IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Chu v. British Columbia (Police Complaint Commissioner)*, 2019 BCSC 1273

Date: 20190802
Docket: S168841
Registry: Vancouver

Between:

James S. ("Jim") Chu

Petitioner

And

The Police Complaint Commissioner of British Columbia and The Honourable Ian H. Pitfield

Respondents

- and -

Docket: S1611386
Registry: Vancouver

Between:

Daryl Wiebe

Petitioner

And

The Police Complaint Commissioner of British Columbia

Respondent

Before: The Honourable Madam Justice Choi

Reasons for Judgment

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Place and Date of Trial/Hearing:	New Westminster, B.C. October 25-26, 2018 Vancouver, B.C. January 14 and June 27, 2019
Place and Date of Judgment:	Vancouver, B.C. August 2, 2019

Table of Contents

[1] This is a judicial review proceeding regarding five decisions made by the Police Complaint Commissioner (PCC).

[2] The impugned decisions concern two former executive officers of the Vancouver Police Department (VPD), both of whom filed petitions before this Court: Jim Chu, former Chief Constable of the VPD, and Daryl Wiebe, former Superintendent of the VPD. Both are now retired from the VPD. I use their former titles in keeping with the parties' and counsel's example.

[3] The PCC made the decisions following a complaint by Mrs. Debra and Mr. Kerry Charters against Chief Constable Chu in January 2015.

[4] Chief Constable Chu asks the court to quash three decisions:

a) the PCC's decision to admit the complaint against him;

b) the PCC's decision to appoint the Honourable Ian Pitfield to adjudicate the complaint; and

c) Honourable Ian Pitfield's decision to substantiate aspects of the allegations against Chief Constable Chu.

[5] Superintendent Wiebe asks the court to quash two decisions:

a) the PCC's decision to add him as a subject of the complaint against Chief Constable Chu; and

b) the PCC's decision to appoint the Honourable Wally Oppal, Q.C. to adjudicate the matter against Superintendent Wiebe.

[6] This petition was filed September 22, 2016. The disciplinary proceedings for Chief Constable Chu and Superintendent Wiebe are in abeyance pending the outcome of this matter. All references to section numbers in these reasons refer to the *Police Act*, R.S.B.C. 1996, c. 367 [*Act*] unless otherwise stated. I have reproduced the sections in the appendix.

[7] As Madam Justice Newbury described in *Florkow v. British Columbia (Police Complaint Commissioner)*, 2013 BCCA 92, the *Act* "is not a model of clarity"; it is "dense, complicated and often confusing": para. 6. I have referred to the relevant sections. Much of Part 11 of the *Act*, relevant to the case at bar and titled "Misconduct, Complaints, Investigations, Discipline and Proceedings" is set out in more detail in *Florkow* at paras. 3, 6-8.

Procedural History

Constable Charters

[8] On December 26, 2011, Constable Christopher Charters of the VPD engaged in an unauthorized police chase of a stolen SUV in east Vancouver. He pursued the SUV at high speed against a supervisor's explicit directions, deliberately struck the stolen vehicle, and was dishonest about his actions.

[9] The VPD investigated Constable Charters for misconduct. VPD Superintendent Mike Porteous conducted a discipline proceeding. He substantiated an allegation of deceit and of neglect of duty. He ordered Constable Charters be dismissed.

[10] Constable Charters chose not to accept Superintendent Porteous' decisions and elected to have a public hearing, an option made possible by s. 136.

[11] In February 2014, the PCC appointed a retired judge, the Honourable William B. Smart, Q.C., to adjudicate the public hearing into Constable Charters' alleged deceit and neglect of duty.

[12] The evidentiary portion of the hearing ran from the end of May 2014 to June 2014. Adjudicator Smart issued reasons on July 30, 2014, finding that Constable Charters "had committed the disciplinary defaults of deceit and neglect of duty."

[13] At the disciplinary and corrective measures portion of the hearing, Adjudicator Smart received submissions from several parties and perspectives, including

Constable Charters, Chief Constable Chu on behalf of the VPD, the public hearing counsel, and Constable Charters' union president.

[14] Chief Constable Chu's submission took the form of two letters, the first signed by him on September 8, 2014, and a supplemental letter signed by him on September 23, 2014. Multiple individuals within the VPD, including Chief Constable Chu and Superintendent Wiebe, contributed to the drafting of the letters. Legal counsel for the VPD reviewed the letters. There is a factual dispute as to whether Deputy Police Complaint Commissioner Rollie Woods advised Chief Constable Constable Chu that the office of the PCC wanted "strong letters" from chief constables in such contexts. The letters referred to negative incidents on Constable Charters' VPD employment record.

