

2010 Bill 27

Third Session, 27th Legislature, 59 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 27

POLICE AMENDMENT ACT, 2010

THE SOLICITOR GENERAL AND
MINISTER OF PUBLIC SECURITY

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 27

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2010

POLICE AMENDMENT ACT, 2010

(Assented to _____, 2010)

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

Amends RSA 2000 cP-17

1 The *Police Act* is amended by this Act.

2 Section 1 is amended

(a) by repealing clause (d) and substituting the following:

(d) “complainant” means a person who makes a complaint
under section 42.1;

(d.1) “complaint” means a complaint under section 42.1;

(b) by repealing clause (o).

Explanatory Notes

1 Amends chapter P-17 of the Revised Statutes of Alberta 2000.

2 Section 1(d) and (o) presently read:

1 In this Act,

(d) “complaint” includes a public complaint;

(o) “public complaint” means a complaint made under Part 5 respecting a police service or police officer that is made by a person other than

(i) a member of a police service,

(ii) a commission or a member of a commission,

(iii) a policing committee or a member of a policing committee,

(iv) a peace officer appointed under the Peace Officer Act,

(v) the Director, or

(vi) the Minister;

3 Section 8(2)(a.1) is amended by striking out “public complaints” and substituting “complaints”.

4 Section 17(1)(b) is amended by adding “in accordance with section 19.2” after “section 48”.

5 The following is added after section 19.1:

Review and hearing

19.2(1) Prior to scheduling an appeal for a hearing, the Board shall, within 30 days of receipt of written notice of the appeal, review the written notice of appeal and the record of the hearing and may

- (a) dismiss the matter if in the opinion of the Board the appeal is frivolous, vexatious or made in bad faith, or
- (b) notwithstanding section 20(2)(b), make a decision in respect of the appeal based on the review of the record and consideration of the factors set out in the regulations respecting appeals, without conducting a hearing.

(2) Where the Board is unable to dismiss or conclude an appeal in accordance with subsection (1), the Board may schedule a hearing of the appeal.

(3) The Board may give directions to the affected parties in respect of a review or a hearing and may extend or modify its directions on reasonable request by a party.

Dismissal by Board

19.3 The Board may dismiss an appeal if a direction given by the Board under section 19.2(3) has not been complied with by a party or if a party has not responded to the Board’s direction.

3 Section 8(2) presently reads in part:

(2) The duties of the Director include the following:

(a.1) monitoring the handling by chiefs of police and commissions of public complaints;

4 Section 17(1)(b) presently reads:

17(1) The Board

(b) shall conduct appeals referred to the Board under section 48,

5 Review, hearing and dismissal.

6 Section 20 is amended

(a) in subsection (1) by adding the following after clause (e):

- (e.1) if a complainant fails to attend, to answer questions or to produce an item as required under clause (c) or (d), is unable or refuses to participate or to follow processes or conducts himself or herself in an inappropriate manner, the Board may dismiss the matter;
- (e.2) if a witness fails to attend or to answer questions, is unable or refuses to participate or to follow processes or conducts himself or herself in an inappropriate manner, the Board may dismiss the witness and continue with the matter;

(b) by adding the following after subsection (1.1):

(1.2) If at any time after a written notice of appeal has been filed with the Board in accordance with section 48 the parties agree to a resolution of the matter, the Board may issue an order respecting the agreement.

(1.3) An order issued under subsection (1.2) concludes the appeal process.

(c) by adding the following after subsection (2):

(2.1) A decision of the Board under subsection (2) must be made in writing within 60 days after the Board concludes the appeal.

(2.2) Notwithstanding subsection (2.1), the Board may extend the 60-day time period set out in subsection (2.1) on written notice in accordance with subsection (3) to all of the parties whether or not the period has expired.

7 Section 23 is amended

(a) in subsection (11) by striking out “6 consecutive years” and substituting “10 consecutive years”.

(b) in subsection (14)(g) by striking out “public complaints” and substituting “complaints”.

6 Provides additional powers to the Board re the conduct of appeals.

7 Section 23(11) and (14)(g) presently read:

(11) A member of a policing committee is eligible for reappointment if the reappointment does not result in more than 6 consecutive years of service by that member.

8 Section 28(8) is amended by striking out “6 consecutive years” and substituting “10 consecutive years”.

9 Section 28.1 is amended

(a) in subsection (2) by striking out “or” at the end of clause (c), adding “or” at the end of clause (d) and adding the following after clause (d):

(e) a former police officer if the position of Public Complaint Director is not in the same municipality where the former police officer was employed.

(b) by adding the following after subsection (2):

(2.1) The Public Complaint Director shall not be a currently serving police officer.

