

PUBLIC HEARINGS – GENERAL INFORMATION

DEFINITIONS

<i>Adjudicator</i>	A retired judge of the Provincial Court, Supreme Court of the Court of Appeal, selected by the Associate Chief Justice of the Supreme Court and appointed by the Police Complaint Commissioner under section 142 to preside over a Public Hearing
<i>Commission Counsel</i>	Legal counsel representing the Police Complaint Commissioner at a Public Hearing.
<i>Public Hearing Counsel</i>	Legal counsel appointed by the Police Complaint Commissioner to present to the Adjudicator the case relative to each allegation of misconduct against the member or former member concerned.
<i>Member</i>	A municipal constable, Deputy Chief Constable or Chief Constable, whose conduct is the subject of the Public Hearing.
<i>Misconduct</i>	Conduct as defined by Division 2 of Part 11 of the <i>Police Act</i> , which constitutes a disciplinary breach of public trust when committed by a member.

WHAT IS A PUBLIC HEARING

A Public Hearing is a new hearing concerning the conduct of a member or former member that was the subject of an investigation under Division 3 [s.143(2)]. A public hearing is not limited to the evidence and issues that were before a discipline authority in a discipline proceeding [s. 143(3)].

Witnesses who have relevant evidence to give may be called, whether or not they were interviewed during the original investigation. Witnesses may be subject to examination and cross examination by public hearing counsel, the member’s counsel and commission counsel [s. 143(5)].

A Public Hearing is open to the public and media, unless the Adjudicator, by order, prohibits or restricts a person or a class of persons, or the public, from attending all or part of a the hearing, or from accessing all or part of any information provided to or held by the Adjudicator. [s. 143(8) & 150]

An Adjudicator has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising or required to be determined in respect of a Public Hearing, and to make any order permitted under Division 3 of the *Police Act*. [s.154(1)]

HEARING DATES

The appointed Adjudicator must, with the assistance of the Registrar, arrange and set the earliest practicable date or dates for, the Public Hearing and the Commissioner must serve written notice of the proceeding on the following persons at least 15 business days before the proceeding may commence [s. 142(3)]:

- (a) the complainant, if any;
- (b) the member or former member whose conduct is the subject of the proceeding; and
- (c) the Discipline Authority concerned.

PARTICIPANTS IN A PUBLIC HEARING [s. 144]

Other participants in a Public Hearing

- Public Hearing Counsel
- Commission Counsel
- The member, or former member (or his/her legal counsel or agent)
- Any other person who, upon application to the Adjudicator, is granted rights to participate

POWERS RESPECTING PARTICIPANTS [s. 145]

The Adjudicator may make orders respecting:

- the manner and extent of a participant's participation;
- the rights and responsibilities, if any, of a participant; and
- any limits or conditions on a participant's participation.

COMPLAINANTS [s. 143(7)]

If the public hearing concerns the conduct that was the subject of an admissible complaint, the complainant, or her or his agent or legal counsel, may make oral or written submissions, or both, after all of the evidence is called.

ATTENDANCE AT PUBLIC HEARINGS AND COMPELLABILITY

The Adjudicator may order a person to do either or both of the following:

- (a) attend, in person or by electronic means, before the Adjudicator to give evidence on oath or in any other manner;
- (b) produce for the Adjudicator a record or thing in the person's possession or control

An Adjudicator's order to attend must be in the form of a summons, served on the person by personal delivery or registered mail to the person's last known address on record with the Police Complaint Commissioner.

Respondent member(s):

A member or former member whose conduct is the subject of a Public Hearing is not compellable to testify as a witness at the Public Hearing, but an adverse inference may be drawn from the member's or former member's failure to do so. [s. 151]

Witnesses:

All oral evidence must be given under affirmation or oath.

A participant or witness in a Public Hearing has the same immunities as a witness who appears before the court. A witness is considered to have objected to answering any question that may incriminate the participant or witness in a criminal proceeding, or establish the participant's or witness's liability in a civil proceeding. [s.146(2)]

Any answer provided by a participant or witness before an Adjudicator must not be used or admitted in evidence against the participant or witness in any trial or other proceedings, other than a prosecution for perjury in respect of the answer provided.

Subject to the law of privilege, all witnesses are compellable at the Public Hearing. [s.146(3)]

Power to enforce summons and punish for contempt [s.149]

If a person who has been served a summons to appear fails to:

- attend as directed;
- take an oath or make an affirmation;
- answer questions; or
- produce records or things in the person's possession or control,

the Adjudicator may make an order finding that person to be in contempt and may impose a fine on or commit the person for contempt.

DECISIONS BY THE ADJUDICATOR [s. 143(9)]

After all the evidence is called and submissions by the participants are concluded, the Adjudicator must determine:

- whether any misconduct as defined by section 77 of the *Police Act* has been proven against the member or former member;
- if applicable, the appropriate disciplinary or corrective measures to be taken; and
- recommendations, if any, to the Chief Constable or police board regarding changes in policy or practices as the Adjudicator considers advisable in respect of the matter.

Imposition of disciplinary or corrective measures [s.126]

If the allegations of misconduct have been proven, the Adjudicator must determine the appropriate corrective or disciplinary measures to be imposed pursuant to section 126(1), and taking into consideration the mitigating and aggravating circumstances as set out in section 126(2).

At the discretion of the Adjudicator, the participants may be invited to make written submissions regarding corrective and disciplinary measures.

If the Adjudicator considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the member concerned takes precedence, unless it is unworkable or would bring the administration of police discipline into disrepute.

PUBLICATION OF REASONS FOR DECISION BY ADJUDICATORS

Unless special circumstances exist for which the Adjudicator has ordered a ban on publication, all Notices of Public Hearings, submissions from Counsel, and Reasons for Decision by Adjudicators will be accessible to the public and published on the Office of the Police Complaint Commissioner's website.