

SPECIAL COMMITTEE TO APPOINT A POLICE COMPLAINT COMMISSIONER



LEGISLATIVE ASSEMBLY
of BRITISH COLUMBIA

DECEMBER 2018

**THIRD SESSION
OF THE 41ST PARLIAMENT**



December 12, 2018

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,

Rachna Singh, MLA
Chair

Mike Morris, MLA
Deputy Chair

Table of Contents

Composition of the Committee	i
Terms of Reference	ii
Introduction	1
Recruitment Process	3
Biographical Information	4
Appendix A: Advertisement	5
Appendix B: <i>Police Act</i>	6

Composition of the Committee

Members

Rachna Singh, MLA

Chair

Surrey-Green Timbers

Mike Morris, MLA

Deputy Chair

Prince George-Mackenzie

Garry Begg, MLA

Surrey-Guildford

Rich Coleman, MLA

Langley East

Sonia Furstenau, MLA
(to July 26, 2018)

Cowichan Valley

Adam Olsen, MLA
(from July 26, 2018)

Saanich North and the Islands

Committee Staff

Kate Ryan-Lloyd, Acting Clerk of the Legislative Assembly

Karan Riarh, Committee Research Analyst

Terms of Reference

On April 25, 2018, the Legislative Assembly 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;
- 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.

Introduction

The Police Complaint Commissioner is an independent officer of the Legislature responsible for providing impartial civilian oversight of complaints and investigations regarding the conduct of municipal police officers in British Columbia. This includes: establishing a process for receiving, handling, investigating, and reporting complaints; developing and providing outreach programs and services to inform and educate the public on the police complaint process; and making recommendations for improvements to the police complaint process.

The Commissioner does not have jurisdiction over complaints of misconduct involving RCMP officers. These are reviewed by the Civilian Review and Complaints Commissioner for the RCMP. As well, the separate Independent Investigations Office investigates officer-related incidents of serious harm and death.

The position was established in 1998 under Part 9 of the Police Act, and initially provided for a six-year non-renewable term with the Commissioner appointed by the Lieutenant Governor in Council on the recommendation of the Legislative Assembly. In 2009, the Act was amended to provide for an initial term of five years and a second term of up to five years, and to provide for the direct appointment of the Commissioner by resolution of the Legislative Assembly following the unanimous recommendation of a special committee.

Current Commissioner Stan T. Lowe was first appointed for a six-year non-renewable term in February 2009 under the then provisions of the Police Act. The amendments in 2009 included transition provisions for the current Commissioner, setting the expiry of his first term as February 28, 2015, and allowing for his re-appointment to a second term of up to four years. In February 2015, a special committee unanimously recommended Mr. Lowe's re-appointment for a four-year term commencing March 1, 2015.

On behalf of all Members of the Legislative Assembly, the Special Committee expresses their gratitude to Mr. Lowe for his dedicated service to the province as Police Complaint Commissioner over the last ten years.

This report contains the Special Committee's unanimous recommendation to the Legislative Assembly regarding the appointment of the province's next Police Complaint Commissioner.

Meeting Schedule

During the third Session of the 41st Parliament, the Committee met on the following dates for the purposes described below.

Monday, May 28, 2018	Organizational meeting
Wednesday, June 27, 2018	Briefing with Stan T. Lowe, Police Complaint Commissioner
Wednesday, October 31, 2018	Deliberations
Thursday, November 1, 2018	Deliberations
Monday, November 19, 2018	Interviews

Wednesday, November 21, 2018

Interviews
Deliberations

Tuesday, November 27, 2018

Deliberations
Adoption of Report

Further information on the work of the Special Committee is available at: <https://www.leg.bc.ca/cmt/pcc>

Recruitment Process

At an organizational meeting on May 28, 2018, the Committee elected the Chair and Deputy Chair, and adopted a motion to hold all meetings and deliberations on a confidential, in-camera basis in keeping with the usual practices for special committees of appointment. The Committee also considered a preliminary workplan for a recruitment process, as well as the roles and responsibilities of the Police Complaint Commissioner position.

The Committee received a briefing from the current Police Complaint Commissioner, Stan T. Lowe, on June 27, 2018. He described the history of the Office of the Police Complaint Commissioner and noted an upcoming, statutorily required audit of the police complaint process. He also shared key considerations for the appointment of the next Commissioner, including the importance of experience in criminal and administrative law, and of maintaining strong working relationships with all stakeholders.

A call for applications was distributed to Canadian police oversight agencies, and legal and other professional organizations, as well as shared on social media, on July 3, 2018. An advertisement was also placed in British Columbia and national daily newspapers in September.

A total of 56 applications for the position were received by the October 12, 2018 deadline. The Committee shortlisted eight applicants for an interview, based on their leadership and senior executive experience, their understanding of the police complaint process and investigative and review process principles, and their dispute resolution, mediation and conflict resolution experience.

