



Court Of Appeal File No. CA-50840

**COURT OF APPEAL**

BETWEEN:

**ARVIN SINGH DANG AND KRISTY MORGAN**

**APPELLANTS**  
Plaintiffs

AND:

**THE ATTORNEY GENERAL OF CANADA AND MINISTER OF PUBLIC SAFETY  
AND SOLICITOR GENERAL OF THE PROVINCE OF BRITISH COLUMBIA**

**RESPONDENTS**  
Defendants

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**INTERVENER'S FACTUM**

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## OPENING STATEMENT

1. The British Columbia Civil Liberties Association (the “**BCCLA**”) intervenes in this appeal to provide submissions on the preferability framework applicable to the appellants’ certification application.
2. The BCCLA urges the Court to take a purposive approach to assessing whether proposed alternative procedures can address any relevant substantive access to justice barriers. Access to justice is an animating consideration of the preferability analysis at the certification stage. Substantive access to justice is only possible where a just and effective remedy exists. In a proposed class action seeking *Charter* damages, an alternative procedure can only provide access to justice, and thus serve as a preferable procedure, if it is capable of leading to a remedy that meets the compensation, vindication and deterrence purposes of *Charter* damages.
3. Viewed through this lens, the Civilian Review Complaints Commission (the “**CRCC**”) and the Independent Investigations Office (the “**IIO**”) have limited ability to achieve the compensation, vindication and deterrence objectives of *Charter* damages and thus provide just and effective remedies for *Charter* claims.

## **PART 2 - STATEMENT OF FACTS**

4. The BCCLA is a non-profit advocacy group that advocates for the protection of civil liberties and human rights. It has experience bringing forward complaints of police misconduct, including to the CRCC. The BCCLA does not take a position on the facts of this appeal or its outcome. It intervenes to present submissions on how the preferability requirement of certification is applied in the context of *Charter* claims.
5. Below, the appellants sought to certify a class proceeding seeking tort damages as well as declaratory relief and *Charter* damages as remedies for alleged *Charter* violations by the RCMP.
6. Justice Giaschi rejected the appellants’ certification application. In addition to finding there was no identifiable class and the proceeding lacked common issues, Justice

Giaschi found that a class proceeding would not be preferable.<sup>1</sup> On this criterion, Justice Giaschi reasoned that: “[a]lternative preferable procedures include individual actions and complaints to the Independent Civilian Review and Complaints Commission and the Independent Investigations Office.”<sup>2</sup> The BCCLA confines its appeal to the legal framework and analysis applicable to the Court’s reasoning on this point.

### **PART 3 - ARGUMENT**

#### **The Preferability Analysis and Access to Justice**

7. The preferability stage of the certification test considers whether “a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues”.<sup>3</sup> In considering this question, the court must “actively consider” the five mandatory considerations listed in s. 4(2) of the *CPA*.<sup>4</sup> One of these factors is “whether other means of resolving the claims are less practical or less efficient.”<sup>5</sup>

8. When assessing preferability, the analysis must be conducted with a view to the three principle goals of class proceedings: judicial economy, behaviour modification and access to justice.<sup>6</sup> The court must consider the extent to which the proposed class proceeding will achieve these goals as compared with other possible means of resolving the dispute.<sup>7</sup> The focus of the analysis is a comparison between the procedure of a class proceeding and any alternative means of resolving the claims.<sup>8</sup>

9. For an alternative procedure to be preferable to a class action, it must address the access to justice barriers that exist in the particular circumstances and that could be addressed through a class proceeding.<sup>9</sup> Access to justice in this context has both

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<sup>1</sup> *Reasons* at para 184.

<sup>2</sup> *Reasons* at para 184.

<sup>3</sup> *Class Proceedings Act*, [RSBC 1996], c 50 (“*CPA*”), s. 4(1)(d).

<sup>4</sup> *Lewis v Westjet*, 2022 BCCA 145 (“*Lewis*”) at para 44.

<sup>5</sup> *CPA*, s. 4(2)(d).

<sup>6</sup> *AIC Limited v Fischer*, 2013 SCC 69 (“*AIC Limited*”) at para 22.

<sup>7</sup> *AIC Limited* at para 23.

<sup>8</sup> *Ewert v Canada (Attorney General)*, 2022 BCCA 131 (“*Ewert*”) at para 32.

<sup>9</sup> *AIC Limited* at para 38.

procedural and substantive dimensions.<sup>10</sup> In order for an alternative procedure to effectively resolve the claims of potential class members there must be both a fair process and the potential for claimants to obtain a “just and effective remedy” if their claims are established.<sup>11</sup>

### **Charter Claims and Access to Justice**

10. Cases alleging breaches of *Charter* rights without accompanying significant physical or psychological harm face significant access to justice barriers: they are prohibitively costly, time-consuming and often offer little chance of significant financial relief.<sup>12</sup> They are often “economically irrational.”<sup>13</sup> Class actions have the potential to make such claims possible by distributing litigation costs across a large number of class members.<sup>14</sup> In this context, seeking *Charter* damages through a class action may be the only financially viable route for those seeking to vindicate their rights through litigation.<sup>15</sup>

11. In addition to economic barriers, *Charter* claims will often involve other forms of access to justice barriers inherent in allegations of police or governmental misconduct. For example, in *Reilly v Alberta*, where the plaintiff alleged class members’ *Charter* rights had been violated through delays in bail hearings, the Alberta Court of Appeal recognized the likelihood of “personal barriers in the form of vulnerabilities such as addictions, homelessness and other vulnerabilities.”<sup>16</sup> All relevant barriers to just and effective remedies for the particular claim ought to be considered and weighed in the preferability analysis.

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<sup>10</sup> *AIC Limited* at para 4.

