CHAPTER FIVE: PUBLIC COMPLAINT PROCEDURES

Edited By: Ming Lin
With the Assistance of: Douglas King of the Pivot Legal Society
Current as of July 15, 2016

TABLE OF CONTENTS

I. INTRODUCTION 1

II. GOVERNING LEGISLATION AND RESOURCES 1

A. GENERAL 1

1. Legislation 1

2. Resources 1

B. PRIVACY OR ACCESS TO INFORMATION 1

1. Legislation 1

2. Resources 2

C. COMPLAINTS ABOUT POLICE CONDUCT 2

1. Legislation 2

2. Resources 2

D. THE RIGHT TO VOTE 3

1. Legislation 3

2. Resources 3

III. STEPS TO TAKE 3

A. STEP ONE: INFORMAL REVIEW 3

B. STEP TWO: FORMAL REVIEW 3

C. STEP THREE: EXAMINING AN APPEAL 4

1. Judicial Review 4

2. Ombudsperson 10

IV. PRIVACY OR ACCESS TO INFORMATION 11

A. INTRODUCTION 11

B. AT COMMON LAW 11

C. WIRETAP LEGISLATION AND LAWFUL ACCESS 12

D. FEDERAL PRIVACY ACT, FEDERAL ACCESS TO INFORMATION ACT 12

1. Introduction 12

2. Privacy Act 12

3. Access to Information Act 13

E. FEDERAL PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT 14

1. Introduction 14

F. BC PERSONAL INFORMATION PROTECTION ACT 15

G. BC FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT 15

1. Introduction 15

2. Scope of Freedom of Information Rights 15

3. Scope of Privacy Rights 16

4. Process of Making a Disclosure Request 17

H. THE BC PRIVACY ACT 19
I. POLICE INFORMATION CHECKS (CRIMINAL RECORD CHECKS) 19
V. COMPLAINTS CONCERNING POLICE CONDUCT 20
A. INTRODUCTION 20
B. COMPLAINTS AGAINST A MEMBER OF A MUNICIPAL POLICE FORCE 21
1. General Information 21
2. The Complaint Process 22
C. COMPLAINTS AGAINST A MEMBER OF THE RCMP 25
1. General Information 25
2. The Complaint Process 26
D. CIVIL OR CRIMINAL PROCEEDINGS 26
1. Criminal Proceedings 26
2. Civil Proceedings 27
VI. COMPLAINTS AGAINST SECURITY GUARDS 28
A. INTRODUCTION 28
B. FILING THE COMPLAINT 28
VII. THE RIGHT TO VOTE 29
A. INTRODUCTION 29
B. BRITISH COLUMBIA PROVINCIAL ELECTIONS 30
1. General Information 30
2. Who Is Eligible to Vote 30
3. Registration and Voting Procedures 31
C. FEDERAL ELECTIONS 32
D. MUNICIPAL ELECTIONS 33
VIII. COMPLAINTS AND APPEALS REGARDING THE UNIVERSITY OF BRITISH COLUMBIA 34
A. THE AMS OMBUDS OFFICE 34
B. THE AMS ADVOCACY OFFICE 35
IX. COMPLAINTS AND APPEALS REGARDING SIMON FRASER UNIVERSITY 35
A. THE SFU OFFICE OF THE OMBUDSPERSON 35
X. COMPLAINTS AGAINST DOCTORS 36
XI. COMPLAINTS AGAINST LAWYERS 37
APPENDIX A – GLOSSARY 38
APPENDIX B – SAMPLE LETTER OF INTENT TO SUE THE CITY AND/OR POLICE 39

CHAPTER FIVE: PUBLIC COMPLAINT PROCEDURES

I. INTRODUCTION

This chapter does not address all problems, legal or otherwise, relating to government, but it provides some general information that may assist making a public complaint. This section contains general guidelines for dealing with public bodies (e.g., the Canadian Radio-television and Telecommunications Commission, the Egg Marketing Board, or a public university). Individuals involved in the judicial review process should consult the following texts:

David J Mullan, *Administrative Law,* (Toronto: Irwin Law, 2001).

