

Special Committee to Appoint a Police Complaint Commissioner



FEBRUARY 2015



February 11, 2015

To the Honourable
Legislative Assembly of the
Province of British Columbia

Honourable Members:

We have the honour to present herewith the Report of the Special Committee to Appoint a Police Complaint Commissioner containing our unanimous recommendation.

Respectfully submitted on behalf of the Committee,

John Martin, MLA
Chair

Jennifer Rice, MLA
Deputy Chair

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Composition of the Committee

Members

John Martin, MLA	Chair	Chilliwack
Jennifer Rice, MLA	Deputy Chair	North Coast
Mike Farnworth, MLA		Port Coquitlam
Eric Foster, MLA		Vernon-Monashee
Marvin Hunt, MLA		Surrey-Panorama

Committee Staff

Kate Ryan-Lloyd
Deputy Clerk and Clerk of Committees

Terms of Reference

On November 6, 2014, the Legislative Assembly of British Columbia agreed that a Special Committee be appointed to select and unanimously recommend the appointment of a Police Complaint Commissioner, pursuant to section 47 of the *Police Act*, R.S.B.C. 1996, c. 367.

The said Special Committee shall have the powers of a Select Standing Committee and in addition is empowered:

- a) to appoint of their number one or more subcommittees and to refer to such subcommittees any of the matters referred to the Committee;
- b) to sit during a period in which the House is adjourned, during the recess after prorogation until the next following Session and during any sitting of the House;
- c) to adjourn from place to place as may be convenient; and,
- d) to retain such personnel as required to assist the Committee;

and shall report to the House as soon as possible, or following any adjournment, or at the next following Session, as the case may be; to deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly.

The said Special Committee is to be composed of John Martin (Convener), Marvin Hunt, Eric Foster, Mike Farnworth, and Jennifer Rice.

Introduction

The Police Complaint Commissioner serves the people of British Columbia by ensuring impartial civilian oversight of public complaints of misconduct involving municipal police.

The position of Police Complaint Commissioner was established in 1998 under Part 9 of the *Police Act*, in response to recommendations in the 1994 Oppal Commission Report, *Closing the Gap: Policing and the Community*. The 2007 Wood Report on the *Review of the Police Complaint Process in British Columbia* led to a strengthening of the role of the Office of the Police Complaint Commissioner through legislative amendments which were passed by the Legislative Assembly in 2010.

The RCMP is outside the jurisdiction of the Office – complaints of misconduct involving RCMP officers are reviewed by the Commission for Public Complaints Against the RCMP (which is being replaced under 2013 federal legislation by the Civilian Review and Complaints Commission for the RCMP).

In 2011, amendments to the *Police Act* established a separate Independent Investigations Office to investigate officer related incidents of serious harm and death. That office became operational in 2012.

Under the *Police Act*, the Police Complaint Commissioner is an independent officer of the Legislature. The formal appointment mechanism for the position is a resolution of the Legislative Assembly.

The current Commissioner, Stan T. Lowe, was initially appointed for a six-year non-renewable term starting on February 11, 2009 under the then-existing appointment provisions of the *Police Act*.

In May 2009, the Legislative Assembly adopted the *Police (Police Complaint Commissioner) Amendment Act 2009*, which amended the Commissioner's appointment provisions to provide for an initial term of five years, which is renewable for a second term with a period of up to five years – resulting in a total maximum appointment period of ten years. The legislation included transition provisions to establish parallel conditions for the current Commissioner, setting the expiry of his first term on February 28, 2015, and allowing for his reappointment for a second term of up to four years – i.e., a total maximum appointment period of ten years. With respect to reappointment, the legislation further requires that a Commissioner must notify the Legislative Assembly at least six months before the end of the first term that she or he wishes to be considered for reappointment.

The May 2009 changes also provide for direct appointment of the Commissioner, as an officer of the Legislature, by resolution of the Legislative Assembly instead of by order of the Lieutenant Governor in Council, bringing the position in line with appointment provisions for other Statutory Officers.

In November 2014, the Special Committee to Appoint a Police Complaint Commissioner was struck to recommend the appointment of a Police Complaint Commissioner. The Committee held its first meeting on November 25, 2014, and undertook deliberations on December 11, 2014, and January 27, 2015.