[15] The letters supported the VPD's submission at the disciplinary and corrective measures hearing that nothing short of Constable Charters' dismissal would be "workable." PCC-appointed public hearing counsel adopted counsel for the VPD's submissions supporting Constable Charters' dismissal.

[16] On October 31, 2014, Adjudicator Smart issued his sanction decision. He stated that any opinion from a chief constable in such a matter "is expected to be fair, balanced, complete, and accurate", and he criticized the letters and the VPD for not meeting this standard. This standard is not established in the case law or in the *Act*. Adjudicator Smart added that his criticism was "not directed at the Chief Constable personally but rather at the department." Adjudicator Smart decided that Constable Charters should receive a 40-day suspension rather than a dismissal.

[17] Constable Charters resigned from the VPD at some point after the hearing ended.

Chief Constable Chu and Superintendent Wiebe

[18] In mid-January 2015, Chief Constable Chu informed the Vancouver Police Board that he planned to retire. He informed the VPD and the public of the same on the morning of January 23, 2015.

[19] On that same day, Constable Charters' parents, Mrs. and Mr. Charters, filed a complaint against Chief Constable Chu with the PCC. The Charters alleged misconduct by Chief Constable Chu under the *Act* for signing and submitting a letter that contained a "serious misrepresentation" of their son. The Charters characterized Chief Constable Chu's written statements as "misleading, inaccurate and untrue," and as being "for the sole purpose of attempting to mislead the court to try and convince them to dismiss Constable Charters from the police force."

[20] The Charters' complaint also alleged that separate VPD allegations against their son for theft and fraud, which were not pursued, had been partly due to Chief Constable Chu's involvement.

[21] Chief Constable Chu argues that the complaint was motivated by vengeance and is entirely frivolous and vexatious.

[22] The PCC received and reviewed the Charters' complaint to determine its admissibility under s. 82. On February 12, 2015, the PCC decided that the Charters' complaint regarding the VPD's allegations of theft and fraud was inadmissible for various reasons not relevant here.

[23] The PCC also decided that the Charters' allegation regarding the letter, if substantiated, would constitute misconduct by Chief Constable Chu and, additionally, Superintendent Wiebe. The PCC issued notifications of admissibility of complaint under s. 82 to Chief Constable Chu and Superintendent Wiebe regarding their conduct in making written submissions to Adjudicator Smart, which "failed to provide balanced, fair, accurate and complete information." The PCC specified that this conduct could potentially be defined as "discreditable conduct" pursuant to s. 77(3)(h). I will refer to this as the "s. 82 decision" or the "admissibility decision."

[24] The PCC then made two further decisions regarding the complaint against Chief Constable Chu: 1) the PCC appointed Chief Superintendent David Critchley (Burnaby RCMP) to conduct an investigation into the admissible allegations against him under s. 91(1)(a); and 2) the PCC appointed a retired judge, the Honourable Ian

Pitfield, to act as discipline authority under s. 135(2)(b) ("s. 135 decision"). The PCC determined it was in the public interest to appoint a retired judge as discipline authority due to Chief Constable Chu's particular position as a chief constable.

[25] The PCC made two parallel decisions with respect to Superintendent Wiebe: the PCC appointed Chief Superintendent Critchley to conduct an investigation into the admissible allegations against him under s. 91(1)(a) and Chief Constable Jones of the New Westminster Police Department to act as discipline authority under s. 135(2)(b).

Outcome for Chief Constable Chu

[26] Chief Superintendent Critchley investigated the allegations about the letter submitted to the public hearing. He concluded in his final investigative report that the letter "was a product of a flawed business process" and "an organizational failure and not the product of a singular person, including Chief Constable Chu." He concluded, "Chief Constable Chu did not know, or could not have known that his submissions lacked fairness".

[27] Discipline Authority Pitfield reviewed Chief Superintendent Critchley's report and reached a different conclusion. He stated "[i]t appears that the allegation of misconduct … may be substantiated" and proposed a prehearing conference pursuant to s. 112, with a proposed penalty of a written reprimand ("s. 112 decision"). Chief Constable Chu declined the offer. Where such an offer is declined, ss. 112(3) and 123(1) require the discipline authority to convene a discipline proceeding.

Outcome for Superintendent Wiebe

[28] Following Chief Superintendent Critchley's investigation, in which he found Superintendent Wiebe exhibited no misconduct, Discipline Authority Jones determined the allegations were unsubstantiated.

[29] The Charters then made a written request to the PCC under s. 117(2), asking the PCC to appoint a new discipline authority to review the complaint against Superintendent Wiebe again.

