



Office of the
Police Complaint Commissioner

British Columbia, Canada

**Procedure to Make an Appointment under
Sections 117(1), 135(2) and 142(1) of the *Police Act***

Background

Section 177.2(1) of the *Police Act* requires the Police Complaint Commissioner to maintain a list of retired judges who may be appointed under one or more of sections 117(1), 135(2) and 142(1) of the *Police Act*. In conjunction with that requirement, section 177.2(3) of the *Police Act* requires the Commissioner to establish and apply consistent and objective appointment procedures. The procedures and the established list must be posted on a publicly accessible website pursuant to section 177.2(4) of the *Police Act*.

The Commissioner has considered the purposes of appointments under sections 117(1), 135(2) and 142(1) of the *Police Act* and has established the following procedures and considerations to be applied when the Commissioner must appoint retired judges for adjudications under the *Police Act*. These procedures may be updated from time to time.

Appointment considerations

When appointing a retired judge under these procedures, the Commissioner may consider the following factors:

- a) the provision under which the appointment is being made;
- b) the current workloads of the various retired judges;
- c) the complexity of the matter and any prior experience with the *Police Act*; and
- d) any specific expertise or experience of a retired judge with respect to a particular issue or sensitivity associated with the matter.

Process

Within the time limits permitted by the *Act*, the Commissioner will make the requisite determinations under sections 117(1), 135(2), 137 or 138 and determine whether the appointment of a retired judge is necessary.

Once advised that the appointment of a retired judge is necessary, the retired judges on the list will be contacted to determine which judges have availability and inquire as to the existence of any conflicts.

Prabhu Rajan
Police Complaint Commissioner

2nd Floor, 947 Fort Street
PO Box 9895 Stn Prov Govt
Victoria, British Columbia V8W 9T8
Tel: (250) 356-7458 Fax: (250) 356-6503

Toll Free 1 877-999-8707 # Website: www.opcc.bc.ca

The Commissioner will be advised as to which retired judges are available to take on a new adjudication and do not have any conflicts. The Commissioner will consider the factors set out above and appoint a retired judge for the purposes of section 117(1), 135(2) or 142(1) of the *Police Act*.

Following the acceptance of an appointment, the Commissioner's decision under section 117(1), 135(2) or 142(1) will be finalized and notice will be provided in accordance with the *Police Act*.

For section 117 reviews, the retired judge will indicate when they are able to receive the required statutory materials and their preferred form and manner (electronic, hard copy, both). Once provided with these materials, the retired judge will have ten (10) business days to complete their review and issue their decision.

For a Review on the Record or a Public Hearing, the retired judge will coordinate with counsel involved through a case management conference to schedule the proceedings.

For a section 135(2) appointment, the retired judge will receive the required statutory notices and other relevant materials.

Consultation with the Associate Chief Justice

In accordance with section 177.2(2), the Commissioner has requested that the Associate Chief Justice of the Supreme Court consult with retired judges of the Provincial Court, the Supreme Court and the Court of Appeal and recommend retired judges for possible inclusion on the list of the retired judges.

As of June 11, 2024, the Associate Chief Justice has provided her recommendations and the Commissioner has created a list of retired judges, which is attached as Appendix "A". The Commissioner will, from time to time, request the Associate Chief Justice to recommend additional retired judges to add to this list.

Effective date: June 13, 2024



Prabhu Rajan
Police Complaint Commissioner

Appendix "A"

List of Retired Judges

The Associate Chief Justice has recommended retired judges who the Commissioner may include on the list of retired judges and may be appointed as decision-makers under sections 117(1), 135(2) and 142 of the *Police Act*. As of June 13, 2024, from those recommendations, the Commissioner has decided to include the following retired judges on the list (in alphabetical order):

1. Elizabeth Arnold-Bailey, retired BC Supreme Court Justice
2. William Ehrcke, K.C., retired BC Supreme Court Justice
3. Carol Baird Ellan, K.C., retired BC Provincial Court Judge
4. David Frankel, K.C., retired BC Court of Appeal Justice
5. Brian Neal, K.C., retired BC Provincial Court Judge
6. David Pendleton, retired Provincial Court Judge
7. James Threlfall, retired BC Provincial Court Judge

Prior to being placed on the list, all recommended retired judges will be provided with an orientation and training session from the OPCC in relation to Part 11 of the *Police Act*. In addition, each retired judge will be asked to provide a biography to the OPCC outlining their experience and expertise.

Updates to this list will be made periodically.