Meeting Schedule

During the third session of the 40th Parliament, the Committee considered the appointment of a Police Complaint Commissioner at the following meetings:

Tuesday, November 25, 2014	Organization/Planning Notification of the Police Complaint Commissioner's interest in reappointment
Thursday, December 11, 2014	Candidate interview Deliberations
Tuesday, January 27, 2015	Deliberations Adoption of Report

Committee Process

On November 25, 2014, the Committee held an organizational meeting and elected the Chair and Deputy Chair. The Committee was advised of the notification by the incumbent Police Complaint Commissioner of his interest in reappointment.

As a first step, the Committee met on December 11, 2014 to interview the incumbent Commissioner. During the interview, he was asked a comprehensive set of questions regarding professional experience, leadership style, organizational management, and suitability for reappointment.

The interview enabled Committee Members to undertake a review the Commissioner's work and achievements since his appointment in February 2009. The Commissioner has: implemented 2010 statutory changes to the responsibilities of the Office; built up a more professional staff culture; and increased the use of evidence-based procedures and Alternative Dispute Resolution to resolve complaints. Pursuant to the *Police Act*, the Office of the Auditor General carried out an audit of selected complaints and investigations undertaken by the Office of the Police Complaint Commissioner between April 2010 and August 2012, and concluded that these were, in all significant respects, completed in compliance with the Act. The Commissioner has also strengthened the Office's engagement of police agencies, stakeholders, and citizens, and advanced work on a vision for the future work of the Office.

After the interview was concluded, the Committee deliberated carefully on December 11, 2014, and January 27, 2015. Committee Members expressed confidence in the Commissioner's continued ability to lead and manage the Office, acknowledging his achievements in fostering a professional staff culture, strengthening public engagement and outreach, and developing a vision for the possible future work of the Office.

Committee Members concluded that Mr. Lowe's background, abilities, and experience would provide ongoing leadership for this important position, and agreed unanimously to recommend to the Legislative Assembly that he be reappointed as Police Complaint Commissioner for a term of four years.

Recommendation

The Committee unanimously recommends to the Legislative Assembly that:

Recommendation

Stan T. Lowe be re-appointed as Police Complaint Commissioner for a 4 year term commencing on March 1, 2015, pursuant to the *Police Act* (RSBC 1996, c. 367) and the *Police (Police Complaint Commissioner) Amendment Act 2009*.

Biographical Information

Stan T. Lowe was born in Calgary and moved to Vancouver in 1985 to attend law school at the University of British Columbia. He obtained his law degree in 1988, was called to the British Columbia Bar in 1989, and began his legal career with Davis & Company in Vancouver.

Mr. Lowe joined the Vancouver Crown Counsel office in 1990 in pursuit of a career in the courtroom. In June 1991, he joined the Victoria Crown Counsel office on Vancouver Island. Mr. Lowe's family had early roots in that community, as both his father and grandmother were born and raised in Victoria's Chinatown. In the early 1900s, his grandfather worked as a cook at various establishments, including the CP Empress Hotel.

In 1996, Mr. Lowe joined the Major Crimes Prosecutions Unit for Vancouver Island, and for nine years he prosecuted primarily murder cases. During this period, he liaised with numerous municipal police departments and the RCMP. During his tenure in the Major Crimes Unit, he also participated in the Provincial Residential School Prosecutions Project where he had conduct of a prosecution involving multiple victims who attended Kuper Island Residential School in the 1960s. In 2005, he became Communications Counsel for the Criminal Justice Branch, serving as a member of Executive Branch Management, where he shared his expertise in a number of areas.

Throughout his 25 years as a public servant, Mr. Lowe has been a guest lecturer on legal topics related to police training including the Major Crime Investigators Course, Senior Investigators Course, and Undercover Operations Course. He has also lectured to professional standards officers in BC on the law regarding the use of force and served as the President of the Canadian Association for Civilian Oversight of Law Enforcement.

Since his appointment as the Police Complaint Commissioner for British Columbia in February 2009, Mr. Lowe has expanded the use of alternative dispute resolution at the Office of the Police Complaint Commissioner, helping complainants and officers to reach fair outcomes and providing participants with more positive and meaningful outcomes.

Mr. Lowe's primary objective remains to promote both public and police confidence in the police complaint process and to improve the public perception of policing through an oversight system which demonstrates that police are able to professionally address complaints and uphold a high standard of professional conduct.

Mr. Lowe and his wife Christine have three daughters.