[30] The PCC obliged and appointed a retired judge, Honourable Wally Oppal, Q.C., as discipline authority under s. 117(1) ("s. 117 decision"). Discipline Authority Oppal reviewed Chief Superintendent Critchley's report and determined that Superintendent Wiebe's conduct appeared to constitute misconduct pursuant to s. 117(9). He proposed a prehearing conference with Superintendent Wiebe pursuant to s. 120. Discipline Authority Oppal's appointment under s. 117(1) is subject to this judicial review; his decision under s. 117(9) is not.

Parties' Positions

Petitioners

[31] The petitioners made oral submissions on the standard of review. The petitioners argue the PCC's decisions must be quashed because they were made without appropriate jurisdiction, they were procedurally unfair due to the failure to provide reasons, and/or they were unreasonable.

[32] Counsel for Chief Constable Chu argues that decisions made within the PCC's statutory jurisdiction are subject to reasonableness, and decisions made outside the PCC's statutory jurisdiction are subject to correctness as they raise true questions of jurisdiction.

[33] Chief Constable Chu identifies the PCC's admissibility decision as being subject to a reasonableness review. He argues that it was unreasonable for two reasons: first, because the PCC failed to consider whether, or find that, the complaint was frivolous or vexatious (and to provide sufficient reasons for its decision); and second, because the PCC failed to find the complaint inadmissible despite the fact that it relates to the VPD's internal procedures and policies.

[34] He relies on the legal framework for assessing reasonableness and the sufficiency of reasons set out in *Elsner v. British Columbia (Police Complaint*

Commissioner), 2018 BCCA 147 at paras. 70-74, citing from *Dunsmuir v. New Brunswick,* 2008 SCC 9; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*]; *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38; and *Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4.

[35] Chief Constable Chu argues the complaint was clearly frivolous and vexatious and it was unreasonable to admit it on that basis alone. In addition, the reasons given to admit the complaint are opaque. They do not explain why the PCC determined the Charters' complaint was not related to the "general direction and management or operation of a municipal police department" (s. 82(3)(a)(b)) or "its internal procedures" (s. 82(3)(b)(v)), given Adjudicator Smart's own comments. If it had, the complaint would have been deemed inadmissible. Instead, the PCC determined that the complaint, if substantiated, would constitute misconduct (s. 82(2)(a)), and continued with its process.

[36] Chief Constable Chu identifies two issues as "truly jurisdictional" and, therefore, subject to a correctness review in oral argument. The first was appointing Discipline Authority Pitfield before an investigation had begun, contrary to s. 91(1); the second was in choosing Discipline Authority Pitfield from a shortlist of retired judges as opposed to by direct consultation with the Associate Chief Justice of the Supreme Court of British Columbia, per s. 135.

[37] He relies on *Bentley v. The Police Complaint Commissioner*, 2014 BCCA 181, *Florkow,* and *Elsner* in making these arguments.

[38] In *Bentley*, the court applied the standard of correctness to a decision to re-open an investigation without statutory authority. In *Florkow*, the court applied the correctness standard and upheld the chambers judge's quashing of the PCC's order to issue a notice of public hearing without statutory authority as the PCC had "leapfrogged" the stages laid out by its home statute. In *Elsner*, the court reflected on

Florkow and declined to infer inherent jurisdiction for the PCC that would allow the PCC to bypass detailed provisions of his own statute.

[39] Chief Constable Chu argues that Discipline Authority Pitfield's appointment was incorrect, or unreasonable in the alternative, because the PCC did not have jurisdiction to appoint him. The PCC appointed Discipline Authority Pitfield outside of the sequence of events provided by the statute. The appointment occurred before an investigation had begun. Instead of consulting with the Associate Chief Justice directly about who should be appointed as discipline authority for Chief Constable Chu in place of the default, the chair of the police board, the PCC selected Discipline Authority Pitfield off a pre-approved shortlist. Chief Constable Chu argues his s. 112 decision is, therefore, incorrect as well because he made it without jurisdiction.

[40] While the PCC argues that this was wholly appropriate and that it is owed latitude in interpreting its home statute, counsel for petitioner Chu argues that Justice Newbury J.A. rejected this argument in *Florkow* at paras. 45, 54.

[41] In the alternative, Chief Constable Chu argues that Discipline Authority Pitfield's s. 112 decision was unreasonable because he did not consider the mental fault element required for misconduct nor whether it required taking any disciplinary or corrective measures per s. 112(2)(d)(i). The s. 112 decision rested on a lack of standards respecting conduct, and a tribunal may not invent its own "best practice" for application to the facts. While Discipline Authority Pitfield found Chief Constable Chu "departed from the expected norm" in participating in the letter-writing process, there was no evidence of such a norm to compare his conduct against. As Discipline Authority Pitfield had no evidence before him to support a finding of blameworthy conduct, his decision was unreasonable.