- Part of the *Essentials of Canadian Law* series by Irwin Law, this text provides a comprehensive review of administrative law in Canada.

Sara Blake, *Administrative Law in Canada*, 5th ed (Toronto: LexisNexis, 2011).

- This text provides a simple and clear review of administrative law.

Donald Brown & John M Evans, *Judicial Review of Administrative Action in Canada*, loose-leaf (Toronto: Canvasback Publishing, 1998).

- This regularly updated three-volume text provides a more detailed review of administrative law.

II. GOVERNING LEGISLATION AND RESOURCES

A. General

1. Legislation

Federal Courts Act, RSC 1985, c F-7.

Judicial Review Procedure Act, RSBC 1996, c 241.

2. Resources

David Mossop, Kendra Milne & Jess Hadley, *Representing Yourself in a Judicial Review*, 2d ed (Vancouver: Community Legal Assistance Society, 2010), online: <clasbc.net/publications>.

The Ombudsperson of BC website: www.ombudsman.bc.ca.

B. Privacy or Access to Information

1. Legislation

Access to Information Act, RSC 1985, c A-1.

Freedom of Information and Protection of Privacy Act, RSBC 1996, c 165.

Personal Information Protection and Electronic Documents Act, SC 2000, c 5.

Privacy Act, RSBC 1996, c 373.

Privacy Act, RSC 1985, c P-21.

NOTE: In May of 2010, the BC legislature released the Report of the Special Committee to Review the *Freedom of Information and Protection of Privacy Act* [Report]. The Special Committee reiterated the call for public bodies to adopt the practice of routine proactive disclosure of electronic records, made by the two previous statutory review committees. Other recommendations focused on more timely and efficient disclosure of information requests, appointing a Government Chief Privacy Officer, and giving the Privacy Commissioner expanded powers. For details, see the Report at http://www.leg.bc.ca/cmt/39thparl/session-2/foi/index.htm.

2. Resources

BC Freedom of Information and Privacy Association
http://fipa.bc.ca/home/

BC Civil Liberties Association
900 Helmcken Street, 2nd Floor
Vancouver, British Columbia, V6Z 1B3
Website: www.bccla.org
Phone: (604) 687-2919
Fax: (604) 687-3045
Email: info@bccla.org

Office of the Information and Privacy Commissioner for B.C.
P.O. Box 9038, Stn. Prov. Govt.
Victoria, British Columbia, V8W 9A4
1-800-663 7867 (Enquiry B.C.)
Website: www.oipc.bc.ca

Privacy Commissioner of Canada
112 Kent Street
Place de Ville, Tower B, 3rd Floor
Ottawa, Ontario, K1A 1H3
Website: www.priv.gc.ca
Telephone: (819) 994-5444
Toll-Free: 1-800-282-1376
Fax: (819) 994-5424

C. Complaints about Police Conduct

1. Legislation

Police Act, RSBC 1996, c 367.

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

2. Resources

BC Civil Liberties Association
900 Helmcken Street, 2nd Floor
Vancouver, British Columbia, V6Z 1B3
Website: www.bccla.org
Phone: (604) 687-2919
Fax: (604) 687-3045
Email: info@bccla.org

Pivot Legal Society
121 Heatley Avenue
Vancouver, British Columbia, V6A 3E9
Telephone: (604) 255-9700
Fax: (604) 255-1552

Office of the Police Complaints Commissioner:
Website: www.opcc.bc.ca
#501-947 Fort St.
P.O. Box 9895 Stn Prov Govt
Victoria, BC V8W 9T8
E-mail: info@opcc.bc.ca
Telephone: (250) 356-7458
Fax: (250) 356-6503

- Toll-free outside of Vancouver: Call Enquiry BC at 1-877-999-8707 and ask to be connected to the Office of the Police Complaints Commissioner.

