is unfit for duty as a result of drinking intoxicating liquor or the non-medical use of a drug, or
- (b) without proper authority, makes any use of, or receives from any other person any intoxicating liquor or a non-medical drug when on duty.
11. Improper dress or untidiness, that is, if he, while on duty, or while off duty but wearing uniform in a public place, is improperly dressed or is untidy in his appearance.
12. Criminal conduct, that is, if he is found guilty of an indictable offence or an offence punishable on summary conviction under any statute of Canada or any province or territory of Canada which renders him unfit to perform his duties.
13. Being an accessory to a disciplinary default, that is, if he aids, abets, connives at or is knowingly an accessory to, a disciplinary default under the code.
14. Attempting to commit a disciplinary default, that is, if he attempts, by any means, to commit a disciplinary default under the code.

APPENDIX "B"

Forms to be Used in Connection with Proceedings Under
the Police Administration Regulation

Form 1

PROVINCE OF BRITISH COLUMBIA

NOTICE OF INFORMAL DISCIPLINARY ACTION
(Police Administration Regulation, s. 23)

Police Force:

Date:

To:¹

Take notice that informal disciplinary action has been taken against you for the following breach of the Code of Conduct and forms a part of your service record of discipline:²

Date, time, place of breach:

Nature of breach (insert appropriate reference to Code of Conduct):

Particulars of breach:

The particulars of the informal disciplinary action are as follows:³

You have rights of review under section 30 of the Regulations.

(Signed) _____
(Chief Constable, Delegate or
Chairman of the Board)

I acknowledge service of this form:

(Signed) _____
(Member)

Date: _____

- 1 Insert here the full name, rank and service number of member.
- 2 Insert here the section(s) of the Code of Conduct for which action was taken and brief particulars of the breach, including the date of the breach.
- 3 Include here what action was taken under section 23 of the Regulation.

PROVINCE OF BRITISH COLUMBIA
NOTICE OF DECISION OF POLICE CONDUCT REVIEW BOARD
INFORMAL DISCIPLINARY ACTION
(Police Administration Regulation, s. 30)

Police Force:

Date:

To:¹

And to:²

The Police Conduct Review Board has reviewed the Informal Disciplinary
Action taken against¹ _____ on
_____, 19_____.

The decision of the Police Conduct Review Board was to:³

1. confirm action as taken.
2. determine that no breach of the Code of Conduct was established.
3. amend the action as follows:⁴

(Signed) _____
(Chairman, Police Conduct Review Board)

-
- 1 Insert here the full name, rank and service number of member.
 - 2 Municipal Board.
 - 3 Delete as appropriate.
 - 4 Where action is amended, give particulars.

PROVINCE OF BRITISH COLUMBIA
NOTICE OF FORMAL DISCIPLINE PROCEEDINGS
(Police Administration Regulation, s. 46 (2))

Police Force:

Date:

To:¹

Pursuant to section 74, Police Act, and the Police Administration Regulation made thereunder, you are alleged to have committed a breach of the Code of Conduct, viz:²

Contrary to:³

Particulars of the breach of Code of Conduct:⁴

Maximum penalty:⁵

(Signed) _____
(Chief Constable, Delegate or
Chairman of the Board)

I acknowledge service of this form:

(Signed) _____
(Member)

Date: _____

- 1 Insert here the full name, rank and service number of accused member.
- 2 Insert appropriate heading from the Code of Conduct.
- 3 Insert appropriate section from the Code of Conduct.
- 4 Insert date, time, place of alleged disciplinary default, and sufficient particulars to identify the nature of the allegation. If there is more than one charge, each should appear as a separately numbered paragraph, or on a new Form 3.
- 5 In the event of an accepted admission or finding of a breach of the Code of Conduct, the penalty imposed shall not be greater than that set out above but may include action set out in s. 23 (1) (a) to (d) of the Police Administration Regulation, s. 59.

PROVINCE OF BRITISH COLUMBIA

NOTICE TO WITNESS IN FORMAL DISCIPLINE HEARING

(Police Act, S.B.C. 1988, c. 53, s. 66)

Police Force:

Date:

To:

Address:

Take notice that you are to be called as a witness in discipline proceedings being taken against

1 _____

to be heard on _____, 19____ at _____ o'clock
at _____ and your attendance is hereby required.

(Signed) _____
(Chairman, Police Conduct Review Board)

I acknowledge service of this form:

(Signed) _____
(Witness)

Date: _____

1 Insert name, rank and service number of accused member.

PROVINCE OF BRITISH COLUMBIA
RECORD OF FORMAL DISCIPLINE PROCEEDINGS
(Police Administration Regulation, s. 60 (1))

Police Force:

Details of member:¹

Details of alleged breach of Code of Conduct:²

Reply to allegations:

Admit:
Deny:

Date(s) of Hearing

Reason (e.g., for adjournment)

Finding:

Penalty or other action:

(Signed) _____
(Chairman, Police Conduct Review Board)

Date: _____

CONFIRMATION/AMENDATION BY CHIEF CONSTABLE

³I hereby confirm the above penalty.

