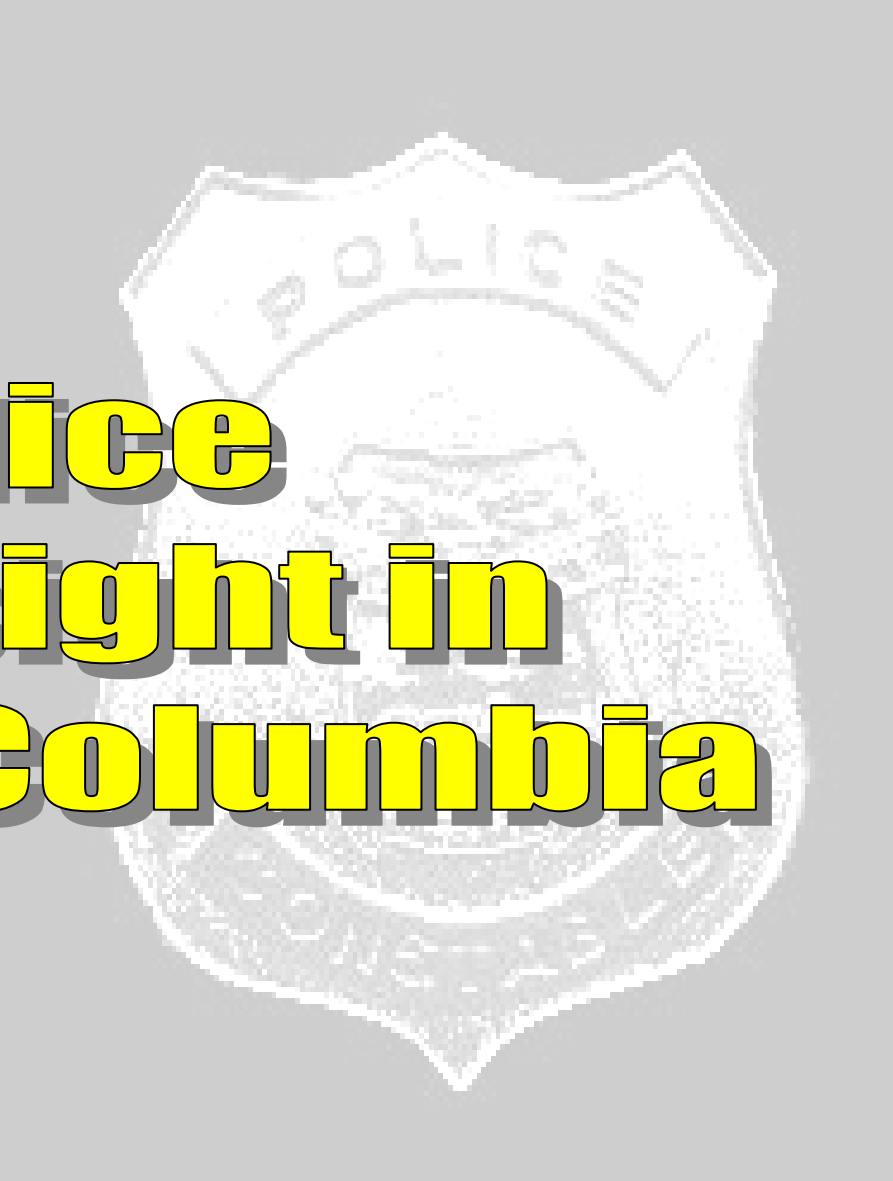




Police Oversight in British Columbia

CACOLE - June 16, 2008 - REGINA, SASK.

POLICE ACT

CHAPTER 367



The Police Act, 1996 and its regulations have been amended by the Police Amendment Act, 1997 and associated regulations. These changes are being introduced as result of consultations with Police Chiefs, the BC Federation of Police Officers and various community groups, and in response to the recommendations of the Oppal Commission report Closing the Gap: Policing and the Community.

The focus of the new Act is to reform and strengthen the oversight of policing in British Columbia and\

The HISTORICAL RECORD

Between 1914 and 1974 – municipal police boards in BC had complete authority over appointments and discipline. There was no uniform complaint process.

POLICE ACT
CHAPTER 367



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The
HISTORICAL
RECORD

1974 Police Act

***-established the first
province wide process
for investigating and
adjudicating
complaints against
police.***

POLICE ACT

CHAPTER 367



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The HISTORICAL RECORD

1974 Police Act

*-Process monitored by
BC Police Commission
-members appointed by
Cabinet .*

*The 1974 Police Act
was replaced in 1988.*

**POLICE ACT
CHAPTER 367**



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The HISTORICAL RECORD

1988 Police Act

- Retained the system of police investigating the police .*
- Deputy Chair of the Police Commission became the complaint commissioner.*

POLICE ACT
CHAPTER 367



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The HISTORICAL RECORD

1988 Police Act

- Mandatory inquiry if requested by officer or complainant .

- Police Board sat as disciplinary tribunal.

POLICE ACT

CHAPTER 367



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1992

Oppal Commission of Inquiry

To examine process of receiving, investigating and resolving complaints against police.