[42] Superintendent Wiebe adopts all of Chief Constable Chu's arguments, emphasizing that the decisions regarding Superintendent Wiebe are more egregious given that he was not even the subject of a complaint. The PCC itself expanded the complaint to include Superintendent Wiebe without any reasons.

[43] Superintendent Wiebe further argues that the impugned letter underwent 20 drafts by numerous individuals. His involvement was limited to the early stages because he was on vacation or not involved with the drafting during much of the material time. Thus, Superintendent Wiebe argues the absence of a specific complaint about him and insufficient evidence make the PCC's s. 82 and s. 117 decisions unreasonable.

[44] The petitioners submit the lack of reasons given for diverging from the statutory provisions breach the duty of fairness.

[45] The petitioners also made arguments about the PCC's standing on the judicial review in respect of the reasonableness and substantive merits of the s. 112 decision. They rely on comments from *Lowe v. Diebolt*, 2014 BCCA 280, respecting the PCC's neutrality, in arguing that the PCC is not entitled to make submissions respecting the correctness of its decision to appoint Discipline Authority Pitfield or the reasonableness of the s. 112 decision.

Respondent

[46] The PCC raised two preliminary issues: its standing to make full arguments on all issues and the prematurity of this judicial review.

[47] Respecting standing, the PCC acknowledges that historically, a tribunal was limited to participate to explain the record of proceeding, make submissions on the appropriate standard of review, and argue that its decision is reasonable: *British Columbia Lottery Corporation v. Skelton*, 2013 BCSC 12 at paras. 42-47. This was for reasons relating to tribunal impartiality. However, the PCC argues that in the case at bar, it ought to participate fully because it serves a policy-making, regulatory or investigative role. Concerns about impartiality are muted in the context of such tribunals: *Ontario (Energy Board) v. Ontario Power Generation Inc*., 2015 SCC 44 at paras. 59-62.

[48] The PCC described its mandate as including "broad regulatory responsibilities … grounded in the public interest in ensuring effective civilian oversight that provides

accountability and builds public confidence in policing and the police complaints system." This Court should, therefore, allow the PCC broad latitude in this proceeding to make full argument on all issues raised in the petitions, including its decisions to appoint retired judges Pitfield and Oppal, and Discipline Authority Pitfield's s. 112 decision.

[49] In any event, the PCC argues that while this Court has discretion to hear the merits of the application pursuant to s. 8 of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241, this Court should dismiss the petition as premature. It is a well-known principle that the court ought to decline to hear and decide a judicial review before the administrative proceedings have concluded.

[50] The PCC disagrees with the petitioners' argument that the impugned decisions are jurisdictional and subject to the standard of correctness. The PCC submits that this is contrary to the decisions in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 and *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67.

[51] The PCC emphasizes that an administration decision maker is entitled to deference when interpreting its home statute. The PCC argues that the "dense, imprecise and complicated nature of the disciplinary provisions" in the *Act*, as described in *Florkow*, is precisely why the PCC is owed deference in interpreting the legislation it applies and advises upon.

[52] In responding to the argument that there was a breach of procedural fairness due to inadequate or lack of reasons, the PCC submits, "the concept of procedural fairness is eminently variable" and reasons are not always required. The PCC relies on *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 and *Newfoundland Nurses* to argue that where reasons are given for a decision, procedural fairness concerns do not arise. Any issue with the sufficiency of the reasons must be considered as part of the reasonableness analysis.

[53] Further, in *Knight v. Indian Head School Division No. 19,* [1990] 1 S.C.R. 653 at paras. 24-27, the SCC held that a preliminary decision does not generally trigger a duty to act fairly. Applying the factors from *Knight*, the PCC's s. 82 admissibility decision would trigger a low duty of fairness, and the s. 135 decision would trigger no duty of fairness. In *Farbeh v. College of Pharmacists of B.C.*, 2009 BCSC 1120 at para. 19, the court distinguished between the duty of fairness attached to investigative or screening functions from the duty attached to adjudicative functions.

[54] Regarding the s. 82 decisions, the PCC argues that s. 83(1)(b) the *Act* specifies that the PCC must give reasons only if it finds a complaint to be inadmissible. The PCC submits that this implicitly means it does not have to provide reasons for finding a complaint admissible. Determining admissibility is a screening exercise that does not trigger a duty of fairness, as it does not have a significant impact on the rights of the complaint's subject.

Discussion

Prematurity

[55] The PCC's primary argument in response to the petitions is that they are premature.