(c) in subsection (3)

(i) by repealing clause (b) and substituting the following:

(b) act as a liaison between the commission, policing committee, the chief of police, the officer in charge of a police service and the complainant as applicable,

(ii) in clause (c) by striking out “public complaints” and substituting “complaints”;

(iii) by adding the following after clause (c):

(d) review the investigation conducted in respect of a complaint during the course of the investigation and at the conclusion of the investigation,

(14) A policing committee shall, with respect to the municipality for which it is established,

*(g) assist the officer in charge in resolving public complaints,
and*

8 Section 28(8) presently reads:

(8) A member of a commission is eligible for reappointment if the reappointment does not result in more than 6 consecutive years of service by that member.

9 Section 28.1 presently reads:

28.1(1) Each commission and policing committee shall designate a person as a Public Complaint Director.

(2) The Public Complaint Director may be

(a) a member of the commission or policing committee other than a member of the council,

(b) an employee of the commission or policing committee,

(c) an employee of the municipality, or

(d) another person, other than a member of the council, who in the opinion of the commission or policing committee is qualified to serve in that capacity.

(3) The Public Complaint Director shall

(a) receive complaints against police officers from the public and refer them to the chief of police under section 43(1),

(b) provide liaison between the commission or policing committee and the chief, and

(c) perform the duties assigned by the commission or policing committee in regard to public complaints.

- (e) offer an alternative dispute resolution process where, in the Public Complaint Director's opinion, that may be an appropriate manner in which to resolve the complaint,
- (f) if an alternative dispute resolution process is offered under clause (e), review the manner in which the alternative dispute resolution process is delivered, and
- (g) provide reports to the commission or policing committee, as required by the commission or policing committee.

10 The following is added after section 28.1:

Regional Public Complaint Director

28.2(1) Notwithstanding section 28.1, the policing committees of 2 or more municipalities may, by unanimous agreement of the municipalities, designate a person as a Regional Public Complaint Director for those policing committees.

(2) A person who is eligible to be a Public Complaint Director under section 28.1(2) or (2.1) is also eligible to be a Regional Public Complaint Director but may not serve as both a Public Complaint Director and Regional Public Complaint Director concurrently.

(3) A Regional Public Complaint Director has the same powers as a Public Complaint Director has under section 28.1(3).

Provincial Public Complaint Director

28.3(1) The Minister may designate an employee of the Government under the Minister's administration as a Provincial Public Complaint Director.

(2) The Provincial Public Complaint Director has the following functions:

- (a) receive complaints from the public;
- (b) refer complaints to the chief of police, the officer in charge of a police service, the Public Complaint Director or the Regional Public Complaint Director, as appropriate;

10 Provincial and Regional Public Complaint Directors.

- (c) if no Public Complaint Director or Regional Public Complaint Director has been designated for the municipality in which a complaint arose, perform the functions of a Public Complaint Director or Regional Public Complaint Director in respect of the complaint;
- (d) provide education and training resources to the Public Complaint Director and Regional Public Complaint Director;
- (e) gather information and statistical data respecting the types of complaints made, the number of complaints made and any other information respecting complaints as required;
- (f) present reports to the Minister as required.

11 The following is added before section 43:

Complaints

42.1(1) Subject to subsection (2), a person may make a complaint respecting the conduct of a police officer.

(2) The following persons may make a complaint referred to in subsection (1):

- (a) a person to whom the conduct complained of was directed;
- (b) a person who was present at the time the incident occurred and witnessed the conduct complained of;
- (c) an agent of a person referred to in clause (a);
- (d) a person who
 - (i) was in a personal relationship with the person referred to in clause (a) at the time the incident occurred, and
 - (ii) suffered a loss, damage, distress, danger or inconvenience as a result of the conduct complained of.

11 Complaints.

(3) Any person may make a complaint in respect of a policy or service of a police service.

(4) A complaint must be made in writing and must include the following information:

- (a) the full name of the complainant;
- (b) the complainant's contact information, including the complainant's
 - (i) address,
 - (ii) telephone number,
 - (iii) cellular telephone number, if available, and
 - (iv) electronic mail address, if available;
- (c) if the complaint is made by an agent of the complainant, the agent's full name and contact information;
- (d) if the complaint is in respect of the conduct of a police officer,
 - (i) the date of the alleged conduct, if known,
 - (ii) the identification of the police officer, if known, and
 - (iii) a description of the incident that gave rise to the alleged conduct;
- (e) if the complaint is in respect of a policy or service of a police service, sufficient information to identify the policy or service complained of;
- (f) any other information requested by the chief of police, the officer in charge of a police service, the Public Complaint Director, the Regional Public Complaint Director or the Provincial Public Complaint Director;
- (g) any other information prescribed in the regulations.

(5) A complaint may be transmitted by electronic mail.

(6) A complaint is considered to be made on the date it is received by the chief of police, the officer in charge of a police service, the Public Complaint Director, the Regional Complaint Director or the Provincial Public Complaint Director, as the case may be.