POLICE ACT

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1994Oppal Report:

- Found police accountability seriously lacking, and oversight mechanisms insufficient to ensure both impartiality and the perception of impartiality in complaint investigations.***
- Dealt with who should investigate and who should adjudicate.***

POLICE ACT

CHAPTER 367



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1994 Oppal Report:

- Concluded police should not be removed from complaint Investigation – if an improved oversight process was legislated.***
- Complete independence of the police complaint commissioner was a precondition to the conclusion that police should continue to conduct Police Act investigations.***
- Recommended independent investigative powers for Police Complaint Commissioner .***

POLICE ACT CHAPTER 367



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1994-1996

*Attorney General
consultation process.
- Created “consensus”
legislation – some
suggest “compromise”
legislation., in attempt
to satisfy stakeholders.*

POLICE ACT

CHAPTER 367



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1997

Reforms to Police Act introduced ... most of Oppal's recommendations Incorporated.

- Noteworthy exception that Police Complaint Commissioner not given power to conduct independent investigations.

POLICE ACT

CHAPTER 367



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1998

*Amended Police Act
proclaimed.*

*- Office of the Police
Complaint Commissioner
open for business
July 1, 1988.*

*- Independent officer
of the BC legislature.*

COMPLAINT PROCESS

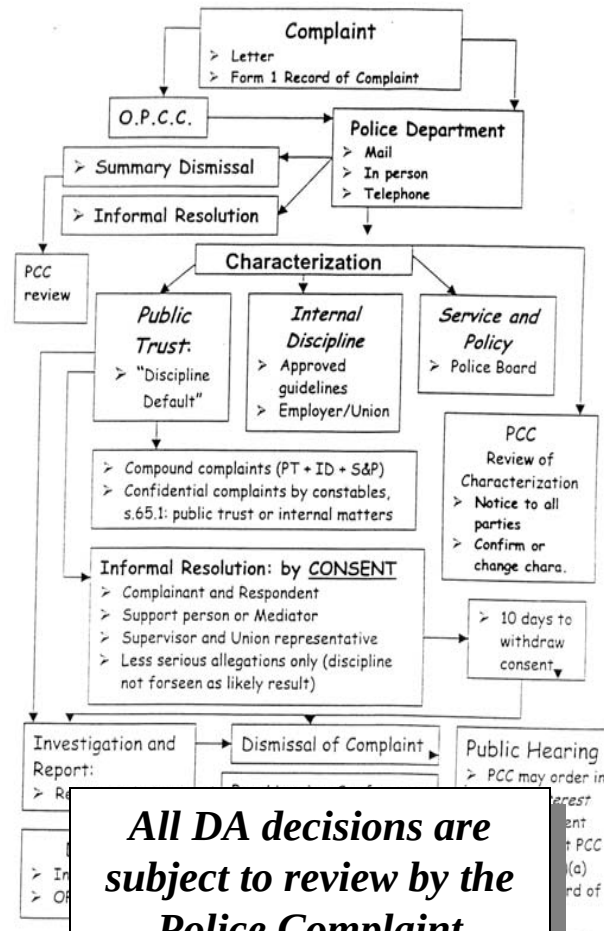
Complaint can be made against any officer and any department.

Complaint can be made to the Chief Constable, duty NCO, or the PCC.

Complaints may be submitted orally in writing - but before processed - must be on the statutory 'Form 1'.

There is a duty to assist the complainant.

There is a duty to inform the parties about the complaint.



Characterization is an important stage that determines how the complaint will be processed.

Processing may involve one or a combination of the following:

Summary dismissal.

Withdrawal of complaint.

Informal resolution.

Investigation.

Discipline or Public Hearing.

All DA decisions are subject to review by the Police Complaint Commissioner.

MAJOR OPERATING FEATURES

Police conduct complaint investigations

CHARACTERIZATION

Public trust / internal discipline / service or policy

CONFIDENTIAL COMPLAINTS

*The identity of complainant
is known only to the Police Complaint Commissioner
("whistleblower section")*

THIRD PARTY COMPLAINANTS

*Person not personally affected – does not have same rights
as first party complainant*

POLICE ACT

CHAPTER 367



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1998: Police Agencies Subject to Part 9:

*12 Municipal Police
Departments*

3 Tribal Police Services

*Organized Crime Agency
of BC (O.C.A. BC)*

POLICE ACT

CHAPTER 367



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2008: Police Agencies Subject Part 9:

12 Municipal Departments

1 Tribal Police Service

BC Combined Forces

*Special Enforcement Unit
(formerly OCA BC)*

Greater Vancouver

*Transportation Association
Police Service (GVTAPS)*

STRENGTHS

PCC may receive and obtain information in the manner the PCC considers appropriate.

A person having records related to a complaint must provide the PCC access to those records.

Every decision by a police discipline authority is subject to review by the PCC.

Despite any other provision in the Act, the PCC may order an investigation into the conduct of a constable, deputy or chief constable, whether or not a formal complaint has been lodged.