Appendix A: Part 9 of the *Police Act* (RSBC 1996, c. 367)

Part 9 — Office of the Police Complaint Commissioner

Division 1 — Interpretation

Definitions and interpretation

- 46 (1) The definitions in Divisions 1 and 2 of Part 11 [*Misconduct, Complaints, Investigations, Discipline and Proceedings*] apply for the purposes of this Part.
- (2) In sections 47 to 49, "**committee**" means the special committee of the Legislative Assembly that the Legislative Assembly specifies for the purposes of those sections.

Division 2 — Police Complaint Commissioner

Appointment of police complaint commissioner

- 47 (1) The Legislative Assembly, by resolution, may appoint as the police complaint commissioner a person to exercise the powers and perform the duties assigned to the police complaint commissioner under this Act.
- (2) The police complaint commissioner and any acting police complaint commissioner appointed under this Act are officers of the Legislature.
- (3) Subject to section 48, the police complaint commissioner 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 resolution.
- (4) The Legislative Assembly may not appoint a person under subsection (1) who has not previously been appointed police complaint commissioner, unless the committee unanimously recommends the appointment of the person.
- (5) The Legislative Assembly may not appoint a police complaint commissioner for a 2nd term under subsection (1) unless
- (a) the police complaint commissioner notifies the committee at least 6 months before the end of the first term that she or he wishes to be considered for reappointment, and
- (b) the committee unanimously recommends the reappointment within 60 days of being notified by the police complaint commissioner under paragraph (a) of this subsection.
- (6) A person must not be appointed under subsection (1) for a 3rd or subsequent term.

Resignation, suspension or removal of police complaint commissioner

- 48 (1) The police complaint commissioner may resign from office at any time by giving written notice
- (a) to the Speaker of the Legislative Assembly, or
- (b) if the Speaker is absent from British Columbia or there is no Speaker, to the Clerk of the Legislative Assembly.

- (2) By a resolution passed by 2/3 or more of the members present in the Legislative Assembly, the police complaint commissioner, for cause or incapacity, may be suspended from office, with or without salary, or removed from office.
- (3) If the Legislative Assembly is not sitting and is not scheduled to sit within 5 days, the committee, by unanimous resolution, may suspend the police complaint commissioner for cause or incapacity, with or without salary, for a period that must be set by the committee to end not later than on the expiry of a further 20 sitting days of the Legislative Assembly.

Appointment of acting police complaint commissioner

- 49 (1) If the police complaint commissioner is suspended under section 48 or the office is vacant, the Legislative Assembly, by resolution and on the recommendation of the committee, may appoint an acting police complaint commissioner to exercise the powers and perform the duties of the police complaint commissioner under this Act until the suspension ends or an appointment is made under section 47 (1).
- (2) If the police complaint commissioner is suspended under section 48 or the office is vacant, and if the Legislative Assembly is not sitting and is not scheduled to sit within 5 days, the committee, by resolution, may appoint an acting police complaint commissioner to exercise the powers and perform the duties of the police complaint commissioner under this Act,
- (a) if the police complaint commissioner is suspended under section 48 (2), until the suspension ends,
 - (b) if the police complaint commissioner is suspended under section 48 (3), for the period set by the committee under that provision, or
 - (c) if the office of the police complaint commissioner is vacant, until an appointment is made under section 47 (1).

Oath of office

- 49.1 Before beginning to exercise powers and perform duties under this Act, the police complaint commissioner and any acting police complaint commissioner must take an oath before the Clerk of the Legislative Assembly
- (a) to faithfully and impartially exercise those powers and perform those duties, and
 - (b) not to divulge any information received under this Act, except as permitted under this Act.

Repealed

50 [Repealed 2009-28-4.]

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

- 50.1 (1) The police complaint commissioner is entitled
- (a) to be paid, out of the consolidated revenue fund, a salary equal to the salary paid to the chief judge of the Provincial Court of British Columbia, 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 police complaint commissioner under this Act.

- (2) The public service plan as defined in section 1 (1) of the *Public Sector Pension Plans Act* applies to the police complaint commissioner.