[56] In *Vancouver (City) v. British Columbia (Assessment Appeal Board, Assessor of Area No. 09 – Vancouver)* (1996), 135 D.L.R. (4th) 48 (B.C.C.A.), the court confirmed the general rule:

> [26] The general rule seems clear in both criminal and civil proceedings: a tribunal should be permitted to complete its process and to render its final decision before judicial review is entertained. This rule is founded in the time honored principle that a tribunal, such as the Board in this case, is established to fulfil the statutory functions it is assigned. The Board should be seen as the master of its own process, and that process should not be interfered with by the courts until a final decision is rendered, lest there be one court application after another, which would clearly frustrate the Board's mandate and its legislative purpose.

[57] The principle shows deference to the administrative tribunal, prevents the inefficient fracturing of the decision-making process, and avoids expending judicial

resources before a final administrative decision is made that may well vindicate the petitioners.

[58] In the police context, prematurity was considered a bar to judicial review in *Montgomery v. Edmonton (City of) Police Service*, 1999 ABQB 913; *Ackerman v. Ontario Provincial Police*, 2010 ONSC 910; and *Black v. Canada (Attorney General),* 2012 FC 1306. The court in *Black* referred to *C.B. Powell Limited v. Canada (Border Services Agency),* which provides a summary of the prematurity principle:

> [31] … absent exceptional circumstances, those who are dissatisfied with some matter arising … must pursue all effective remedies that are available within that process; only when the administrative process affords no effective remedy can they proceed to court. …

[59] At para. 23 of *ICBC v*. *Yuan*, 2009 BCCA 279 [*Yuan*], Groberman J.A. cited Ballance J.'s comments in *Imperial Parking Canada Corp. v. Bali*, 2005 BCSC 643 regarding examples where the court may choose to judicially review a preliminary ruling. These exceptional circumstances include a *habeas corpus* challenge, questions of whether the tribunal has the authority to continue, and interlocutory decisions that violate the *Canadian Charter of Rights and Freedoms*, clearly exceed jurisdiction, or deny natural justice. Mr. Justice Groberman emphasized, "[p]rematurity is not an absolute bar to judicial review, but a discretionary one."

[60] The petitioners argue that prematurity is not a bar on the basis that the decisions rendered to date are final and because there are exceptional circumstances due to the many jurisdictional issues alleged. Chief Constable Chu argues that the decisions under review are not preliminary, but threshold decisions. He submits that this Court should exercise its discretion to proceed with this judicial review even though the proceedings are ongoing. He relies on Harvey J.'s decision to proceed with a judicial review of a decision of the PCC in *Diaz-Rodriguez v. British Columbia (Police Complaint Commissioner)*, 2018 BCSC 1642 in support of his position.

[61] For the reasons that follow, I dismiss the petitions on the basis of prematurity. The weight of the case law is clear that courts have long been reticent to allow the

judicial review of applications brought before the end of the underlying administrative proceedings. The court in *British Columbia (Ministry of Public Safety and Solicitor General) v. Mzite*, 2014 BCCA 220 provided that there are "practical and theoretical reasons for the rule that restraint should be exercised in hearing appeals from administrative tribunals before they have completed their work": para. 30. It is the general practice: *Yuan* at para. 24.

[62] Although the petitioners argue that the impugned decisions are final ones, I find they are discrete decisions in and of themselves, but are interlocutory. The administrative process has not yet "run its course", a process the legislature designed to occur in full first before judicial review.

[63] Further, as stated in *CB Powell Limited* at para. 33, "the presence of so-called jurisdictional issues is not an exceptional circumstance justifying early recourse to courts." This point also arises in *Brown v. Police Complaint Commissioner et al.*, 2001 BCSC 1115. The case law does not support a finding that any of the PCC's decisions or Discipline Authority Pitfield's decision exceed jurisdiction so clearly as to allow a review at this stage.

[64] *Diaz-Rodriguez* is distinguishable in many respects from the case at bar. The petitions challenged the initiation of a public hearing, which was a final decision. Two adjudicative tribunals, the second and third discipline authorities, had issued their final discipline proceeding decisions "leaving nothing left to decide": para. 117. The petitions did not raise a challenge to an interlocutory decision. Mr. Justice Harvey found that the judicial review was timely, not premature, because there was a complete evidentiary record "on which to assess the petitioner's claims of unreasonable delay and the reasonableness of the decision of the PCC to initiate the public hearing process" (at para. 123). As well, there were extraordinary procedural delays, resulting in a five-year piecemeal process.

[65] In the case at bar, none of the PCC's four decisions under review are decisions on the merits. The PCC did not determine whether any misconduct was substantiated. They were decisions made to move the administrative process

forward. While Discipline Authority Pitfield's decision was on the merits, the discipline proceeding is not concluded. I must, therefore, find that the petitions are premature and must be dismissed.

[66] Given my reasons on prematurity, there is no need to review the PCC's ss. 82, 117, or 135 decisions, Discipline Authority Pitfield's s. 112 decision, or the standing issue.