<sup>11</sup> *Lewis* at para 61; *AIC Limited* at para 24.

<sup>12</sup> Iryna Ponomarenko, “The Devil is in the Scale: Revisiting the Commonality Requirement in Charter Class Actions” (2019) 57:1 *Alberta Law Review* 69 (“**The Devil is in the Scales**”) at 70; See e.g. *Good v Toronto Police*, 2014 ONSC 4583 (Div Ct) (“**Good Div Ct**”) at para 93 aff’d 2016 ONCA 250.

<sup>13</sup> *The Devil is in the Scales* at 70.

<sup>14</sup> *Western Canadian Shopping Centres Inc. v Dutton*, 2001 SCC 46 (“**Dutton**”) at para 28.

<sup>15</sup> *The Devil is in the Scales* at 74.

<sup>16</sup> *Reilly v Alberta*, 2024 ABCA 270 (“**Reilly**”) at para 24.

12. Courts and commentators have recognized the potential for *Charter* class actions to address these access to justice barriers. Allen Cocunato argues that class actions should be considered presumptively preferable in circumstances where multiple people seek to advance *Charter* damages claims, given that they will be preferable in the majority of cases.<sup>17</sup> Both the Ontario Court of Appeal in *Good v Toronto (City)* and the Alberta Court of Appeal in *Reilly* also recognized the value of class proceedings in *Charter* cases in promoting behaviour modification and the protection of constitutional rights.<sup>18</sup>

### **The Purpose of *Charter* Remedies as Part of the Preferability Analysis**

13. The Supreme Court of Canada has emphasized a purposive approach to *Charter* remedies. Section 24(1) of the *Constitution Act* enables courts to order any remedy for the infringement or violation of *Charter* rights that is “appropriate and just in the circumstances”.<sup>19</sup> Remedies under s. 24(1) must be responsive to the purpose of the *Charter* right at issue and must be effective.<sup>20</sup>

14. *Charter* damages are one possible remedy. They “are a powerful tool that can provide a meaningful response to rights violations.”<sup>21</sup> Before *Charter* damages can be awarded a plaintiff must establish damages would serve at least one of three purposes of *Charter* damages: compensation, vindication and deterrence.<sup>22</sup> Declaratory or

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<sup>17</sup> Allan Cocunato, “And (Judicially Economical) Justice for All: The Case for Class Proceedings as the Preferable Procedure in Mass Claims for Charter Damages” (2019) 14:2 *The Canadian Class Action Review* 339 at 342; See also *Good v Toronto Police*, 2016 ONCA 250 (“**Good ONCA**”) at para 86: “It remains apparent that most of the affected individuals are unwilling to devote the time and expense necessary to seek individual relief. The access to justice issue identified by the Divisional Court continues to be an important one.”

<sup>18</sup> *Reilly* at para 25. *Good ONCA* at para 87.

<sup>19</sup> *The Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s. 24(1).

<sup>20</sup> *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62, at para 25.

<sup>21</sup> *Henry v British Columbia (Attorney General)*, 2015 SCC 24 at para 35.

<sup>22</sup> *Vancouver (City) v Ward*, 2010 SCC 27 (“**Ward**”) at para 61.

injunctive orders are other possible remedies that may serve to deter future rights violations.<sup>23</sup>

15. Access to justice in the context of the preferability analysis is similarly concerned with the potential for just and effective remedies.<sup>24</sup> When evaluating whether an alternative procedure can lead to access to justice, courts ought to consider whether the purposes underlying the sought-after *Charter* remedies can actually be advanced in the alternative forum. Otherwise, substantive access to justice barriers will remain – while a process may exist to bring forward complaints that state actors violated constitutional rights – the purposes underlying the sought-after *Charter* remedies may remain unaddressed.

### **The Purpose and Scope of Remedies as Part of Access to Justice and Preferability**

16. The existing case law on preferable procedure and substantive access to justice emphasizes the importance of both the cause of action advanced and its potential remedies.<sup>25</sup> Underlying these factors is a concern that the proposed alternative procedure be able to provide a just and effective remedy for the claims sought to be advanced in the class proceeding.

17. Often, the preferability analysis will consider whether the alternative procedure will serve the compensatory goal of damages in a private law claim.<sup>26</sup> For example, in *AIC Limited v Fischer*, the Supreme Court of Canada considered whether the substantive access to justice barriers – compensation for investor losses that were individually small and the related lack of a fair process geared towards protecting the investors' rights – were adequately addressed through an Ontario Securities Commission proceeding.<sup>27</sup> The Court recognized that there was some basis in fact that this process had not fully

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<sup>23</sup> Kent Roach “Enforcement of the Charter – Subsections 24(1) and 52(1)”, E. Mendes and S. Beaulac, *Canadian Charter of Rights and Freedoms* (Ontario: LexisNexis, 2013) (5<sup>th</sup> Ed.) at 1164-65.

<sup>24</sup> *AIC Limited* at para 24.

<sup>25</sup> *Lewis* at para 62.

<sup>26</sup> See e.g., *Reichert v Canada (Attorney General)*, 2026 BCCA 9 at para 37.