Staff and other designated individuals

- 51 (1) The police complaint commissioner may appoint, in accordance with the *Public Service Act* and regulations, if any, made under section 184 (2) (b) [*regulations under Parts 9 and 11*] of this Act, one or more deputy police complaint commissioners and other employees necessary for exercising the powers and performing the duties of the police complaint commissioner under this Act.
- (2) For the purposes of the application of the *Public Service Act* to subsection (1) of this section, the police complaint commissioner is a deputy minister.
 - (3) The police complaint commissioner may retain consultants, mediators, experts, specialists and other persons that the police complaint commissioner considers necessary to enable or assist the police complaint commissioner in exercising powers or performing duties of the police complaint commissioner under this Act.
 - (4) The police complaint commissioner may establish the remuneration and other terms and conditions of a person, other than a mediator, retained under subsection (3).
 - (5) The police complaint commissioner may designate
 - (a) an individual for the purposes of receiving, recording and registering complaints, forwarding them to the police complaint commissioner and assisting complainants under sections 78 (2) [*how complaints are made*] and 80 [*if complaint made to member or designated individual under section 78 (2) (b)*], or
 - (b) an individual for the purposes of receiving and recording service or policy complaints, forwarding them to the police complaint commissioner and assisting persons under sections 168 (2) (b) [*making a service or policy complaint*] and 169 [*if complaint made to member, designated individual or chair under section 168 (2) (b)*].
 - (6) A designation under subsection (5) (a) or (b) may include terms and conditions the police complaint commissioner considers appropriate.
 - (7) The *Public Service Act* does not apply in respect of the following:
 - (a) a person retained under subsection (3);
 - (b) an individual designated under subsection (5) (a) or (b), except to the extent that the *Public Service Act* may already apply to any such individual before the designation.

Confidentiality

- 51.01 (1) Before beginning to exercise powers and perform duties under this Act, a deputy police complaint commissioner and an employee appointed under section 51 (1) must take an oath before the police complaint commissioner
- (a) to faithfully and impartially exercise the powers and perform the duties delegated by the police complaint commissioner to the deputy police complaint commissioner or the other employee, and

- (b) not to divulge any information received in the exercise of those powers or performance of those duties, except as permitted under this Act.
- (2) A person retained under section 51 (3) must take an oath before the police complaint commissioner not to divulge any information received in assisting the police complaint commissioner in the exercise of her or his powers or performance of her or his duties under this Act.
- (3) Before beginning to perform duties under section 80 [*if complaint made to member or designated individual under section 78 (2) (b)*] or 169 [*if complaint made to member, designated individual or chair under section 168 (2) (b)*], an individual designated under section 51 (5) (a) or (b) must take an oath before the police complaint commissioner
- (a) to faithfully and impartially perform those duties, and
- (b) not to divulge any information received in the performance of those duties, except as permitted under this Act.
- (4) For the purposes of subsections (1) to (3), the police complaint commissioner is a commissioner for taking affidavits in British Columbia.
- (5) The police complaint commissioner, any person employed, retained or designated by the police complaint commissioner, and every investigating officer must, except as specifically authorized under this Act, maintain confidentiality in respect of all matters that come to her or his knowledge in the exercise of powers or performance of duties under this Act.

Non-delegable powers and duties of police complaint commissioner

- 51.02 The police complaint commissioner may not delegate to any person employed, retained or designated by the police complaint commissioner any of the following powers and duties:
- (a) the duty of the police complaint commissioner to report to the Speaker of the Legislative Assembly under section 51.1 [*annual report*];
- (b) the powers of the police complaint commissioner under section 84 (2) or (4) [*discontinuance and consolidation of complaints made by third-party complainants*];
- (c) the power of the police complaint commissioner under section 92 (1) or (3) [*external investigations when in public interest*];
- (d) the power of the police complaint commissioner under section 93 [*independent power to order investigation, whether or not complaint made*];
- (e) the power of the police complaint commissioner under section 97 (1) (d) [*police complaint commissioner's powers relating to investigation*];
- (f) the power of the police complaint commissioner to appoint a retired judge under section 117 (1) [*appointment of new discipline authority if conclusion of no misconduct is incorrect*];
- (g) the duty of the police complaint commissioner to appoint a retired judge as a discipline authority under section 135 (2) (b) [*power to designate another discipline authority if in public interest*];

- (h) the duties of the police complaint commissioner under section 138 [*determining whether to arrange public hearing or review on the record*];
- (i) the duties of the police complaint commissioner under section 142 (1) and (2) [*appointment of adjudicator for public hearing or review on the record*];
- (j) the duties of the police complaint commissioner under section 177 (2) (a) and (b) [*guidelines*], (c) [*forms*] and (f) [*reports*];
- (k) the powers of the police complaint commissioner under section 177 (4).