"Choi J."

Appendix

Police Act, R.S.B.C. 1996, c. 367

Defining misconduct

77 (3) Subject to subsection (4), any of the conduct described in the following paragraphs constitutes a disciplinary breach of public trust, when committed by a member:

…

(h) "discreditable conduct", which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department, including, without limitation, doing any of the following:

(i) acting in a disorderly manner that is prejudicial to the maintenance of discipline in the municipal police department;

(ii) contravening a provision of this Act or a regulation, rule or guideline made under this Act;

(iii) without lawful excuse, failing to report to a peace officer whose duty it is to receive the report, or to a Crown counsel, any information or evidence, either for or against any prisoner or defendant, that is

material to an alleged offence under an enactment of British Columbia or Canada

…

Determination of whether complaint is admissible

82 (1) On receiving a complaint directly from a complainant or receiving a copy or record of a complaint from a member or designated individual referred to in section 78 (2) (b), the police complaint commissioner must determine whether the complaint is admissible or inadmissible under this Division.

(2) A complaint or a part of a complaint is admissible under this Division if

(a)the conduct alleged would, if substantiated, constitute misconduct by the member,

(b)the complaint is made within the time allowed under section 79 (1) or (2) *[time limit for making complaints]*, and

(c)the complaint is not frivolous or vexatious.

(3) A complaint or a part of a complaint is inadmissible under this Division insofar as it relates to any of the following:

(a)the general direction and management or operation of a municipal police department;

(b)the inadequacy or inappropriateness of any of the following in respect of a municipal police department:

(i)its staffing or resource allocation;

(ii)its training programs or resources;

(iii)its standing orders or policies;

(iv)its ability to respond to requests for assistance;

(v)its internal procedures.

(4) A complaint concerning a person who, at the time of the conduct alleged, was a member is not inadmissible by reason only that the person

(a) is, at the time the complaint is made, no longer a member, or

(b) retires or resigns from the municipal police department at any time after the complaint is made.

(5) Nothing in this section limits the application of section 109 *[power to discontinue investigation]*.

(6) Any complaint or part of a complaint that is determined inadmissible under subsection (3) must be processed by the board of the municipal police department concerned under Division 5 *[Process Respecting Department Service and Policy Complaints]*.

Notification following determination of admissibility

83 (1) On determining under section 82 that a complaint is inadmissible, the police complaint commissioner must

(a) give written notification of that determination to

(i) the complainant,

(ii) a chief constable of the municipal police department with which the member in respect of whom the complaint is made is employed or, if the complaint concerns the conduct of a former member, a chief constable of the municipal police department with which the former member was employed at the time of the conduct of concern, and

(iii) in the case of a complaint determined inadmissible under section 82 (3), the board of the municipal police department concerned,

(b)include in the notification the reason for the determination

…

If complaint against chief constable not resolved informally, external investigation must be initiated

91 (1) Despite section 90 (1) *[if complaint not resolved informally, investigation must be initiated]*, if an admissible complaint against a chief constable or former chief constable of a municipal police department is not resolved under Division 4 *[Resolution of Complaints by Mediation or Other Informal Means]*, then the police

complaint commissioner must direct that an investigation into the matter be conducted by either of the following as investigating officer:

(a) a constable of an external police force who is appointed for the purpose of this section by a chief constable, a chief officer or the commissioner, as the case may be, of the external police force;

(b) a special provincial constable appointed for the purpose of this section by the minister.

…

Discipline authority to review final investigation report and give early notice of next steps

112 (1) Within 10 business days after receiving an investigating officer's final investigation report in respect of the conduct of a member or former member, the discipline authority must

(a) review the report and the evidence and records referenced in it,

(b) subject to subsection (6), provide

(i) the complainant, if any, with a copy of the final investigation report, and

(ii) the member or former member with a copy of the final investigation report and the evidence and records referenced in it, and

(c) notify the complainant, if any, the member or former member, the police complaint commissioner and the investigating officer of the next applicable steps to be taken in accordance with this section.

(2) Notification under subsection (1) (c) must be in writing and include the following, as applicable:

(a) a description of the complaint, if any, and any conduct of concern;

(b) a statement of a complainant's right to make submissions under section 113 [complainant's right to make submissions];

(c) a list or description of each allegation of misconduct considered by the discipline authority;

(d) if subsection (3) applies, the discipline authority's determination as to the following:

(i) whether or not, in relation to each allegation of misconduct considered by the discipline authority, the evidence referenced in the report appears to substantiate the allegation and require the taking of disciplinary or corrective measures;

(ii) whether or not a prehearing conference will be offered to the member or former member under section 120 [prehearing conference];

(iii) the range of disciplinary or corrective measures being considered by the discipline authority in the case;

(e) if subsection (4) applies, a statement that

(i) the complainant, if any, may file with the police complaint commissioner a written request for an appointment under section 117 [appointment of new discipline authority if conclusion of no misconduct is incorrect], and

(ii)includes the effect of subsection (5) of this section.

