

## **PART 7— THE PROFESSIONAL STANDARDS INVESTIGATION OF POLICE-RELATED DEATHS**

### **C. The 1998 *Police Act***

After three years of consultations and negotiations with the various stakeholders, a new *Police Act* was enacted in 1997,<sup>1</sup> and brought into force on July 1, 1998. The Act preserved the “police investigating themselves” model, and established a new police complaint commissioner (PCC), who is an independent officer of the Legislature.

#### **1. Part 9 of the *Police Act***

Part 9 deals with police complaints and disciplinary measures, including the PCC. It is fundamentally a complaint-driven system. When a complaint is made (either to the police department or to the PCC), the police department must promptly characterize the complaint as a public interest complaint, an internal discipline complaint, or a service or policy complaint (s. 52.1(1)). The PCC must, within 10 days, review that characterization and either confirm it or overrule it, and independently characterize it (s. 52.1(6)).

- a. *A public trust complaint* refers to conduct that constitutes a breach of the *Code of Professional Conduct Regulation*,<sup>2</sup> and that does one of the following:
  - ◆ causes or has the potential to cause physical or emotional harm or financial loss to any person,
  - ◆ violates any person’s dignity, privacy or other rights recognized by law, or
  - ◆ is likely to undermine public confidence in the police.
- b. *An internal discipline complaint* means a complaint that relates to the acts, omissions or deportment of a police officer that does not constitute a public trust complaint. It may also include a public trust complaint that is not processed as a public trust complaint.

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<sup>1</sup> S.B.C. 1997, c. 36.

<sup>2</sup> See *Code of Professional Conduct Regulation*, BC Reg. 205/98, available at: [http://www.qp.gov.bc.ca/statreg/reg/P/Police/205\\_98.htm](http://www.qp.gov.bc.ca/statreg/reg/P/Police/205_98.htm). The code creates “disciplinary defaults” for matters such as discreditable conduct, neglect of duty, deceit, improper disclosure of information, corrupt practice, abuse of authority, and improper use and care of firearms.

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This type of complaint is normally dealt with under the collective agreement's grievance procedure (s. 64).

- c. *A service or policy complaint* means a complaint to the effect that a police department's policies, procedures, supervision and management controls, training programs, staffing or resource allocations are inadequate or inappropriate. This type of complaint is dealt with by the police board, which may initiate a study or an investigation. The PCC oversees the board's handling of such complaints (s. 63.1).

### **2. Processing a public trust complaint**

In the Frank Paul case the complaint was characterized as a public trust complaint, and the discussion that follows will be limited to a description of the process applicable to those types of complaints.

Under s. 54.1 of the *Police Act*, a complaint may be resolved informally if the discipline authority (i.e., the chief constable or his or her delegate) considers that disposition to be appropriate, and if the officer and the complainant consent.

In all other cases, the discipline authority must initiate an investigation into a public trust complaint (s. 55). The PCC may appoint an employee of that office as an observer to the investigation, if the PCC considers the appointment necessary in the public interest (s. 56.1(1)). An investigation must normally be completed within six months (s. 56(7)), but the PCC may grant an extension. Within 10 days of receiving the final investigation report, the discipline authority must:

- o provide a summary of that report to the officer and the complainant, and a complete, unedited copy of the final investigation report to the PCC (s. 57), and
  - o determine whether the evidence is sufficient to warrant the imposition of disciplinary or corrective measures (s. 57.1). If the discipline authority determines that disciplinary or corrective measures are warranted, the discipline authority must notify the respondent and complainant, identifying the alleged discipline defaults, whether a pre-hearing conference will be offered, and a description of the response proposed by the discipline authority to each alleged default.
- a. The pre-hearing conference

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Under s. 58, the disciplinary authority may proceed—by way of a confidential, without prejudice, pre-hearing conference—to determine whether the officer is willing to admit a public trust default and, if so, what disciplinary measures the officer is willing to accept. However, this procedure must not be offered if the complaint is sufficiently serious to warrant dismissal or reduction in rank, or if a pre-hearing conference would be contrary to the public interest. If the disciplinary or corrective measures are accepted by the officer and approved by the disciplinary authority, the complainant must be notified. A complainant who is aggrieved may file with the PCC a request for a public hearing.

**b. The discipline proceeding**

If a public trust complaint is not resolved at a pre-hearing conference, a discipline proceeding must be convened (s. 58.1). The officer, the investigating officer and the discipline authority must attend a discipline proceeding, and the only other people who may attend are the PCC and the officer's counsel. According to s. 59(2), the only witness at a discipline proceeding is the investigating officer. The officer (i.e., respondent) is not compellable, but may ask questions of the investigating officer and may make submissions. However, it seems clear that the officer also may testify because, according to s. 61.1(1), an adverse inference may be drawn if the officer fails to testify. The discipline authority must decide whether a discipline default has been proved on the civil standard of proof and, if so, decide within 10 days on appropriate disciplinary or corrective measures (s. 59).

**c. A public hearing**

Under s. 59.1, the PCC must be provided with the entire unedited record of the discipline proceeding. Under s. 60, the commissioner may order a public hearing if he or she considers that necessary in the public interest. If the officer requests a public hearing, the commissioner must order one if the disciplinary or corrective measure imposed was more severe than a verbal reprimand. The officer is not compellable at a public hearing, but an adverse inference may be drawn from the officer's failure to testify. The adjudicator at a public hearing may find that all, part or none of the alleged discipline default has been proved, impose any disciplinary or corrective measures that a disciplinary authority may impose, or affirm, increase or reduce any such measures (s. 61).