Personal liability protection and non-compellability in civil proceedings

51.03 (1) In this section, "protected individual" means an individual who is or was any of the following:

- (a) the police complaint commissioner;
 - (b) a deputy police complaint commissioner or an employee appointed under section 51 (1);
 - (c) a person retained by the police complaint commissioner under section 51 (3);
 - (d) an individual designated by the police complaint commissioner under section 51 (5).
- (2) Subject to subsection (3), no legal proceeding for damages lies or may be commenced or maintained against a protected individual because of anything done or omitted
- (a) in the exercise or intended exercise of a power under this Act, or
 - (b) in the performance or intended performance of a duty under this Act.
- (3) Subsection (2) does not apply to a protected individual in relation to anything done or omitted in bad faith.
- (4) A protected individual and anyone acting for or under the direction of the protected individual must not give, or be compelled to give, evidence in court or in any other proceedings in respect of any records or information obtained in the exercise of powers or performance of duties under this Act.
- (5) Despite subsection (4), a protected individual or anyone acting for or under the direction of the protected individual may give, or be compelled to give, evidence in any of the following:
- (a) a prosecution for perjury in respect of sworn testimony;
 - (b) a prosecution for an offence under this Act;
 - (c) an application for judicial review of a decision made under this Act.
- (6) Subsections (4) and (5) apply also in respect of evidence of the existence of an investigation under Part 11, a mediation or other means of informal resolution under Part 11 or any proceeding conducted under Part 11.

Annual report

51.1 (1) The police complaint commissioner must report annually to the Speaker of the Legislative Assembly on the work of the police complaint commissioner's office.

- (2) The Speaker must promptly lay each annual report before the Legislative Assembly if it is in session and, if the Legislative Assembly is not in session when the report is submitted, within 15 days after the beginning of the next session.

Audit of complaints and investigations under Part 11

- 51.2 (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, 2013, the special committee must conduct an audit respecting the outcome or resolution of randomly selected complaints and investigations under Part 11, and must submit a report respecting the results of the audit to the Legislative Assembly within one year after the date of the appointment of the special committee.
 - (3) As part of the audit process contemplated by subsection (2), the special committee may
 - (a) request the police complaint commissioner to provide copies of any records, information or reports referred to in section 177 (2) (d) to (f) [*general responsibility and functions of police complaint commissioner*],
 - (b) review and consider the copies of records, information and reports referred to in paragraph (a) that the police complaint commissioner provides, and
 - (c) solicit and consider written and oral submissions from any interested person or organization.
 - (4) Subject to subsection (5), the police complaint commissioner 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 police complaint commissioner 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) At least once every 6 years after the report under subsection (2) is submitted to the Legislative Assembly, the special committee must act as described in subsections (2) and (3).
 - (7) A report submitted under subsection (2) or (6) may include any recommendations that the special committee considers necessary or appropriate.

Division 3

Repealed 52, 52.1-52.2 [Repealed 2009-28-7.]

Division 4

Repealed 53-62 [Repealed 2009-28-7.]

Division 5

Repealed 63-63.1 [Repealed 2009-28-7.]

Division 6

Repealed 64 [Repealed 2009-28-7.]

Division 7

Repealed 64.1-66.1 [Repealed 2009-28-7.]

Appendix B: Previous Appointment Provisions

Appointment Provisions in Effect in February 2009

The current Police Complaint Commissioner was initially appointed for a six-year non-renewable term starting on February 11, 2009 under the then-existing appointment provisions of the *Police Act*. These provisions follow.

Division 2— Police Complaint Commissioner

Police complaint commissioner

- 47 (1) On the recommendation of the Legislative Assembly, the Lieutenant Governor in Council must appoint as the police complaint commissioner a person, other than a member of the Legislative Assembly, who has been unanimously recommended for the appointment by a special committee of the Legislative Assembly.
- (2) The police complaint commissioner is an officer of the Legislature.
- (3) Subject to section 48, the police complaint commissioner holds office for a term of 6 years.
- (4) A person who is appointed under this section is not eligible to be reappointed as police complaint commissioner.