Civilian Review and Complaints Commission for the RCMP
Email: complaints@crcc-ccetp.gc.ca Anywhere in Canada: 1-800-665-6878
Telephone for Greater Vancouver: (604) 501-4080 Fax: (604) 501-4095
Website: www.crcc-ccetp.gc.ca/

- To use the online complaint form, click on the "Make a Complaint" link.

D. The Right to Vote

1. Legislation

Canada Elections Act, RSC 2000, c 9

Election Act, RSBC 1996, c 106

Local Government Act, RSBC 1996, c 323

Vancouver Charter, SBC 1953, c 55

2. Resources

Elections British Columbia
Website: www.elections.bc.ca

Elections Canada
Website: www.elections.ca

III. STEPS TO TAKE

A. Step One: Informal Review

Disputes with government agencies can often be resolved through informal communication. Agencies often make initial decisions based on misperceptions, without all relevant information. Sometimes the most difficult part of an advocate's job is to locate the person making the decision or someone in a position to review the decision. Before pursuing more drastic (and often expensive) avenues, try to locate this person and ensure that they have been provided with all relevant information.

B. Step Two: Formal Review

Most government agencies have some sort of formal review process. For some agencies there is little difference between formal and informal review, while others have sophisticated, published processes that closely resemble courtroom procedure. Whatever the problem is and whichever government player is involved, be sure to research the review process before launching a formal appeal. Factors such as cost, location of the hearing, type of submissions heard, and evidence required will all affect the choice of whether or not to pursue a resolution through the formal review process.

Generally, powers of review and review procedures are set out in the statutes and regulations that govern a particular tribunal or court. Agencies themselves further clarify this process. Many publish handbooks for internal use that are available to the general public on their websites or in law libraries. Lawyers with experience in the area may also provide valuable insight. Lawyers at the Community Legal Assistance Society can be helpful when dealing with specific problems, especially those dealing with poverty law topics (EI, WCB, Income Assistance).

NOTE: Pay attention to time limits. Many worthy cases have been lost because an advocate failed to pay proper attention to limitation periods. Some limitation periods are very short.

C. Step Three: Examining an Appeal

If launching an internal review fails to solve an issue, an individual can either apply for judicial review or contact the BC Ombudsperson. Both of these options can be pursued at the same time, but one option may be preferable to the other in certain circumstances. Generally speaking, individuals will be looking to resort to the courts through a judicial review, which will actually render a binding decision on a case. The Ombudsperson is generally to be contacted only where an individual does not have a legal cause of action, but still wants to change a part of a government body's structure that leads to unfairness.

1. Judicial Review

If you receive an unfavourable decision from an agency's appeal process, or object to the appeal process itself, you may have recourse to the courts. Sometimes regulations give an individual a right to appeal directly to the courts. If so, one should use this direct right to appeal rather than the general judicial review procedure. However, even if an individual has no express statutory right to appeal to the courts, superior courts possess inherent jurisdiction to review administrative action to ensure that administrative decision-makers do not exceed the authority granted to them by statute.

The courts have developed criteria against which to assess the adequacy of government agencies' decision-making procedures. These criteria form the heart of administrative law. It is not within the scope of this section to attempt a comprehensive overview of the basic principles of administrative law. Interested parties can find an excellent introduction to these fundamental principles in *Dunsmuir v New Brunswick*, 2008 SCC 9. Bastarache and Lebel JJ for the majority provide the following description at paragraphs 27-28:

As a matter of constitutional law, judicial review is intimately connected with the preservation of the rule of law... By virtue of the rule of law principle, all exercises of public authority must find their source in law. All decision-making powers have legal limits, derived from the enabling statute itself, the common or civil law or the Constitution. Judicial review is the means by which the courts supervise those who exercise statutory powers, to ensure that they do not overstep their legal authority. The function of judicial review is therefore to ensure the legality, the reasonableness and the fairness of the administrative process and its outcomes.