(3) If, on review of the report and the evidence and records referenced in it, the discipline authority considers that the conduct of the member or former member appears to constitute misconduct, the discipline authority must convene a discipline proceeding in respect of the matter, unless section 120 (16) [prehearing conference] applies.

(4) If, on review of the report and the evidence and records referenced in it, the discipline authority decides that the conduct of the member or former member does not constitute misconduct, the discipline authority must include that decision, with reasons, in the notification under subsection (1) (c).

(5) The discipline authority's decision under subsection (4)

(a) is not open to question or review by a court on any ground, and

(b) is final and conclusive, unless the police complaint commissioner appoints a retired judge under section 117 (1) [appointment of new discipline authority if conclusion of no misconduct is incorrect].

…

Appointment of new discipline authority if conclusion of no misconduct is incorrect

117 (1) If, on review of a discipline authority's decision under section 112 (4) *[discipline authority to review final investigation report and give early notice of next steps]* or 116 (4) *[discipline authority to review supplementary report and give notice of next steps]* that conduct of a member or former member does not constitute misconduct, the police complaint commissioner considers that there is a reasonable basis to believe that the decision is incorrect, the police complaint commissioner may appoint a retired judge recommended under subsection (4) of this section to do the following:

(a) review the investigating officer's report referred to in section 112 or 116, as the case may be, and the evidence and records referenced in that report;

(b) make her or his own decision on the matter;

(c) if subsection (9) of this section applies, exercise the powers and perform the duties of discipline authority in respect of the matter for the purposes of this Division.

(2) A complainant seeking an appointment under subsection (1) must file a written request with the police complaint commissioner within 10 business days after receiving the notification under section 112 (1) (c) *[discipline authority to review final investigation report and give early notice of next steps]* or 116 (1) (c) *[discipline authority to review supplementary report and give notice of next steps]*.

…

(4) The police complaint commissioner must request the Associate Chief Justice of the Supreme Court to

(a) consult with retired judges of the Provincial Court, the Supreme Court and the Court of Appeal, and

(b) recommend one or more retired judges for the purposes of this section.

…

(7) Within 10 business days after receiving the reports under subsection (6), the retired judge appointed must conduct the review described in subsection (1) (a) and notify the complainant, if any, the member or former member, the police complaint commissioner and the investigating officer of the next applicable steps to be taken in accordance with this section.

(8) Notification under subsection (7) must include

(a) a description of the complaint, if any, and any conduct of concern,

(b) a statement of a complainant's right to make submissions under section 113 [*complainant's right to make submissions*],

(c) a list or description of each allegation of misconduct considered by the retired judge,

(d) if subsection (9) applies, the retired judge's determination as to the following:

(i) whether or not, in relation to each allegation of misconduct considered by the retired judge, the evidence referenced in the report appears sufficient to substantiate the allegation and require the taking of disciplinary or corrective measures;

(ii) whether or not a prehearing conference will be offered to the member or former member under section 120 *[prehearing conference]*;

(iii) the range of disciplinary or corrective measures being considered by the retired judge in the case, and

(e) if subsection (10) applies, a statement that includes the effect of subsection (11).

(9) If, on review of the investigating officer's reports and the evidence and records referenced in them, the retired judge appointed considers that the conduct of the member or former member appears to constitute misconduct, the retired judge becomes the discipline authority in respect of the matter and

must convene a discipline proceeding, unless section 120 (16) *[prehearing conference]* applies.

(10) If, on review of the report and the evidence and records referenced in it, the retired judge decides that the conduct of the member or former member does not constitute misconduct, the retired judge must include that decision, with reasons, in the notification under subsection (7).

(11) The retired judge's decision under subsection (10)

(a) is not open to question or review by a court on any ground, and

(b) is final and conclusive.

Prehearing conference

120 (1) In this section, **"prehearing conference authority"**, in relation to a member or former member of a municipal police department, means

(a) a chief constable, a deputy chief constable or a senior officer of the municipal police department, or

(b) a chief constable, a deputy chief constable or a senior officer of another municipal police department.