Resignation, removal or suspension of police complaint commissioner

- 48 (1) The police complaint commissioner may resign at any time by notifying the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from British Columbia, by notifying the Clerk of the Legislative Assembly.
- (2) The Lieutenant Governor in Council must remove the police complaint commissioner from office or suspend the police complaint commissioner for cause or incapacity on the recommendation of 2/3 of the members present in the Legislative Assembly.
- (3) If the Legislative Assembly is not sitting, the Lieutenant Governor in Council may suspend the police complaint commissioner for cause or incapacity.

Acting police complaint commissioner

- 49 (1) The Lieutenant Governor in Council may appoint an acting police complaint commissioner if one of the following applies:
 - (a) the office of police complaint commissioner is or becomes vacant when the Legislative Assembly is not sitting;
 - (b) the police complaint commissioner is suspended when the Legislative Assembly is not sitting;
 - (c) the police complaint commissioner is removed or suspended or the office of the police complaint commissioner becomes vacant when the Legislative Assembly is sitting, but no recommendation is made by the Legislative Assembly under section 47 (1) before the end of the session;

- (d) the police complaint commissioner will be temporarily absent for more than 30 days because of illness or any other reason.
- (2) An acting police complaint commissioner holds office until the first of the following occurs:
- (a) a person is appointed under section 47 (1);
 - (b) the suspension of the police complaint commissioner ends;
 - (c) the Legislative Assembly has sat for 20 days after the date of the acting police complaint commissioner's appointment;
 - (d) the police complaint commissioner returns to office after a temporary absence.

Appointment Provisions Adopted in May 2009

In May 2009, the Legislative Assembly adopted the *Police (Police Complaint Commissioner) Amendment Act 2009*. The legislation amended the above appointment provisions to provide for an initial term of five years, which is renewable for a second term with a period of up to five years – for a total maximum appointment period of ten years. The legislation included transition provisions to establish parallel conditions for the current Commissioner, setting the expiry of his first term on February 28, 2015, and allowing for his reappointment for a second term of up to four years – for a total maximum appointment period of ten years.

The provisions of the May 2009 legislation follow.

BILL 7 — 2009

POLICE (POLICE COMPLAINT COMMISSIONER) AMENDMENT ACT, 2009

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

SECTION 1: [*Police Act, section 46*] adds a definition of "committee" to Part 9 of the Act.

1 Section 46 (1) of the Police Act, R.S.B.C. 1996, c. 367, is amended by adding the following definition:

"committee" means the special committee of the Legislative Assembly that the Legislative Assembly specifies for the purposes of sections 47 to 49;

SECTION 2: [*Police Act, sections 47 to 49*]

- in the proposed section 47, provides for direct appointment of the police complaint commissioner, as an officer of the Legislature and for a 5-year term, by resolution of the Legislative Assembly instead of by order of the Lieutenant Governor in Council, and enables reappointment for a 2nd 5-year term;
- in the proposed section 48,
 - requires notice of the police complaint commissioner's resignation to be given in writing,

- affords the power to suspend or remove the police complaint commissioner, for cause or incapacity, directly to the Legislative Assembly, instead of through the Lieutenant Governor in Council, and
- affords the power to suspend the police complaint commissioner, for cause or incapacity, to the special committee of the Legislative Assembly if the Legislative Assembly is not sitting;
- in the proposed section 49, provides for direct appointment of an acting police complaint commissioner by resolution of the Legislative Assembly or, if the Legislative Assembly is not sitting, by resolution of the special committee of the Legislative Assembly.

2 Sections 47 to 49 are repealed and the following substituted:

Appointment of police complaint commissioner

- 47 (1) The Legislative Assembly, by resolution, may appoint as the police complaint commissioner a person to exercise the powers and perform the duties assigned to the police complaint commissioner under this Act.
- (2) The police complaint commissioner and any acting police complaint commissioner appointed under this Act are officers of the Legislature.
- (3) Subject to section 48, the police complaint commissioner 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 resolution.
- (4) The Legislative Assembly may not appoint a person under subsection (1) who has not previously been appointed police complaint commissioner, unless the committee unanimously recommends the appointment of the person.
- (5) The Legislative Assembly may not appoint a police complaint commissioner for a 2nd term under subsection (1) unless
- (a) the police complaint commissioner notifies the committee at least 6 months before the end of the first term that she or he wishes to be considered for reappointment, and
 - (b) the committee unanimously recommends the reappointment within 60 days of being notified by the police complaint commissioner under paragraph (a) of this subsection.
- (6) A person must not be appointed under subsection (1) for a 3rd or subsequent term.