Remember that judicial review should not be contemplated unless all aforementioned avenues have been exhausted.

a) BC Judicial Review Procedure Act

For matters within the jurisdiction of the BC Legislature, the *Judicial Review Procedure Act*, RSBC 1996, c 241 [*JRPA*], provides for the judicial review of the "exercise, refusal to exercise, or proposed or purported exercise, of a statutory power" (*JRPA*, s 2). This includes the power to review decisions "deciding or prescribing (a) the legal rights, powers, privileges, immunities, duties or liabilities of a person, or (b) the eligibility of a person to receive, or to continue to receive, a benefit or licence..." (*JRPA*, s 1). In a proceeding under the *JRPA*, the court has broad powers to craft a suitable remedy; most often the case will be returned to the tribunal for reconsideration in light of the court's findings of law or fact (see **Section I.F.4: Available Remedies**, below). An application under the *JRPA* can be brought before a Supreme Court judge in Chambers. Although this is a less expensive procedure than a trial, it may still be beyond the means of most individuals.

b) Judicial Review Procedure

A party applying for judicial review must first determine whether the Federal Court or a provincial superior court has authority to decide on the matter. As a general rule, provincial jurisdiction includes tribunals established within provincial constitutional jurisdiction and tribunals created by the province due to a delegation of powers by the federal government.

(1) Federal Court

When considering judicial review of federal tribunals, look at both the *Federal Courts Act*, RSC 1985, c F-7, and the particular tribunal's governing statute. Often the governing statute sets out important limitation periods and procedures.

The Federal Court Trial Division hears reviews of most federal tribunals. However, the 16 tribunals listed in section 28 of the *Federal Courts Act* are reviewed by the Federal Court of Appeal. Examples of federal tribunals that are reviewed by the Federal Court of Appeal include the Canada Industrial Relations Board, Employment Insurance umpires, the Competition Tribunal, and the CRTC.

The procedures for a federal judicial review are set out in s 18.1 of the *Federal Courts Act*. There is a **30-day** limitation period for applications to the Federal Court, which can be extended under s 18.1(2).

(2) Provincial Superior Courts

A tribunal under provincial jurisdiction can be reviewed upon application to a judge in the BC Supreme Court. The procedural rules are described in the BC *Supreme Court Civil Rules*, BC Reg 168/2009, available in the Practice, Procedure & Policy section of the BC Supreme Court website: www.courts.gov.bc.ca/supreme_court.

Tribunals that can be reviewed under the *JRPA* include the Employment and Assistance Appeal Tribunal, the Workers' Compensation Board, and the Residential Tenancy Branch.

(3) Standing

In general, only the parties who had standing before the tribunal or who are directly affected by the tribunal's decision may apply for judicial review.

(4) Time Limits

The time limit to apply to the Federal Court for judicial review under section 18.1 of the *Federal Courts Act* is **30 days**, although it can be extended by the Federal Court (s 18.2(2)). However, other federal legislation may direct different timelines. For example, for decisions made pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27, appellants must look to both that statute and the *Federal Courts Act*.

For provincial tribunals, applicants must refer to the *Administrative Tribunals Act* [*ATA*], SBC 2004, c 45, and the specific statute governing the tribunal; **60 days** is the default (*ATA* s 57). Limitation periods may be extended pursuant to

section 11 of the *JRPA*, unless another enactment provides otherwise or the delay will result in substantial prejudice or hardship to another person affected.

(5) Stay of Orders or Proceedings

While an application for judicial review is pending, existing orders from a tribunal must be obeyed, and the tribunal has discretion to continue with the proceedings. However, an applicant can ask the court to stay the tribunal's order or to prohibit the proceedings from continuing. For an accessible explanation of how to do this, refer to this booklet (at Appendix sections C-E):

David Mossop, Kendra Milne & Jess Hadley, *Representing Yourself in a Judicial Review*, 2d ed (Vancouver: Community Legal Assistance Society, 2010), online: <clasbc.net/publications>.

(6) Evidence

The primary evidence for judicial review is the tribunal's record of the hearing. Generally, the court does not allow new evidence to be introduced at a judicial review hearing.