³I hereby amend the above penalty by substituting the following:

(Signed) _____
(Chief Constable)

Date: _____

- 1 Enter full name, rank and service number of accused member.
- 2 This section shall contain the charges as drafted on Form 3.
- 3 Delete as applicable.

APPEAL TO B. C. POLICE COMMISSION

| Date of Hearing | Disposition | Reason |
|-----------------|-------------|--------|
| <hr/> | | |
| <hr/> | | |

(Signed) _____
(Chairman, B. C. Police Commission)

Date: _____

PROVINCE OF BRITISH COLUMBIA
NOTICE OF PROOF OF DISCIPLINARY DEFAULT
(Police Administration Regulation, s. 60 (1))

Police Force:

Date:

To:¹

Take notice that on _____, 19____ the following breach(es) of the Code of Conduct was/were established against you:

Penalty:

²This finding and penalty shall be forwarded to the Chief Constable for confirmation or amendment.

³You have a right of appeal to the Police Commission under the Police Administration Regulation.

⁴This finding and penalty is subject to section 60 *et seq.* of the *Police Act*, which permits requests for a public inquiry, either by a municipal constable or by a citizen, in citizen complaint cases. If no such request is made by any party, you have a right of appeal to the Police Commission under the Police Administration Regulation.

(Signed) _____
(Chairman, Police Conduct Review Board)

I acknowledge service of this form:

(Signed) _____
(Member)

Date: _____

- 1 Insert here the full name, rank and service number of member.
- 2 Delete if not applicable (i.e., where Chief Constable is Presiding Officer).
- 3 Delete in citizen complaint cases.
- 4 Delete if not a citizen complaint case.

PROVINCE OF BRITISH COLUMBIA

NOTICE OF RESULT OF APPEAL TO POLICE COMMISSION
(Police Administration Regulation, s. 66 (2))

Police Force:

Date:

To:¹

On _____, 19____, the following
breach(es) of the Code of Conduct was/were established against you:

and you were ordered to be punished as follows:

Take notice that on _____, 19____ before the
Police Commission for _____ your appeal was dealt
with as follows:

Finding:

Penalty (if applicable):

(Signed) _____
(Chairman, Police Commission)

I acknowledge service of this form:

(Signed) _____
(Member)

Date: _____

1 Insert here the full name, rank and service number of appellant member.

PROVINCE OF BRITISH COLUMBIA

STATISTICAL INFORMATION ON INTERNAL POLICE DISCIPLINE
(Police Administration Regulation, s. 70A)

Police Force: _____

Year Ending December 31, 19__

| Subject | Number |
|--|--------|
| 1. Informal disciplinary action taken | |
| 2. Informal disciplinary action reversed or varied by Police Conduct Review Board | |
| 3. Members formally investigated | |
| 4. Decision following investigation: | |
| (a) Formal disciplinary proceedings commenced | |
| (b) Informal disciplinary action taken | |
| (c) No action | |
| (d) Pending | |
| 5. Findings in formal discipline cases: | |
| (a) Disciplinary breach established | |
| (b) Disciplinary breach not established | |
| (c) Pending | |
| 6. Appeals to police commission: | |
| (a) Disciplinary breach established | |
| (b) Disciplinary breach not established | |
| (c) New hearing | |
| (d) Penalty sustained | |
| (e) Penalty altered | |
| (f) Pending | |
| 7. Appeals to Supreme Court of British Columbia: | |
| (a) Disciplinary breach established | |
| (b) Disciplinary breach not established | |
| (c) New hearing | |
| (d) Penalty sustained | |
| (e) Penalty altered | |
| (f) Pending | |

(Signed) _____ (Chief Constable)

Date: _____

Form 9

PROVINCE OF BRITISH COLUMBIA
COMPLAINTS AGAINST POLICE
NOTIFICATION OF RESULT OF INVESTIGATION

[will be incorporated in present form]

Form 10

PROVINCE OF BRITISH COLUMBIA
STATISTICAL INFORMATION ON PUBLIC COMPLAINTS
AGAINST POLICE

[will be incorporated in present form]

Form 11

PROVINCE OF BRITISH COLUMBIA
STATISTICAL INFORMATION ON PUBLIC COMPLAINTS
AGAINST POLICE

[will be incorporated in present form]

APPENDIX "H"

November 30, 1989

EXECUTIVE SUMMARY REVIEW OF POLICE (DISCIPLINE) REGULATION

The Police (Discipline) Regulation was enacted in 1975. The formal, inflexible and punitive nature of the Regulation has been criticized, and confusion over dismissal of members and probationary members for reasons other than disciplinary reasons has resulted in litigation. Recent changes to police discipline procedures in other jurisdictions and the proclamation of the new Police Act this year were other factors in the Ministry seeking a complete review of the Regulation.