Resignation, suspension or removal of police complaint commissioner

- 48 (1) The police complaint commissioner may resign from office at any time by giving written notice
- (a) to the Speaker of the Legislative Assembly, or
 - (b) if the Speaker is absent from British Columbia or there is no Speaker, to the Clerk of the Legislative Assembly.

- (2) By a resolution passed by 2/3 or more of the members present in the Legislative Assembly, the police complaint commissioner, for cause or incapacity, may be suspended from office, with or without salary, or removed from office.
- (3) If the Legislative Assembly is not sitting and is not scheduled to sit within 5 days, the committee, by unanimous resolution, may suspend the police complaint commissioner for cause or incapacity, with or without salary, for a period that must be set by the committee to end not later than on the expiry of a further 20 sitting days of the Legislative Assembly.

Appointment of acting police complaint commissioner

- 49 (1) If the police complaint commissioner is suspended under section 48 or the office is vacant, the Legislative Assembly, by resolution and on the recommendation of the committee, may appoint an acting police complaint commissioner to exercise the powers and perform the duties of the police complaint commissioner under this Act until the suspension ends or an appointment is made under section 47 (1).
- (2) If the police complaint commissioner is suspended under section 48 or the office is vacant, and if the Legislative Assembly is not sitting and is not scheduled to sit within 5 days, the committee, by resolution, may appoint an acting police complaint commissioner to exercise the powers and perform the duties of the police complaint commissioner under this Act,
- (a) if the police complaint commissioner is suspended under section 48 (2), until the suspension ends,
 - (b) if the police complaint commissioner is suspended under section 48 (3), for the period set by the committee under that provision, or
 - (c) if the office of the police complaint commissioner is vacant, until an appointment is made under section 47 (1).

SECTION 3: [*Police Act, section 49.1*] consistent with practice and legislation respecting officers of the Legislature, requires the police complaint commissioner to take an oath of office.

3 The following section is added:

Oath of office

- 49.1 Before beginning to exercise powers and perform duties under this Act, the police complaint commissioner and any acting police complaint commissioner must take an oath before the Clerk of the Legislative Assembly
- (a) to faithfully and impartially exercise those powers and perform those duties, and
 - (b) not to divulge any information received under this Act, except as permitted under this Act.

SECTION 4: [*Police Act, section 50*] updates a reference to the minister charged with the administration of the *Police Act*.

4 Section 50 (3) (e) is amended by striking out "the Attorney General" and substituting "the minister".

SECTION 5: [*Police Act, section 50.1*] statutorily provides the police complaint commissioner with a salary equal to that of the chief judge of the Provincial Court of British Columbia, and applies the public service pension plan to the police complaint commissioner.

5 *Section 50.1 is repealed and the following substituted:*

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

50.1 (1) The police complaint commissioner is entitled

(a) to be paid, out of the consolidated revenue fund, a salary equal to the salary paid to the chief judge of the Provincial Court of British Columbia, 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 police complaint commissioner under this Act.

(2) The public service plan as defined in section 1 (1) of the *Public Sector Pension Plans Act* applies to the police complaint commissioner.

SECTION 6: [*Transition — appointment and pension of police complaint commissioner*] deems the current police complaint commissioner to have been appointed under and in accordance with section 47 of the *Police Act*, as enacted by this Bill, except that the first term of appointment is for 6 years with a possible 2nd term of up to 4 years, and provides retroactively for application of the public service pension plan to the current police complaint commissioner.

Transition — appointment and pension of police complaint commissioner

6 (1) Subject to subsection (2), the police complaint commissioner holding office on the date that this section comes into force is deemed to have been appointed under and in accordance with section 47 of the *Police Act*, as enacted by this Act.

(2) Subject to section 48 of the *Police Act*, as enacted by this Act, the police complaint commissioner referred to in subsection (1) of this section holds office

(a) for a first term ending February 28, 2015, and

(b) if appointed for a 2nd term, for a period of up to 4 years as specified in the reappointment resolution.

(3) Section 50.1 (2) of the *Police Act*, as enacted by this Act, applies to the police complaint commissioner referred to in subsection (1) of this section effective February 13, 2009.

(4) This section is retroactive to the extent necessary to give it effect on and after February 13, 2009.

Commencement

7 This Act comes into force on the date of Royal Assent.