(7) Filing Fees and Indigency Applications

Applicants who cannot afford the filing fees for judicial review may apply for an indigency order pursuant to Rule 20-5 in Appendix C, Schedule 1 of the BC *Supreme Court Civil Rules*. Indigency status affords the applicant relief from all court fees and is available to those with low income and limited earning potential. Note that the process for indigency applications is complicated. For more exhaustive details on the process, please refer to this booklet (at sections 4(E) and 5):

David Mossop, Kendra Milne & Jess Hadley, *Representing Yourself in a Judicial Review*, 2d ed (Vancouver: Community Legal Assistance Society, 2010), online: <clasbc.net/publications>.

c) Scope of Judicial Review

Assuming a party can resort to the courts to review the decision of a tribunal, there are limitations as to the scope of judicial review.

(1) Substantive Errors

An administrative body has only as much power as its governing statute grants to it. This grant of authority is limited in both the context and the manner in which it can be applied. If an administrative decision-maker exceeds his or her authority, the court can step in to provide a remedy.

(a) Errors of Fact

Findings of fact are generally reviewable only if they are not supported on the evidence. The deference granted by the court to a tribunal's findings of fact in judicial review is akin to the deference an appeal court shows to a trial court's findings of fact. Nevertheless, the legislature is presumed not to have intended to

give an administrative body the authority to act arbitrarily or capriciously. If the tribunal makes a finding of fact that cannot reasonably be drawn from the evidence, then it is exceeding the authority granted to it, and its decision can be set aside by the court.

(b) Errors of Law

Substantive law reviewable by the courts can be divided into two areas: statutory interpretation related to the powers of a tribunal, and interpretation related to other broader questions of law.

A tribunal can be overruled if it is acting without authority. A tribunal must generally act within the jurisdiction of the legislation that created it. Similarly, a tribunal must not misinterpret the rules that govern the way it exercises authority, since these rules represent a precondition to the exercise of that authority. The mandate of a tribunal is defined in large part by the intention of the legislature. If in the course of exercising its authority a tribunal misinterprets its mandate, a court may declare the tribunal's decision void upon judicial review.

Similarly, a tribunal can be overruled if it applies the law incorrectly in other contexts. The enabling statute creating a given tribunal cannot grant it the authority to act illegally or to change the law.

(c) Standards of Review

Different standards of review may be imposed depending on the issue that is under review and the nature of the tribunal. The law relating to standards of review is quite complicated; thus, for a more detailed discussion of the issues pertaining to the standards of review, one should refer to *Dunsmuir*, above. See also the *ATA* for statutorily prescribed standards of review applicable to certain provincial tribunals.

Generally, for questions of law that go beyond the tribunal's specialized area of expertise, the standard of review will be **correctness** — i.e., the tribunal must get the law right.

If a tribunal is interpreting its own enabling statute or a closely related statute with which it has particular familiarity or expertise (e.g., the Workers' Compensation Board applying the *Workers Compensation Act*), then the court will generally show some deference to the tribunal's interpretation. The standard of review will generally be **reasonableness**.

Likewise, for questions of fact, and for exercises of discretion (e.g., with respect to the appropriate remedy), the court will usually show deference to the judgment of the administrative decision-maker who saw the evidence first-hand. The standard of review will generally be **reasonableness**. A court does not usually review a tribunal's discretionary decisions unless its discretion was not exercised in good faith, was exercised for an improper purpose, was based on irrelevant considerations, or was otherwise unreasonable. The appropriate degree of deference depends on a number of factors, including the nature of the discretionary

decision, the knowledge and expertise of the decision-maker, and the amount of discretion that is given by legislation. See *Baker v Canada (Minister of Citizenship and Immigration),* [1999] 2 SCR 817 [*Baker*], and *Suresh v Canada (Minister of Citizenship and Immigration)*, [2002] SCC 1 (for *Charter* violations).