In 1987, a committee was struck to study the Regulation and recommend changes to it. This committee, with representatives from a cross section of the police community, completed its work in May of this year. It had reached a consensus on some issues but not on several fundamental ones, and no specific revisions to the Regulation were proposed.

In May of 1989, the Solicitor General appointed Terrence L. Robertson, Q.C., to review that committee's work and arrive at specific recommendations for changes to the Regulation. The work process involved a thorough research of legislation, literature and case law, as well as consultations with members of the police community and other organizations interested in the discipline of police officers. The report makes specific recommendations for changes to the Regulation and proposes a new regulation in substitution for it.

The recommended regulation differs from the former one in several respects: It confirms that police members may be dismissed for reasons other than disciplinary reasons; gives increased power to the chief to take informal disciplinary action, gives members the right to have alleged breaches adjudicated by an independent tribunal, adopts civil rules of procedure and evidence resulting in an overall change in tone, and changes the appeal process.

1. Non-Discipline Matters

The dismissal of members and probationary members for reasons other than disciplinary reasons will continue to be dealt with through the provisions of the collective agreement and the Industrial Relations Act. The recommended regulation confirms the propriety of the labour process in such dismissals and provides that alleged or proven breaches of the Discipline Code may be considered if relevant to the grounds of dismissal. The interrelationship between the Police (Discipline) Regulation and the Industrial Relations Act has caused confusion in the past and the recommended regulation seeks to avoid future confusion.

2. Informal Disciplinary Action

The current Regulation is lacking in flexibility and remedial concepts. The recommended regulation adopts the concept of informal disciplinary action and allows the chief, without a hearing, to direct a member to take counselling or training or work under close supervision. He may also impose a reprimand, a suspension of less than five days or forfeiture of less than five days off.

Informal disciplinary action may only be taken where no citizen complaint is involved or where a citizen complaint has been informally resolved. Where the conduct arises as a result of an unresolved citizen complaint, the matter must be proceeded with formally.

A member against whom informal disciplinary action is taken may appeal to the "Police Conduct Review Board", an ad hoc, independent tribunal comprised either of one member agreed to by the police board and the association representing the member, or comprised of three members, one appointed by the police board, one appointed by the association representing the member and the chairman appointed jointly. Where a joint appointment is not possible because of disagreement, the recommended regulation proposes that the chairman be appointed by the Chief Justice of the Supreme Court of British Columbia. The cost of the Police Conduct Review Board in such cases will be shared jointly by the police board and the association, if the member is represented by an association, or by the member, if he is not so represented.

We believe that having informal disciplinary action reviewed by an independent board would increase member confidence in the review procedure.

3. Adjudication of Formal Disciplinary Proceedings

Where the chief contemplates formal, rather than informal disciplinary action, and in all cases where an unresolved citizen complaint is involved, the chief would remain responsible for investigating an alleged breach of the Code of Conduct, for determining the maximum penalty to be imposed if the breach is established, and for appointing an officer to present the case against the member at the hearing. The chief also retains the responsibility to impose a penalty where the member chooses to admit the breach to him.

In all other cases, the Police Conduct Review Board replaces the "presiding officer" in formal disciplinary proceedings.

The use of an independent tribunal, we believe, will increase member confidence in the adjudication process and decrease the risk of a reasonable apprehension of bias. The recommended change should also enhance the public's perception of internal disciplinary proceedings.

The Police Conduct Review Board adjudicates on whether a breach of the Code of Conduct has been committed and imposes a penalty, subject to the maximum that has been set by the chief. At the conclusion of the hearing, the chief will confirm the penalty imposed or amend it to a lesser penalty.

The cost of the Police Conduct Review Board when it adjudicates on a formal disciplinary hearing is the responsibility of the municipal police board.

4. Adoption of Civil Rules of Procedure and Evidence

The hearing before the Police Conduct Review Board incorporates civil rules of evidence, including the standard of proof applicable in civil proceedings. The rules of evidence and procedure applicable in summary conviction proceedings contained in the existing Regulation stem from the military history of the police and are no longer applicable in modern times. Not only are the current rules inconsistent with the rules applicable to public inquiries held pursuant to a citizen complaint, they are different from those applicable in hearings for professional misconduct as well as labour arbitrations involving discipline.

5. The Appeal Process

Under the existing Regulation, appeals from formal disciplinary hearings before a presiding officer currently go to the police board and then to the police commission. Under the recommended regulation, police boards have joint responsibility for the composition of the Police Conduct Review Board, so they should not also sit as an appellate body from its decision. The report recommends that there be a full and final appeal to the Court with broader grounds than judicial review. The recommended regulation provides that decisions of the Police Conduct Review Board are appealed to the police commission with a final appeal to the Supreme Court of British Columbia.

6. Summary

The recommended regulation does not give any of the people or organizations interested in or affected by police discipline exactly what they requested in their submissions. To do so would be impossible because of widely divergent demands and interests. The recommended regulation does, however, strike a delicate balance among these people or organizations and answers the primary concerns of each.