<sup>27</sup> *AIC Limited* at para 50.

compensated investors and thus the substantive access to justice barrier for the individually uneconomical claims remained.<sup>28</sup> A class proceeding could address this barrier and therefore met the preferability criteria.<sup>29</sup>

18. But even where an alternative procedure has the potential for monetary compensation, it is necessary to consider the purpose of a possible monetary award. In *Lewis v Westjet*, while the Court recognized that the *Canadian Human Rights Act* empowers the Canadian Human Rights Tribunal (the “CHRT”) to award compensation to victims of discriminatory practices, the CHRT was not a preferable alternative procedure. It could only order monetary compensation to victims who actually suffered discrimination, not to the entirety of the proposed class who were seeking disgorgement as a remedy for breach of contract.<sup>30</sup> Thus, the proposed alternative procedure would not provide substantive access to justice for the claims advanced through the proposed class proceeding.<sup>31</sup>

### **Conclusion on Access to Justice and Preferability**

19. In sum, the BCCLA submits that the assessment of alternative procedures in the context of *Charter* rights claim should consider whether the function of any sought-after *Charter* remedies will be served in the alternative forum. A claimant who establishes entitlement to *Charter* damages will have established that such an award serves one or more of the related functions of compensation, vindication and deterrence and is a just and appropriate remedy.<sup>32</sup> An alternative procedure can therefore only be preferable to a class proceeding if it can also serve these functions. Otherwise, substantive access to justice – the potential to achieve a just and effective remedy – will remain elusive.

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<sup>28</sup> *AIC Limited* at para 61.

<sup>29</sup> *AIC Limited* at para 55.

<sup>30</sup> *Lewis* at paras 106-107.

<sup>31</sup> *Lewis* at para 135.

<sup>32</sup> *Ward* at para 4.

## **Compensation, Vindication and Deterrence in the Civilian Review and Complaints Commission and the Independent Investigations Office**

### ***The CRCC***

20. Justice Giaschi found that preferable procedures in this case included individual actions and complaints to the CRCC and IIO. In this section, the BCCLA reviews the mandates and powers of these organizations with a view to their capacity to serve the goals of s. 24(1) *Charter* remedies. The BCCLA makes no submissions on the comparative assessment between a class proceeding and these alternative procedures on the particular facts of this case.

21. The CRCC is created under the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 (the “**RCMP Act**”).<sup>33</sup> Members may not be current or former members of the RCMP.<sup>34</sup> It has the power to review and report on activities of the RCMP, either on its own initiative or on the request of the Minister of Public Safety and Emergency Preparedness.<sup>35</sup> The CRCC may make findings about whether the RCMP’s activities were carried out in accordance with the legislation and applicable policies and well as on the adequacy or sufficiency of any policy, procedure or guideline relating to the RCMP’s operation.<sup>36</sup>

22. Individuals can make complaints about the conduct of RCMP members to the CRCC directly, provided the alleged misconduct does not relate to an RCMP Code of Conduct decision and the complaint is made within one year of the alleged misconduct (unless the CRCC grants an extension).<sup>37</sup> Once the complaint is accepted, it may either be resolved informally, or proceed to investigation by either an internal RCMP body or the CRCC at first instance.<sup>38</sup> If investigated by the RCMP Commissioner, the Commissioner

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<sup>33</sup> *RCMP Act*, s. 45.29(1). The *Public Complaints and Review Commission Act*, SC 2024, c 25, which has received Royal Assent but not is yet in force, would replace the CRCC with the Public Complaints and Review Commission, which would review the conduct of both the RCMP and the Canada Border Services Agency:

<sup>34</sup> *RCMP Act*, s. 45.29(2).

<sup>35</sup> *RCMP Act*, s. 45.34(1).

<sup>36</sup> *RCMP Act*, s. 45.35(3).

<sup>37</sup> *RCMP Act*, s. 45.53.

<sup>38</sup> *RCMP Act*, s. 45.56, s. 45.66.

must then issue a report on the complaint stating its findings and any actions that have or will be taken.<sup>39</sup>

23. A complainant then has a right to request that the CRCC review the outcome of the complaint.<sup>40</sup> The CRCC is then required to issue a decision confirming whether it is satisfied by the RCMP's investigation and report.<sup>41</sup> If unsatisfied, the CRCC may prepare an interim report setting out its recommendations, requesting the Commissioner to direct a further investigation into the complaint or investigate the complaint itself.<sup>42</sup> The complainant does not receive a copy of the interim report.<sup>43</sup> There is an opportunity for the RCMP Commissioner to provide a response before the Commissioner prepares a final report setting out any findings and recommendations.<sup>44</sup>

24. As the Federal Court has previously recognized, there have often been long delays in the time it has taken for the RCMP Commissioner to respond to interim reports. In *British Columbia Civil Liberties Association v Canada (Royal Mounted Police)*, the Court found the RCMP Commissioner had violated her obligation under the *RCMP Act* to respond "as soon as feasible" by failing to respond to an interim report for 3.5 years.<sup>45</sup>

25. As this summary indicates, the CRCC process can only fulfill the purposes of *Charter* remedies, and in particular *Charter* damages, to a limited extent. Its deterrence potential remains questionable as recommendations made by the CRCC regarding the conduct of the RCMP are not binding. The CRCC cannot compensate complainants for personal loss flowing from a *Charter* breach and thus cannot serve a compensatory function.<sup>46</sup> Because its function is to adjudicate on RCMP compliance with legislation or

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<sup>39</sup> *RCMP Act*, s. 45.64.

<sup>40</sup> *RCMP Act*, s. 45.64(d).

<sup>41</sup> *RCMP Act*, s. 45.71.

<sup>42</sup> *RCMP Act*, s. 45.71(3).

<sup>43</sup> *British Columbia Civil Liberties Association v Canada (Royal Mounted Police)*, 2021 FC 1475 ("**BCCLA 2021**") at para 8.

<sup>44</sup> *RCMP Act*, s. 45.72(2).

<sup>45</sup> *BCCLA 2021* at paras 39-40.

<sup>46</sup> See *Ward* at para 25.

policy, its purpose is not to determine whether *Charter* rights have been violated and therefore cannot vindicate *Charter* rights directly.