A third, more deferential standard of review, patent unreasonableness, used to be applied in some circumstances. However, *Dunsmuir* has expressly done away with this standard of review, at least in the context of the common law. It is unclear at this time how *Dunsmuir* may have affected the standards of review dictated by the *ATA,* which still makes reference to "patently unreasonable" findings. However, Binnie J offered the following *obiter* comments in *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12:

"The expression 'patently unreasonable' did not spring unassisted from the mind of the legislator. It was obviously intended to be understood in the context of the common law jurisprudence, although a number of indicia of patent unreasonableness are given in s. 58(3). Despite Dunsmuir, 'patent unreasonableness' will live on in British Columbia, but the content of the expression, and the precise degree of deference it commands in the diverse circumstances of a large provincial administration, will necessarily continue to be calibrated according to general principles of administrative law. That said, of course, the legislature in s. 58 was and is directing the BC courts to afford administrators a high degree of deference on issues of fact, and effect must be given to this clearly expressed legislative intention."

Binnie J further stated that a "legislature has the power to specify a standard of review if it manifests a clear intention to do so. However, where the legislative language permits, the court (a) will not interpret grounds of review as standards of review, (b) will apply *Dunsmuir* principles to determine the appropriate approach to judicial review in a particular situation, and (c) will presume the existence of a discretion to grant or withhold relief based in part on *Dunsmuir* including a restrained approach to judicial intervention in administrative matters."

d) Procedural Areas of Law

Generally, tribunals must follow procedural norms, although their procedures may be less formal than those of a court. Tribunals must follow any procedures required by statute or regulation. However, the legislation is often largely silent on procedural requirements, and tribunals are often given a wide discretion within which to operate. Nevertheless, the superior courts are constitutionally bound to uphold the rule of law and will not allow procedural laxity to result in unreasonable prejudice to those affected by administrative decisions. That is, the legislature is presumed to have intended that the administrative body follow certain procedural fairness minimums as a precondition to exercising its authority.

The content of the mandatory procedural fairness minimum will differ depending on the circumstances; see *Baker*, above. Determining the precise procedural requirements of a given case is rarely clear cut, and an extensive body of case law exists addressing these issues in various contexts.

Fundamental procedural rights include the right to know the case that must be met and to respond, and the right to an impartial decision-maker. In some cases, procedural fairness requirements might also include the right to advanced notice, the right to an oral hearing, the right to be represented by counsel, or the right to formal written reasons. In all cases, the prejudice to the accused from denying a procedural norm must be balanced against the need to make administrative decisions efficiently.

(1) Standard of Review

Generally, the tribunal's procedural decisions will be assessed on a standard of **fairness**. The court will show deference to the administrative body's discretionary choice of procedures, provided that the selection is fair in the circumstances. See e.g. *Baker*, above.

For provincial tribunals to which the *ATA* applies, the Act provides: "questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted **fairly**" (ss 58(2)(b) and 59(5)).

(2) Duty to Act Fairly

Tribunals have a common-law duty to act fairly. At its most basic level, the doctrine of fairness requires that a party be given the opportunity to respond to the case against him or her. The circumstances determine whether this response is a written objection or a full oral hearing. As a corollary to the right to present one's case, the legal maxim that only the people who hear the case may decide on it applies to tribunals. The tribunal must meet quorum but need not be unanimous.

The extent of disclosure depends on what is fair to all parties involved and whether the information at issue is prejudicial to an individual's interests (i.e., failure to disclose inconsequential information may not be fatal). At the very least, a party must know which incidents and allegations will be at issue when the decision is made.

The courts will allow tribunals considerable latitude in establishing procedures (while keeping in mind what is fair). However, a tribunal is required to be procedurally consistent. Where a tribunal informs an individual that a certain procedure will be followed, it will normally be considered unfair to follow a different procedure.

Although many statutes have limitation periods, even where there is no limitation period, any delay in holding a hearing must be within reasonable limits. No one has the right to an adjournment; however, tribunals should consider the amount of notice, the gravity of the consequences of the hearing, the degree of disclosure, and the availability of counsel when deciding whether to allow an adjournment.