12 Section 43 is amended

(a) by repealing subsection (3);

(b) by adding the following after subsection (9):

(9.1) If a complainant under subsection (2) or section 46(1) refuses or fails to participate in an investigation, the commission may dismiss the complaint.

(c) by adding the following after subsection (10):

(10.1) If a complainant under section 44(1) refuses or fails to participate in an investigation, the commission may dismiss the complaint.

(d) by repealing subsection (11) and substituting the following:

(11) The chief of police, with respect to a complaint referred under subsection (1), or the commission, with respect to a complaint referred under subsection (2) or section 46(1), shall dismiss any complaint that is made more than one year after

(a) the conduct complained of occurred, or

(b) the complainant first knew or ought to have known that the conduct complained of had occurred,

whichever occurs later.

(e) in subsection (12) by striking out “subsection (8), (9) or (10)” and substituting “subsection (8), (9), (9.1), (10) or (10.1)”.

12 Section 43 presently reads in part:

43(1) All complaints with respect to a police service or a police officer, other than the chief of police, shall be referred to the chief.

(2) All complaints with respect to the chief of police must be referred to the chair of the commission.

(3) A public complaint with respect to a police service or a police officer shall be in writing and signed by the complainant where practicable.

(11) The chief of police, with respect to a complaint under subsection (1), or the commission, with respect to a complaint under subsection (2) or section 46(1), shall dismiss any complaint that is made more than one year after the events on which it is based occurred.

(12) If the commission decides under subsection (8), (9) or (10) to dismiss a complaint, the commission shall notify the complainant and the police officer who is the subject of the complaint, if any, in writing of

(a) the decision and the reasons for the decision, and

(b) the right of the complainant, within 30 days of receiving the notice, to request

(i) the Board, with regard to a complaint or portion of a complaint as to the actions of a police officer or a chief of police, or

(ii) the commission, with regard to a complaint or portion of a complaint as to the policies of or services provided by a police service,

to review the decision.

13 Section 43.1 is amended by adding the following before subsection (1):

43.1(0.1) The chief of police or the chair of the commission shall, where appropriate, offer an alternative dispute resolution process to the complainant and the police officer who is the subject of the complaint prior to commencing a formal investigation of the complaint.

14 Section 45 is amended

(a) in subsection (4) by striking out “the contravention” and substituting “the alleged contravention”;

(b) by adding the following after subsection (4):

(4.1) Where the chief of police disposes of a matter under subsection (4), the decision of the chief of police is final.

15 Section 46.1 is amended by adding the following before subsection (1):

46.1(0.1) For the purposes of this section, “police service” includes military police as defined in section 250 of the *National Defence Act* (Canada).

16 Section 46.2 is amended by adding the following after subsection (3):

(4) Where the head of the integrated investigative unit is conducting an investigation under section 46.1(2)(d) and becomes aware of a further incident that warrants investigating, the head of the integrated investigative unit may, on his or her own initiative, conduct an investigation into that further incident, which may include taking over an ongoing investigation at any stage.

13 Section 43.1 presently reads:

43.1(1) At any time before or during an investigation into a complaint with respect to the actions of a police officer other than the chief of police, if the complainant and the police officer who is the subject of the complaint consent, the chief may attempt to resolve the complaint informally.

(2) At any time before or during an investigation into a complaint with respect to the actions of a chief of police, if the complainant and the chief consent, the chair of the commission may attempt to resolve the complaint informally.

14 Section 45(4) presently reads:

(4) Notwithstanding subsection (3), if the chief of police is of the opinion that the contravention of the regulations governing the discipline or the performance of duty of police officers is not of a serious nature, the chief may, subject to the regulations, dispose of the matter without conducting a hearing.

15 Adds to definition “police service” to include military police with respect to complaints re serious incidents.

16 Section 46.2 presently reads:

46.2(1) The Minister may by order establish an integrated investigative unit and authorize it to act as another police service for the purposes of conducting an investigation under section 46.1.

(2) The Minister may

(a) designate a person as head of the integrated investigative unit, and

(5) Where the head of the integrated investigative unit intends to conduct an investigation into a further incident in accordance with subsection (4), the head of the integrated investigative unit shall notify the Director as soon as possible.

17 Section 47 is amended

(a) in subsection (1) by adding the following after clause (d):

- (d.1) if a complainant fails to attend, to answer questions or to produce an item as required under clause (c), is unable or refuses to participate or to follow processes or conducts himself or herself in an inappropriate manner, the person conducting the hearing may dismiss the matter;
- (d.2) if a witness fails to attend or to answer questions, is unable or refuses to participate or to follow processes or conducts himself or herself in an inappropriate manner, the person conducting the hearing may dismiss the witness and continue with the hearing;

(b) by repealing subsection (5) and substituting the following:

(5) On making a decision after considering the matter in respect of which a complaint is made,

- (a) the chief of police, in the case of a complaint under section 45, or
- (b) the commission, in the case of a complaint under section 46,

shall in writing advise the person against whom the complaint is made and the complainant

- (c) of the findings of the hearing and any action taken or to be taken under subsection (4), or

(b) appoint peace officers appointed under the Peace Officer Act as investigators under the authority of the head of the integrated investigative unit.