26. While a complaint to the CRCC may serve a deterrence objective to some extent through the CRCC's reporting and recommendation functions, it cannot fully fulfill the deterrence purpose of *Charter* remedies. In *Good*, both the Divisional Court and Ontario Court of Appeal recognized that the non-binding nature of similar police conduct reports and recommendations could not fulfill the behaviour modification objectives of class proceedings in the same way as a court declaration and award of damages.<sup>47</sup> The deterrence objective of *Charter* damages mirrors the behaviour modification goal of class proceedings.

### ***The IIO***

27. The other police complaint body relied on by Justice Giashi in his reasons is the Independent Investigations Office. The IIO is a civilian-led independent investigative body created under the *Police Act*.<sup>48</sup> The IIO does not have a mandate to investigate potential *Charter* infringements generally. Its mandate is to “investigate incidents where death or serious harm to members of the public occurs during interactions with British Columbia police officers.”<sup>49</sup> It was created after two public inquiries – the Davies Commission and the Braidwood Inquiry – recommended an independent investigative body be created to conduct investigations where there was the potential that criminal actions by a police officer led to a death or serious injury.<sup>50</sup>

28. Nor does the IIO have any mandate to grant remedies to a victim of a *Charter* violation. If the IIO determines there are reasonable grounds to believe an officer or a detention guard may have committed an offence, the IIO may refer to the matter to the

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<sup>47</sup> *Good Div Ct* at para 95; *Good ONCA* at paras 85, 87.

<sup>48</sup> *Independent Investigations Office of British Columbia v Vancouver (City) Police Department*, 2018 BCSC 1804 (“*IIOBC*”) at para 15 aff'd 2020 BCCA 4. *Police Act*, [RSBC 1996] c 367 (“***Police Act***”), Part 7.1.

<sup>49</sup> *IIOBC* at para 16 aff'd 2020 BCCA 4; see also: *Duhamel v Independent Investigations Office of British Columbia*, 2025 BCCA 203 at para 6. The *Police Act* was recently amended to extend the IIO's mandate to include incidents involving detention guards.

<sup>50</sup> *IIOBC* at paras 12-15.

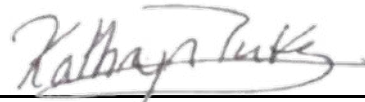
Crown counsel.<sup>51</sup> It may also provide reports on its investigations to the public if it considers it to be in the public interest to do so.<sup>52</sup> While the IIO may serve a subsidiary deterrence function to the extent independent investigation of police officers and detention guards deter future criminal actions, its function is not aimed at determining *Charter* violations or granting remedies to victims of such violations.

29. When compared to the purposes of *Charter* remedies, it is clear that neither the CRCC or the IIO have the mandate nor the powers necessary to fulfill the deterrence, vindication and compensation functions that *Charter* damages serve. In this way, their ability to facilitate substantive access to justice in actions seeking *Charter* remedies is limited.

#### **PART 4 - NATURE OF ORDER SOUGHT**

30. The BCCLA takes no position on the outcome of the appeal. In accordance with Justice Iyers February 20 2026 order in Chambers, no costs are to be awarded for or against the BCCLA on this appeal.

Date: 13/MAR/2026



Signature of lawyer for the British Columbia  
Civil Liberties Association

Katie Duke

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<sup>51</sup> *Police Act*, s. 38.11.

<sup>52</sup> *Police Act*, s. 38.121.

## LIST OF AUTHORITIES

TAB	CASES	PARA(S)
<b>CASE LAW</b>		
1	<i>AIC Limited v Fischer</i> , 2013 SCC 69	8, 9, 15, 17
2	<i>British Columbia Civil Liberties Association v Canada (Royal Mounted Police)</i> , 2021 FC 1475	23, 24
3	<i>Doucet-Boudreau v Nova Scotia (Minister of Education)</i> , 2003 SCC 62	13
4	<i>Duhamel v Independent Investigations Office of British Columbia</i> , 2025 BCCA 203	27
5	<i>Ewert v Canada (Attorney General)</i> , 2022 BCCA 131	8
6	<i>Good v Toronto Police</i> , 2014 ONSC 4583 (Div Ct)	10, 12, 26
7	<i>Good v Toronto Police</i> , 2016 ONCA 250	12, 26
8	<i>Henry v British Columbia (Attorney General)</i> , 2015 SCC 24	14
9	<i>Independent Investigations Office of British Columbia v Vancouver (City) Police Department</i> , 2018 BCSC 1804	27
10	<i>Independent Investigations Office of British Columbia v Vancouver (City) Police Department</i> , 2020 BCCA 4	27
11	<i>Lewis v Westjet</i> , 2022 BCCA 145	7, 9, 16, 18
12	<i>Reichert v Canada (Attorney General)</i> , 2026 BCCA 9	17
13	<i>Reilly v Alberta</i> , 2024 ABCA 270	11, 12
14	<i>Vancouver (City) v Ward</i> , 2010 SCC 27	14, 19, 25
15	<i>Western Canadian Shopping Centres Inc. v Dutton</i> , 2001 SCC 46	10

<b>SECONDARY SOURCES</b>		
16	Allan Cocunato, "And (Judicially Economical) Justice for All: The Case for Class Proceedings as the Preferable Procedure in Mass Claims for Charter Damages" (2019) 14:2 <i>The Canadian Class Action Review</i> 339	12
17	Kent Roach "Enforcement of the Charter – Subsections 24(1) and 52(1)", E. Mendes and S. Beaulac, <i>Canadian Charter of Rights and Freedoms</i> (Ontario: LexisNexis, 2013) (5 <sup>th</sup> Ed.)	14
18	Iryna Ponomarenko, "The Devil is in the Scale: Revisiting the Commonality Requirement in Charter Class Actions" 2019) 57:1 <i>Alberta Law Review</i> 69	10