(3) Right to Be Heard

If there is a hearing, a party is entitled to be present while evidence or submissions are presented. The right to be present at a hearing normally includes a party's right to appear with counsel and his or her right to an interpreter, though normally a tribunal is not required to pay for these services. The tribunal has discretion as to whether the hearing is public or private (although there is a presumption in favour of public hearings). At

any hearing, the tribunal must gather and weigh evidence. Relevance is the primary consideration when determining admissibility. Not all administrative decisions involve an oral hearing. A tribunal may have the power to make certain decisions on the basis of written submissions.

(4) Onus of Proof

The onus of proof is normally to a civil standard, i.e., that the events alleged occurred on a balance of probabilities. However, disciplinary hearings may be to a mixed standard requiring proof beyond a reasonable doubt for some elements.

(5) Duty to Act in Good Faith

All decision-makers are expected to act in good faith and not to discriminate on the basis of irrelevant criteria. Parties are entitled to a decision made by persons untainted by the appearance of bias or conflicts of interest. A tribunal has a duty to at least consider exercising any discretion it may have.

e) Remedies of Judicial Review

Several remedies are available through judicial review:

a) an order in the nature of *mandamus* that requires a tribunal to exercise certain powers;

b) an order in the nature of *prohibition* that prohibits a tribunal from exercising unlawful authority;

c) an order in the nature of *certiorari* that quashes a tribunal decision;

d) where there is an exercise, refusal to exercise, or a proposed or purported exercise of a statutory power, an injunction or declaration from the court; or

e) a court-issued declaration to clarify the law.

A party may also challenge a tribunal decision via a civil action for a declaration or injunction. For non-statutory tribunals, this is the only method of challenge. This is also the only method of challenge wherein the court may grant damages.

2. Ombudsperson

The procedures created by the BC *Ombudsperson Act*, RSBC 1996, c 340, furnish an inexpensive means for reviewing decisions and practices of **provincial** government bodies. At present, there is no federal equivalent of the provincial Ombudsperson. However, as discussed later in the chapter, there are sectional equivalents in such fields as police enforcement and official languages.

The Act has the following main features:

- The Ombudsperson is empowered to investigate complaints against public sector bodies including provincial ministries and provincially appointed boards, commissions, Crown

corporations, and other public institutions where the majority of the board is appointed by the provincial government or is responsible to the government.

- The Schedule to the *Ombudsperson Act* also empowers the Ombudsperson to investigate complaints against such entities as provincial corporations, municipalities and regional districts, universities and colleges, hospitals, and governing bodies of professional or occupational associations established by a provincial Act.

- The Ombudsperson does **not** have jurisdiction to investigate complaints in areas where the parties are private actors or where other specialized complaint procedures have been established. Examples include complaints regarding banks, private life and health insurance, consumer inquiries, doctors, employment issues involving private companies, federal programs, landlord and tenant (residential) inquiries, municipal police, and the RCMP.

- The Ombudsperson has broad powers of inquiry and may make recommendations, but has no power to enforce those recommendations.

- The complainant must exhaust review or appeal procedures within the agency against which the complaint was made **before** turning to the Ombudsperson.

- The Ombudsperson tables an annual report in the Legislature and may publicly disclose any findings if an agency is not complying with his or her recommendations.

Contact the current Ombudsperson, Kim Carter, at:

The Ombudsperson
Second Floor - 947 Fort Street
Victoria, BC V8V 3K3
Mail: PO Box 9039 STN PROV GOVT
Victoria, BC V8W 9A5

Telephone: (250) 387-5855
Toll-free: 1-800-567-3247
Fax: (250) 387-0198
Website: www.ombudsman.bc.ca

IV. PRIVACY OR ACCESS TO INFORMATION

A. Introduction

Although the right to privacy is fundamental to the healthy exercise of democratic rights, recognition and practical enforcement of this right by legislators and the courts has been slow. This problem has many sources, but underlying it is the enormous difficulty jurists have found in coming to an understanding of what is meant and entailed by this right.