Committee Members interviewed the shortlisted candidates on November 19 and 21, 2018. The interviews covered each candidate's approach to leadership and management, and knowledge of the office's statutory mandate. The Committee also probed into each candidate's experience working and building relationships with Indigenous peoples and communities, and other stakeholder groups, as well as communication, decision-making and analytical skills. In-depth reference checks were carried out as part of the final selection process.

In reviewing the experience and qualifications of the shortlisted candidates, Committee Members were impressed by Clayton Pecknold's leadership, personal integrity and commitment to public service. They particularly appreciated his awareness and commitment to Indigenous communities, and his recognition and compassion for vulnerable populations. The Committee noted his professional background in both law and policing, and his valuable experience in working respectfully and effectively with a range of policing, civil liberties, and other stakeholder and community organizations. They especially recognized his strong ethics and values, and his progressive vision for policing and public accountability. Committee Members were therefore of the view that Mr. Pecknold is uniquely and eminently qualified, and unanimously agreed to recommend to the Legislative Assembly that he be appointed as Police Complaint Commissioner.

RECOMMENDATION

The Committee unanimously recommends to the Legislative Assembly that Clayton Pecknold be appointed as Police Complaint Commissioner, pursuant to section 47 of the *Police Act*, R.S.B.C. 1996, c.367.

Biographical Information

Clayton J. D. Pecknold

On March 21, 2011, Clayton Pecknold was appointed Assistant Deputy Minister and Director of Police Services, Policing and Security Branch, Ministry of Public Safety and Solicitor General. The Branch provides regulatory oversight over policing, law enforcement and private security in British Columbia.

Born in Vancouver, British Columbia, Mr. Pecknold joined the Royal Canadian Mounted Police in 1986. He holds a law degree from Dalhousie University and was called to the Bar of British Columbia in 1996. Over his career in public service, he has worked in several provinces in Canada, and has held senior positions in the justice and public safety sector as a senior government official, a police officer and legal counsel.

He is a past Director of the Emergency Communications for British Columbia Incorporated (ECOMM911) and is the Chair of the Board of the Police Records Information Management Environment (PRIME-BC). He has also been an active member of various national justice and public safety committees and presently sits as a member of the Justice and Public Safety Council of BC.

Mr. Pecknold is a graduate of the FBI National Academy in Quantico, Virginia and is a Member of the Governor General's Order of Merit for the Police Forces and holds the Police Exemplary Service Medal and the Queen's Jubilee Medal.



Appendix A: Advertisement

The advertisement was placed in British Columbia and national daily newspapers, including the Vancouver Sun, Times-Colonist, and Globe and Mail, as well as shared on social media. It was also distributed to Canadian police oversight agencies, and legal and other professional organizations.

LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA

Special Committee to Appoint a Police Complaint Commissioner

Rachna Singh, MLA, Surrey-Green Timbers, *Chair* Mike Morris, MLA, Prince George-Mackenzie, *Deputy Chair*

POLICE COMPLAINT COMMISSIONER

The Police Complaint Commissioner is an independent officer of the Legislature responsible for the impartial civilian oversight of complaints about the conduct of municipal police officers in British Columbia, as provided by the *Police Act*.

The Commissioner heads the Office of the Police Complaint Commissioner with headquarters in Victoria. The Office has an annual operating budget of \$3.6 million and 19 full-time equivalents.

The successful applicant must have a law degree and/or extensive experience in dispute resolution, with demonstrated leadership and collaborative problem-solving skills and a solid record of achievement in public or private sector administration. The position requires experience leading sensitive and complex investigations, and exceptional communication and interpersonal skills. The successful applicant should also have a good understanding of the police complaint process, the roles, responsibilities and activities of the Office of the Police Complaint Commissioner, and its relationship to the Legislative Assembly of British Columbia.

The appointment is for a term of five years, and may be renewed for one additional five-year term. The salary is equal to the salary paid to a Chief Judge of the Provincial Court of British Columbia.

Applications should be received by email, fax or mail at the address below no later than **Friday, October 12, 2018**. Although the Committee appreciates the interest of all applicants, only those who are invited for an interview will be contacted. All applications received will be held in confidence.

For further information, please visit our website at www.leg.bc.ca/cmt/pcc or contact:

Kate Ryan-Lloyd, Deputy Clerk and Clerk of Committees
Parliamentary Committees Office
Room 224, Parliament Buildings
Victoria, B.C. V8V 1X4
Toll Free in BC 1.877.428.8337
T 250.356.2933 | F 250.356.8172
PCC2018@leg.bc.ca



LEGISLATIVE ASSEMBLY
of BRITISH COLUMBIA

Appendix B: *Police Act*

Police Act

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

Part 9 – Office of the Police Complaint Commissioner

(This Act is current to November 7, 2018)

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.