## SCHEDULE "A" – RELEVANT STATUTES

*Canada Act 1982 (UK)*, 1982, c 11, Schedule B, s. 24(1)

Enforcement

*Enforcement of guaranteed rights and freedoms*

24(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

*Class Proceedings Act*, [RSBC 1996], c 50

Class certification

**4** (1) Subject to subsections (3) and (4), the court must certify a proceeding as a class proceeding on an application under section 2 or 3 if all of the following requirements are met:

(d) a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues;

(2) In determining whether a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues, the court must consider all relevant matters including the following:

(d) whether other means of resolving the claims are less practical or less efficient;

*Police Act*, [RSBC 1996] c 36

Part 7.1 — Independent Investigations Office

### Definitions

**38.01** In this Part:

**"chief of the police service"** means as follows:

- (a) in relation to the provincial police service, the commissioner;
- (b) in relation to a municipal police department, a chief constable;
- (c) in relation to a designated policing unit, a chief officer;

**"civilian monitor"** means a person appointed by the chief civilian director under section 38.08 (1) to review and assess an investigation by the independent investigations office under this Part;

**"detention guard"** means a person, other than an officer, who performs detention guard duties within the meaning of section 30.1 [*definition for Part 5.1*];

**"officer"** includes a person who is a member of the Royal Canadian Mounted Police;

**"police service"** means the Royal Canadian Mounted Police or a police service in British Columbia other than the independent investigations office;

**"serious harm"** has the same meaning as in Part 11.

### **Independent investigations office established**

**38.02** (1) An independent investigations office is established in the Ministry of Attorney General, the purpose of which is to conduct

- (a) the investigation of an incident under section 38.09 (3) [*immediate reporting of critical incidents*],
- (b) the investigation of a matter under section 38.10 (2) [*immediate reporting of critical investigations*],
- (c) an investigation that may be directed to the independent investigations office under section 44 [*special investigations*], and
- (d) the investigation of a matter under section 177.1 [*duty of police complaint commissioner to notify IIO*] on receiving notice from the police complaint commissioner under that section.

(2) The independent investigations office consists of a chief civilian director, who is in charge of the independent investigations office, and IIO investigators selected by the chief civilian director.

### **Appointment of chief civilian director**

**38.03** (1) The Lieutenant Governor in Council may appoint a person as chief civilian director.

(2) A person who is a current or former member of a police service or the Royal Canadian Mounted Police may not be appointed as chief civilian director.

(3) The chief civilian director holds office,

- (a) on being appointed to a first term, for 5 years, and
- (b) if appointed for a 2nd term, for a period of up to 5 years as specified in the reappointment.

(4) A person must not be appointed under subsection (1) for a 3rd or subsequent term.

### **Responsibilities of chief civilian director**

**38.04** (1) The chief civilian director is responsible for the following:

- (a) the management, administration and operation of the independent investigations office;
- (b) overseeing investigations conducted by the independent investigations office under this Part.

(2) The chief civilian director must

- (a) exercise powers and perform duties assigned to the chief civilian director under and in accordance with this Act and any other enactment, and
- (b) ensure compliance with the director's standards as they relate to the independent investigations office.

### **Remuneration, expenses and application of *Public Sector Pension Plans Act***

**38.05** (1) The chief civilian director is entitled

- (a) to be paid a salary specified by the Lieutenant Governor in Council in the chief civilian director's appointment or reappointment, and
- (b) to be reimbursed for reasonable travelling and out-of-pocket expenses personally incurred in exercising the powers and performing the duties of the chief civilian director under this Act.

(2) The public service plan as defined in section 1 (1) of the *Public Sector Pension Plans Act* applies to the chief civilian director.

### **Independent investigations office staff and investigators**

**38.06** (1) The chief civilian director may appoint, in accordance with the *Public Service Act* and the regulations, if any, made under section 74 (2) (t.1) [*power to make regulations*] of this Act, the employees the chief civilian director considers necessary to enable or assist the chief civilian director in exercising powers or performing duties of the chief civilian director under this Act.

(2) Subject to subsections (2.1) and (3), the chief civilian director may appoint persons with investigative experience to serve as investigators with the independent investigations office.

(2.1) An appointment under subsection (2) must be made in accordance with

(a) the *Public Service Act*, and

(b) the regulations, if any, made under section 74 (2) (t.2) [*power to make regulations*] of this Act.

(3) The chief civilian director may not appoint a person under subsection (2) if the person

(a) is currently a member of a police service or law enforcement agency outside British Columbia,

(b) is currently a member of the Royal Canadian Mounted Police, or

(c) was a member of a police service in British Columbia at any time during the 5-year period immediately preceding the appointment.

(4) For the purposes of the application of the *Public Service Act* to subsections (1) and (2) of this section, the chief civilian director is a deputy minister.

(5) The chief civilian director may retain consultants, experts, specialists and other persons the chief civilian director considers necessary to enable or assist the chief civilian director in exercising powers or performing duties of the chief civilian director under this Act.

(6) The chief civilian director may establish the remuneration and other terms and conditions of a person retained under subsection (5).

(7) The *Public Service Act* does not apply in respect of a person retained under subsection (5).

### **Jurisdiction of chief civilian director and IIO investigators**

**38.07** (1) The chief civilian director and each IIO investigator have

(a) all of the powers, duties and immunities of a peace officer and constable at common law or under any Act, and

(b) jurisdiction throughout British Columbia while carrying out those duties and exercising those powers.

(2) An IIO investigator is under the exclusive command and direction of the chief civilian director while serving with the independent investigations office.