STRENGTHS

PCC can arrange a public hearing in the public interest.

PCC can recommend reviews, studies, and public inquiries.

PCC can refer a complaint to Crown Counsel for possible criminal prosecution.

PCC may at any time order a new investigation or an investigation by another police department or the provincial police if the original investigation was inadequate or unreasonably delayed.

WEAKNESSES

Police Act applies only to municipal police constables. Should apply to other classes of provincially appointed officers.

Purpose Clause and Interpretation Provisions lacking. The public, police, PCC and courts would have a common point of reference regarding the fundamental objectives of the complaint process.

Resignation, retirement or transfer of respondent / subject officers. Should not be allowed to undermine the investigation of legitimate complaints.

No power to replace the discipline authority in circumstances where the actions, statements or relationships of a chief constable have tainted the perception of fairness or impartiality.

WEAKNESSES

Ambiguous powers of PCC need clarification. Example: Power to create guidelines should be replaced with power to issue binding directives.

Requirement for statutory form (Form 1) to initiate formal process.

Need for special protections respecting sensitive law enforcement information.

Inability of PCC to conduct independent investigations.

No power to enter police premises or apply for a warrant to search off-premises.

No compellability of respondent / subject officer.

POLICE ACT

CHAPTER 367



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2001

Special Committee Legislative Review:

1. Review Complaint Procedure and the work of the Police Complaint Commissioner;

POLICE ACT

CHAPTER 367



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Special Committee Legislative Review:

*2. Solicit and consider
written and oral
submissions from any
interested person or
organization by any
means the Committee
considers appropriate;*

POLICE ACT

CHAPTER 367



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Special Committee Legislative Review

*3. Submit a Report
including any
amendments to Part 9
that the Committee
recommends within one
year .*

POLICE ACT

CHAPTER 367



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42 Special Committee Recommendations:

***Including: Express
authority for PCC to
prepare enforceable
guidelines re: process.***

***- Legislative Review
every 4 years & reducing
PCC term of office from 6
to 4 years (with possible
re-appointment).***

POLICE ACT

CHAPTER 367



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Special Committee

Recommendations:

-Certain discretionary

PCC duties made

obligatory.

-Clarify that PCC

empowered to initiate

public trust complaint

whether or not a Record of

Complaint received.

POLICE ACT

CHAPTER 367



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2005

PCC White Paper - Draft Police Complaint Act:

- ***Commissioner Ryneveld
appointed February 2003.***
- ***Recognized inadequacies
in Police Act limiting effective
civilian oversight.***
- ***Issued discussion documents
with 70 recommended
amendments to the Police Act.***

POLICE ACT

CHAPTER 367



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2005 – Pivot Report

- RCMP investigation of Vancouver Police.***
- VPD resistance and non-cooperation with RCMP investigators emphasized need for reform, and prompted PCC recommendations:***

POLICE ACT

CHAPTER 367



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*- Comprehensive
audit of VPD practices
in the handling of
complaints - and Chief
Constable practices in
supervising and
Ensuring proper
internal handling of
complaints.*

POLICE ACT

CHAPTER 367



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*- AG and SOL GEN
initiate immediate
discussions with
Executive Council to
amend Police Act.*

*- Police Chiefs to create
integrated investigation
team to conduct
external investigations
when ordered.*

POLICE ACT

CHAPTER 367



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2005

*Justice Josiah Wood
appointed to review
Police Complaint
Process and make
recommendations
which might improve
Part 9 of the Act.*

POLICE ACT

CHAPTER 367



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2006

PCC Green Paper - in response to stakeholder comments on his White Paper - addressed more than 20 issues.

Including administrative search and seizure; structural independence of the PCC; duty to cooperate and compellability; retirement, resignations and transfer; and PCC power to investigate.

POLICE ACT

CHAPTER 367



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Green Paper:

If the creation of a specialized and integrated unit of police officers to conduct arms length Investigations is not deemed practical, PCC Ryneveld proposed that the responsibility should fall to his office - in a fashion akin to what was proposed for Ontario under Bill 103.

Consistent with that responsibility that provisions be added to the governing legislation to ensure that the PCC is in a position to retain a proper team of investigators, and armed with the necessary investigative powers.

POLICE ACT

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The BC Police Chiefs oppose such a power for the PCC , suggesting “that the Legislature be wary of the inadvertent creation of a quasi-investigational body in the OPCC ... Such a shift in philosophy ... requires a much broader public debate.

Commissioner Ryneveld noted that the public debate was already underway.

POLICE ACT

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2007

Josiah Wood's Review Report: Three (3) overarching conclusions:

- *Inadequate PCC powers.*
- *Police have not fully
accepted concept of civilian
oversight.*
- *Not yet necessary to
change Oppal model of
police investigating police.*

POLICE ACT

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Wood recommended:

- *No investigative power for the PCC.*
- *PCC be given power to provide **advice** or **direction** as necessary to ensure full and thorough investigation as it is being conducted.*
- *“Contemporaneous oversight” to replace present system of ex-post facto review .*