(2) Subject to the exceptions set out in subsection (3), if the discipline authority

(a) considers that the evidence referenced in the final investigation report or any supplementary report appears to substantiate an allegation of misconduct and require the taking of disciplinary or corrective measures, and

(b) has complied with section 112 *[discipline authority to review final investigation report and give early notice of next steps]* and, if applicable, section 116 *[discipline authority to review supplementary report and give notice of next steps]*,

the discipline authority may offer the member or former member a confidential, without prejudice, prehearing conference with a prehearing conference authority to determine whether the member or former member is prepared to admit misconduct and, if so, what

disciplinary or corrective measures the member or former member is prepared to accept.

…

(6) If

(a) a member or former member accepts an offer for a prehearing conference under this section, and

(b) a complainant has been notified under section 112 (1) (c) *[discipline authority to review final investigation report and give early notice of next steps]* or 116 (1) (c) *[discipline authority to review supplementary report and give notice of next steps]* but the complainant has not yet exercised her or his right to make submissions to the discipline authority under section 113 *[complainant's right to make submissions]*, the discipline authority must notify the complainant in writing of the complainant's right to make written or oral submissions, or both, respecting the matters referred to in section 113 (1) (a) to (c) *[complainant's right to make submissions]*.

…

(11) A prehearing conference authority must apply section 126 *[imposition of disciplinary or corrective measures]* in proposing, determining and approving any disciplinary or corrective measures under this section.

…

(12) If disciplinary or corrective measures are accepted by a member or former member and approved by the prehearing conference authority at a prehearing conference, the prehearing conference authority must, within 10 business days after the prehearing conference, provide the complainant, if any, the member or former member, the police complaint commissioner and the discipline authority with a report that includes all of the following, subject to subsection (13):

(a) the disciplinary or corrective measures accepted and approved for each allegation of misconduct and the reasons for approving those measures;

(b) any recommendations in respect of changes in policy or practices of the member's or former member's municipal police department and the reasons for those recommendations;

(c) any noted aggravating and mitigating factors in the case;

(d) a statement of the effect of subsection (16).

…

(16) On approval by the police complaint commissioner, disciplinary or corrective measures accepted by a member or former member and approved by a prehearing conference authority at a prehearing conference constitute a resolution of the matter, which resolution is final and conclusive and not open to question or review by a court on any ground.

Matters related to discipline proceeding

123 (1) Subject to subsections (3) and (4), if a prehearing conference is not offered or held under section 120 or, if held, does not result in a resolution of each allegation of misconduct against the member or former member concerned, the discipline authority must

(a) hold and preside over a discipline proceeding in respect of the matter within the time period required under section 118 *[discipline proceeding to be convened within 40 business days after receiving investigation report or police complaint commissioner's notification]* unless an adjournment is granted under subsection (10) of this section,

(b) at least 15 business days before the discipline proceeding and in accordance with the regulations, if any, under section 184 (2) (g) *[regulations under Parts 9 and 11]*, serve notice of the discipline proceeding on

(i)the member or former member, and

(ii)each witness on whom a notice to appear is served under section 121 (1)

(b) or (2) *[if member's or former member's request to question witnesses is accepted]*, and

(c)at least 15 business days before the discipline proceeding, deliver notice of the discipline proceeding to

(i) the complainant, if any,

(ii) the discipline representative, if any,

(iii) the police complaint commissioner, and

(iv) the investigating officer.

Power to designate another discipline authority if in public interest

135 (1) Subject to subsection (2), at any time after an investigation is initiated under this Part into the conduct of a member or former member of a municipal police department, if the police complaint commissioner considers it necessary in the public interest that a person other than a chief constable of the municipal police department, or her or his delegate, be the discipline authority for the purposes of one or more provisions of this Division, the police complaint commissioner may designate a senior officer of another municipal police department to exercise the powers and perform the duties of a discipline authority under the applicable provision, in substitution of the chief constable or the delegate, as the case may be.

(2) At any time after an investigation is initiated under this Part into the conduct of a member or former member of a municipal police department who is or was a chief constable or deputy chief constable at the time of the conduct of concern, if the police complaint commissioner considers it necessary in the public interest that a person other than the chair of the board be the discipline authority for the purposes of one or more provisions of this Division,

(a) the police complaint commissioner must request the Associate Chief Justice of the Supreme Court to

(i) consult with retired judges of the Provincial Court, the Supreme Court and the Court of Appeal, and

(ii) recommend one or more retired judges to act as discipline authority for the purposes of those provisions, and

(b) the police complaint commissioner must appoint one of the retired judges recommended to exercise the powers and perform the duties of a discipline authority under the applicable provision, in substitution of the chair of the board of the municipal police department.

Time limit for requesting public hearing or review on the record

136 (1) A written request for a public hearing or review on the record, from a complainant or member or former member described in section 133 (5) [review of discipline proceedings], must be received by the police complaint commissioner within 20 business days after the complainant or member or former member, as the case may be, receives the report referred to in section 133 (1) (a).