### **Civilian monitors**

**38.08** (1) The chief civilian director may appoint a person who is not a current or former member of a police service in British Columbia or the Royal Canadian Mounted Police to review and assess the integrity of a specific investigation in accordance with this section and the terms of reference, if any, established by the chief civilian director in the appointment.

(2) Before beginning to exercise powers and perform duties, a civilian monitor appointed under subsection (1) must take an oath before the chief civilian director

(a) to faithfully and impartially review and assess the integrity of the independent investigations office investigation in accordance with this section and the terms of reference, if any, established by the chief civilian director in the appointment, and

(b) not to divulge any information obtained as civilian monitor, except in accordance with this section.

(3) For the purposes of subsection (2), the chief civilian director is a commissioner for taking affidavits in British Columbia.

(4) A civilian monitor is not entitled to participate in, attend or conduct an independent investigations office investigation under this Part, but the civilian monitor

(a) is entitled access at reasonable times to any record of the independent investigations office that is directly related to the investigation in respect of which the civilian monitor is appointed and the duty of the civilian monitor described in subsection (2) (a) in respect of that investigation, and

(b) may request an interview with or statement from a staff member of the independent investigations office or an IIO investigator in order to assist the civilian monitor in the performance of that duty.

(5) A person to whom a request is made under subsection (4) (b) must comply with that request.

(6) Staff members of the independent investigations office and IIO investigators

(a) have a duty to cooperate with a civilian monitor in the exercise of powers or performance of duties under this Act, and

(b) must comply with regulations, if any, made under section 74 (2) (t.3).

(7) Within 30 days after the conclusion of the investigation in respect of which the civilian monitor is appointed, the civilian monitor must provide a written report to the chief civilian director respecting the civilian monitor's assessment of the integrity of the investigation.

(8) If a civilian monitor considers it necessary or advisable at any time before the conclusion of the investigation in respect of which the civilian monitor is appointed, the civilian monitor may provide an interim report to the chief civilian director respecting the civilian monitor's assessment of the integrity of the investigation.

### **Immediate reporting of critical incidents and steps to be taken for takeover by independent investigations office**

**38.09** (1) When an officer is at the scene of an incident where it appears that

- (a) a person may have died or suffered serious harm as a result of the actions of an officer or detention guard, whether on or off duty, or
- (b) an officer or detention guard, whether on or off duty, may have contravened a prescribed provision of the *Criminal Code* or a prescribed provision of another federal or provincial enactment,

the officer must immediately notify the independent investigations office in accordance with the guidelines established by the chief civilian director.

(2) Until IIO investigators arrive at the scene of the incident, the officers at the scene must take any lawful measures that appear to the officers to be necessary or expedient for the purposes of obtaining and preserving evidence relating to the matter.

(3) On arriving at the scene of the incident, one or more IIO investigators must take over and conduct the investigation of the incident under this Part.

### **Immediate reporting of critical investigations and takeover by independent investigations office**

**38.10** (1) When a police service is conducting an investigation into the conduct of an officer under Part 11 [*Misconduct, Complaints, Investigations, Discipline and Proceedings*] and there is evidence that the officer may have, whether on or off duty,

- (a) caused the death of a person,
- (b) caused a person serious harm, or

(c) contravened a prescribed provision of the *Criminal Code* or a prescribed provision of another federal or provincial enactment,

the chief of the police service must immediately notify the independent investigations office in accordance with the guidelines of the chief civilian director.

(2) When the independent investigations office receives notice under this section, one or more of its members must initiate and conduct an investigation into the matter under this Part.

### **Officers to cooperate with independent investigations office**

**38.101** An officer must cooperate fully with

- (a) the chief civilian director in the chief civilian director's exercise of powers or performance of duties under this Act, and
- (b) an IIO investigator in the IIO investigator's exercise of powers or performance of duties under this Act.

### **Use of statements made by officers**

**38.102** (1) A statement provided or an answer given by an officer during an investigation under this Part is inadmissible in evidence in court in a civil proceeding for remedies against the officer in relation to the matter under investigation.

(2) Subsection (1) applies also in respect of evidence of the existence of a statement provided or answer given by an officer during an investigation under this Part.

### **Report to Crown counsel**

**38.11** If after an investigation by the independent investigations office is concluded the chief civilian director considers that there are reasonable grounds to believe that an officer or detention guard may have committed an offence under any enactment, including an enactment of Canada or another province, the chief civilian director may report the matter to Crown counsel.

### **Investigation records and annual reports**

**38.12** The chief civilian director must

- (a) establish and maintain a record of each investigation conducted by the independent investigations office under this Part, including all records related to each of those investigations,

- (b) compile statistical information in respect of records referred to in paragraph (a), including, without limitation,
  - (i) information respecting the number and frequency of investigations or of different types or classes of investigations, and the outcome or resolution of them, and
  - (ii) any trends in relation to information compiled under subparagraph (i), and
- (c) submit to the Attorney General an annual report of the information described in paragraph (b) and the operations of the independent investigations office.

### **Chief civilian director may provide information to public**

**38.121** (1) In this section, "**personal information**" has the same meaning as in Schedule 1 of the *Freedom of Information and Protection of Privacy Act*.

(2) If the chief civilian director considers it in the public interest to do so, the chief civilian director may make the following information available to the public by posting the information on a publicly accessible website maintained by or on behalf of the chief civilian director:

- (a) a summary of a matter in respect of which the independent investigations office has been notified or ordered to conduct an investigation;
- (b) a description of the resources that the independent investigations office has assigned to an investigation;
- (c) a statement indicating whether the independent investigations office, after concluding an investigation, has reported the matter to Crown counsel;
- (d) a summary of the results of an investigation, if the matter has not been reported to Crown counsel.

(3) In providing information under subsection (2), the chief civilian director must not disclose personal information about an officer, a detention guard, a victim, a witness or another person who may have been involved in the matter, except as provided in subsection (4).