(3) Subject to the terms of the Minister's authorization under subsection (1), the head of the integrated investigative unit is deemed to be a chief of police, and any person acting as an investigator is deemed to be a police officer, for the purposes of section 46.1(3), (4), (6), (7) and (8).

17 Section 47 presently reads in part:

47(1) Where a hearing is proceeded with under section 45(3) or 46(4), the following applies:

(c) the person conducting the hearing has, with respect to the holding of a hearing, the same power as is vested in the Court of Queen's Bench for the trial of civil actions

(i) to summon and enforce the attendance of witnesses,

(ii) to compel witnesses to give evidence on oath or otherwise, and

(iii) to compel witnesses to produce documents, records and things;

(d) if a person fails to attend, to answer questions or to produce an item as required under clause (c), the person conducting the hearing may apply to the Court of Queen's Bench for an order committing that person for contempt in the same manner as if that person were in breach of an order or judgment of that Court;

(5) On making a decision after considering the matter in respect of which a complaint is made,

(a) the chief of police, in the case of a complaint under section 45, or

(b) the commission, in the case of a complaint under section 46,

shall in writing advise,

(c) in the case of a public complaint, the person against whom the complaint is made and the complainant,

(d) where a hearing is not held, of the disposition of the complaint and the grounds on which the disposition was made,

and of the right of appeal provided for under this Act.

18 Section 48(2) is amended by striking out “public complaint” and substituting “complaint”.

19 Section 51 is amended by adding “or involuntary” after “voluntary”.

- (i) *of the findings of the hearing and any action taken or to be taken under subsection (4), or*
 - (ii) *where a hearing is not held, of the disposition of the complaint and the grounds on which the disposition was made,*
- and of the right of appeal provided for under this Act, and*
- (d) *in the case of a complaint other than a public complaint, the person against whom the complaint is made,*
- (i) *of the findings made and any action taken or to be taken in respect of the complaint, and*
 - (ii) *of the right of appeal provided for under this Act.*

18 Section 48(2) presently reads:

(2) If a public complaint has been made, the complainant may, within 30 days from the day the complainant was advised under section 47(5) of the determination of the complaint, appeal the matter to the Board by filing with the secretary to the Board a written notice of appeal setting out the grounds on which the appeal is based.

19 Section 51 presently reads:

51 Where a police officer or peace officer appointed under the Peace Officer Act gives evidence during

- (a) *a hearing under this Act, or*
- (b) *an appeal under this Act arising out of a hearing referred to in clause (a),*

that evidence, or an explanatory report made to an investigator on a voluntary basis by a police officer in respect of whom an investigation is being carried out, if it tends to incriminate him or her, subject him or her to punishment or establish his or her liability, shall not be used or received against the police officer or peace officer appointed under the Peace Officer Act in any civil proceeding or in any proceeding under any other Act, except in a

20 Section 52 is amended by adding “and provide any other information respecting the investigation requested by the Director in a manner acceptable to and within a time period specified by the Director” **after** “disposed of”.

21 Section 62(1) is amended by adding the following after clause (g):

- (h) prescribing factors to be considered by the Board in deciding whether an appeal may be concluded under section 19.2(1)(b) without conducting a hearing;
- (i) for the purposes of section 42.1(4)(g), prescribing information that must be included in a complaint.

22 This Act, except sections 7(a), 8 and 15, comes into force on Proclamation.

prosecution for or proceedings in respect of perjury or the giving of contradictory evidence.

20 Section 52 presently reads:

52 If a complaint referred to in section 44, 45, 46 or 46.1 is made, the commission shall, at the end of the month in which the complaint is made or within a longer period of time as prescribed by the Director of Law Enforcement, advise the Director of the complaint and, after the disposition of the complaint, advise the Director as to how the complaint was disposed of.

21 Section 62(1) presently reads:

62(1) The Minister may make regulations

- (a) governing for the purposes of section 22 the sharing of costs of provincial policing services;*
- (b) prescribing colour and style of uniforms, accoutrements and insignia for police officers;*
- (c) governing clothing and equipment furnished to or used by police officers;*
- (d) governing firearms with respect to police officers;*
- (e) governing the providing of information to the Director of Law Enforcement under section 52 and the release of that information by the Director;*
- (f) prescribing the information and statistical data to be kept and reported to the Minister by commissions, policing committees and police services;*
- (g) governing the establishment of standards for police services, police commissions and policing committees.*

22 Coming into force.