(4) The chief civilian director may disclose personal information about a person described in subsection (3) only if

- (a) the person consents to the disclosure, or

(b)in the opinion of the chief civilian director, the public interest in disclosure outweighs the privacy interests of the person.

(5)Before disclosing information in accordance with subsection (4), the chief civilian director must, if practicable,

(a)in the case of information to be disclosed under subsection (4) (a), notify the person to whom the information relates, and

(b)in the case of information to be disclosed under subsection (4) (b),

(i)notify the person to whom the information relates, and

(ii)notify, and consider any comments provided by, the commissioner appointed under the *Freedom of Information and Protection of Privacy Act*.

**Special committee to review administration of independent investigations office**

**38.13** (1)In this section, "**special committee**" means a special committee of the Legislative Assembly that the Legislative Assembly appoints for the purposes of this section.

(2)Before January 1, 2015, the special committee must conduct a review of the following and submit a report under subsection (6):

(a)the administration and general operations of the independent investigations office;

(b)the chief civilian director's progress towards a goal of having an independent investigations office that is staffed entirely with employees and IIO investigators who have never served as officers or members of a police or law enforcement agency.

(3)As part of the review process contemplated by subsection (2), the special committee may

(a)request the chief civilian director to provide copies of any relevant records, information or reports respecting a matter of administration or general operations of the independent investigations office,

(b)review and consider the copies of records, information and reports referred to in paragraph (a) that the chief civilian director provides, and

(c)solicit and consider written and oral submissions from any interested person or organization.

(4)Subject to subsection (5), the chief civilian director must comply with a request of the special committee under subsection (3) (a).

(5) Before providing copies of the records, information and reports referred to in subsection (3) (a), the chief civilian director may sever any portions that must or may be excepted from disclosure by the head of a public body under Division 2 of Part 2 of the *Freedom of Information and Protection of Privacy Act*.

(6) Within one year after the date that the special committee is appointed, the special committee must submit a report respecting the results of the review under subsection (2) to the Legislative Assembly.

(7) A report submitted under subsection (6) may include any recommendations that the special committee considers necessary or appropriate.

*Royal Canadian Mounted Police Act, RSC 1985, c R-10,*

## **PART VI**

### **Civilian Review and Complaints Commission For the Royal Canadian Mounted Police**

#### Establishment and Organization

##### **Establishment**

**45.29 (1)** The Civilian Review and Complaints Commission for the Royal Canadian Mounted Police is established, consisting of a Chairperson and not more than four other members, one of whom may be a Vice-chairperson, appointed by the Governor in Council.

##### **Ineligibility**

**(2)** A person is not eligible to be a member of the Commission if that person

**(a)** is a member or former member; or

**(b)** is not a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*.

##### **Review and report**

**45.34 (1)** For the purpose of ensuring that the activities of the Force are carried out in accordance with this Act or the *Witness Protection Program Act*, any regulations or

ministerial directions made under them or any policy, procedure or guideline relating to the operation of the Force, the Commission may, on the request of the Minister or on its own initiative, conduct a review of specified activities of the Force and provide a report to the Minister and the Commissioner on the review.

### **Review for province**

**45.35 (1)** If there is an arrangement between the government of a province and the Minister under section 20, the provincial minister who has the primary responsibility for policing in that province may ask the Minister to request that the Commission conduct a review of specified activities of the Force in that province.

### **Findings and recommendations**

**(3)** The Commission shall include in its report any findings and recommendations that the Commission sees fit regarding

**(a)** whether the activities of the Force are carried out in accordance with this Act or the [Witness Protection Program Act](#), any regulations or ministerial directions made under them or any policy, procedure or guideline relating to the operation of the Force; and

**(b)** the adequacy, appropriateness, sufficiency or clarity of any policy, procedure or guideline relating to the operation of the Force.

## **PART VII**

### **Investigation, Review and Hearing of Complaints**

Complaints

#### **Complaints**

**45.53 (1)** Any individual may make a complaint concerning the conduct, in the performance of any duty or function under this Act or the [Witness Protection Program Act](#),

of any person who, at the time that the conduct is alleged to have occurred, was a member or other person appointed or employed under Part I.

### **Commission's discretion**

**(2)** The Commission may refuse to deal with the complaint if, in the Commission's opinion, the complaint

**(a)** has been adequately dealt with, or could more appropriately be dealt with, according to a procedure provided for under this Act or any other Act of Parliament;

**(b)** is trivial, frivolous, vexatious or made in bad faith; or

**(c)** is from an individual who

**(i)** is not an individual at whom the conduct was directed,

**(ii)** is not the guardian, tutor, curator, mandatary in case of incapacity or any other person authorized to act on behalf of the individual at whom the conduct was directed,

**(iii)** did not see or hear the conduct or its effects as a result of not being physically present at the time and place that the conduct or its effects occurred,

**(iv)** has not been given written permission to make the complaint from the individual at whom the conduct was directed, or

**(v)** has not suffered loss, damage, distress, danger or inconvenience as a result of the conduct.

### **Complaints involving decisions made under Part IV**

**(3)** The Commission shall refuse to deal with a complaint concerning any decision under Part IV.

**Complaint by members or certain other persons**

(4) The Commission shall refuse to deal with a complaint made under subsection (1) by a member or other person appointed or employed under Part I if the complaint has been or could have been adequately dealt with, or could more appropriately be dealt with, according to a procedure provided for under this Act or any other Act of Parliament.

**National security**

(4.1) The Commission shall refuse to deal with a complaint concerning an activity that is closely related to national security and shall refer such a complaint to the National Security and Intelligence Review Agency.

**Notification of referral**

(4.2) The Commission shall notify the Commissioner if it refers a complaint to the National Security and Intelligence Review Agency. After doing so, it shall also notify the complainant of the referral.

**Time limit**

(5) The complaint shall be made within one year after the day on which the conduct is alleged to have occurred or any longer period permitted under subsection (6).

**Extension of time limit**

(6) The Commission or the Commissioner may extend the time limit for making a complaint if the Commission or the Commissioner, as the case may be, is of the opinion that there are good reasons for doing so and that it is not contrary to the public interest.

**Notice**

(7) If a complaint is made more than one year after the day on which the conduct is alleged to have occurred and the Commissioner does not extend the time limit for the

making of the complaint, the Commissioner shall so notify the complainant and the Commission.

### **Reception of complaint**

(8) A complaint shall be made to

(a) the Commission;

(b) any member or other person appointed or employed under Part I; or

(c) the provincial authority that is responsible for the receipt of complaints against police in the province in which the subject matter of the complaint arose.

### **Assistance**

(9) The Commission shall, on the request of an individual who wishes to make a complaint, arrange for the provision of assistance to that individual in making the complaint.

### **Acknowledgement and notification**

(10) As soon as feasible after a person or entity referred to in subsection (8) receives a complaint, the person or entity shall acknowledge the complaint in writing to the complainant and shall provide written notice of the complaint to the Commissioner and to the entities referred to in paragraphs (8)(a) and (c).

### **Covert operations**

(11) The Commission and the Force are authorized to acknowledge a complaint or otherwise deal with a complainant in a manner that does not reveal, or from which may not be inferred, information concerning

- (a) whether a place, person, agency, group, body or other entity was, is or is intended to be the object of a covert investigation or a covert collection of information or intelligence; or
- o (b) the identity of any person who is, has been or is intended to be engaged in a covert collection of information or intelligence.

## Informal Resolution

### **Informal resolution**

**45.56 (1)** As soon as feasible after being notified of a complaint, the Commissioner shall consider whether the complaint can be resolved informally and, with the consent of the complainant and the member or other person whose conduct is the subject matter of the complaint, may attempt to resolve it informally.

### **Inadmissibility**

(2) An answer or statement made in the course of attempting to resolve a complaint informally, by the complainant or the member or other person whose conduct is the subject matter of the complaint, may be used or received against that person only in

(a) a prosecution under section 132 or 136 of the [Criminal Code](#); or

(b) a civil or administrative proceeding regarding an allegation that with intent to mislead the witness gave the answer or statement knowing it to be false.

### **Agreement to informal resolution in writing**

(3) The terms of every informal resolution of a complaint as well as the agreement of the complainant and the member or other person whose conduct is the subject matter of the complaint to those terms shall be signified in writing. A copy of everything so signified in writing is to be provided to the Commission.

**Regulations**

(4) The Governor in Council may make regulations prescribing the categories of complaints that are not to be resolved informally by the Commissioner.

## **Clarification**

(5) For greater certainty, nothing in this section prevents the Commission from informally resolving a complaint of which it is seized.

## **Report**

**45.64** As soon as feasible after the investigation of a complaint is completed, the Commissioner shall prepare and send to the complainant, the member or other person whose conduct is the subject matter of the complaint and the Commission a report setting out

(a) a summary of the complaint;

(b) the findings of the investigation;

(c) a summary of any action that has been or will be taken with respect to the disposition of the complaint; and

(d) the complainant's right to refer the complaint to the Commission for review, within 60 days after receiving the report, if the complainant is not satisfied with the disposition of the complaint.

Investigation by the Commission

## **Complaints**

**45.66 (1)** After receiving or being notified of a complaint made under this Part, the Commission shall investigate the complaint or institute a hearing to inquire into the complaint if the Chairperson is of the opinion that it would be in the public interest for the Commission to do so.

## **Notice to Commissioner and Minister**

(2) The Commission shall notify the Minister and the Commissioner of any investigation or hearing initiated under this section.

## **Review by Commission**

**45.71 (1)** The Commission shall review every complaint referred to it under section 45.7.

### **Commission satisfied**

**(2)** If, after reviewing a complaint, the Commission is satisfied with the Commissioner's decision or report, the Commission shall prepare and send a report in writing to that effect to the Minister, the Commissioner, the complainant and the member or other person whose conduct is the subject matter of the complaint.

### **Commission not satisfied**

**(3)** If, after reviewing a complaint, the Commission is not satisfied with the Commissioner's decision or report or considers that further inquiry is warranted, the Commission may

**(a)** prepare and send to the Minister and the Commissioner a report in writing setting out any findings it sees fit with respect to the Commissioner's decision or report and any recommendations it sees fit with respect to the complaint;

**(b)** request that the Commissioner direct the Force to investigate or further investigate the complaint; or

**(c)** investigate or further investigate the complaint or institute a hearing to inquire into the complaint.

### **Commissioner's response**

**45.72 (1)** The Commissioner shall, as soon as feasible after receiving a report referred to in paragraph 45.71(3)(a), provide the Commission and the Minister with a written response indicating any further action that has been or will be taken with respect to the complaint. If the Commissioner decides not to act on any findings or recommendations

set out in the report, the Commissioner shall include in the response the reasons for not so acting.

### **Commission's final report**

(2) After considering the Commissioner's response under subsection (1), the Commission shall prepare a final report in writing setting out any findings and recommendations with respect to the complaint that the Commission sees fit and shall send a copy of the report to the Minister, the Commissioner, the complainant and the member or other person whose conduct is the subject matter of the complaint. If there is an arrangement between the government of a province and the Minister under section 20, the Commission shall also send a copy of the report to the provincial minister who has the primary responsibility for policing in the province in which the conduct complained of occurred.