The right to privacy is often balanced against the right to access information, since these rights frequently collide (e.g., when an employer wishes to obtain information about an employee from a government agency). In some cases, a right of access to information may determine whether or not an individual's privacy has been violated. Legislation regulating access to government information is designed to ensure an informed citizenry; when someone seeks information that may injure the privacy interests of a third party, mechanisms exist to weigh privacy interests of the individual against the public interest in disclosure. The following provides a quick survey of the relevant privacy or access to information laws.

B. At Common Law

At common law, the torts of trespass, nuisance, defamation, and invasion of privacy may discourage some of the more blatant forms of invasion of privacy. However, these civil actions do not so much ensure privacy as retroactively provide compensation for its breach.

C. *Wiretap Legislation and Lawful Access*

Individuals interested in information on wiretapping and lawful access to information should contact the BC Civil Liberties Association, who specialize in dealing in these areas. See **section II.I.1.** The case law in this area is very complicated, and an experienced criminal lawyer should be consulted if issues regarding a wiretap arise.

D. *Federal Privacy Act, Federal Access to Information Act*

1. *Introduction*

The federal *Access to Information Act*, RSC 1985, c A-1, and the federal *Privacy Act*, RSC 1985, c P-21, both deal with freedom of information. The *Access to Information Act* allows for access to information in records under the control of federal government institutions. The *Privacy Act* protects the confidentiality of information about an individual held by federal government institutions, and provides individuals with a right of access to information about themselves held by such institutions. What follows is only a brief outline of the main provisions of these Acts. Individuals should consult the Acts if they have a problem in this area.

2. *Privacy Act*

If an individual wants to obtain information relating to themselves, they should make an application under the federal *Privacy Act,* and should make their application directly to the agency that has the information.

The *Privacy Act*, RSC 1985, c P-21, sets out the conditions under which a government institution may collect, maintain, and use personal information about individuals. The Act requires that:

a) the information collected must relate directly to an operating program or activity of the institution (s 4);

b) information used in a decision-making process that directly affects the individual should be, wherever possible, collected directly from the individual to whom it relates, or with his or her consent, and the institution shall inform the individual of the purpose for which the information is being collected (s 5);

c) the institution shall ensure that information used to make a decision about an individual is accurate, up-to-date and as complete as possible, that it is retained long enough for the individual to have a reasonable opportunity to obtain access to it, and that it is disposed of in accordance with the relevant regulations and ministry directives or guidelines (s 6); and

d) the information shall not, without the consent of the individual, be used for any purpose except that for which it was obtained, for a use consistent with that purpose, or for other purposes specified in the Act (s 7).

The Privacy Commissioner is authorized to oversee compliance by federal government institutions with the provisions of the *Privacy Act*. The Commissioner receives and investigates complaints from individuals, audits institutions' storage and use of information, makes recommendations to institutions and the Treasury Board regarding privacy issues, and presents an annual report to Parliament.

The Commissioner cannot make orders requiring bodies to comply with the Act, but may investigate and make reports. Individuals who are refused access to their own personal

information may, after the Commissioner has investigated and reported, apply to the Federal Court for an order requiring access to this information. The Privacy Commissioner may also take enforcement proceedings in Federal Court in relation to a refusal to give an individual access to his or her own personal information. For further information, contact:

BC Freedom of Information and Privacy Association
http://fipa.bc.ca/home

Office of the Privacy Commissioner of Canada
30 Victoria Street
Gatineau, Quebec, K1A 1H3
Website: www.priv.gc.ca
Telephone: 1-800-282-1376
Fax: (819) 994-5424

3. Access to Information Act

This Act gives a Canadian citizen or permanent resident the right to access any record under the control of a federal government institution.

NOTE: If you are seeking to obtain information about an individual person, see section II.E.3 on the application of the *Privacy Act*.

Certain classes of information are exempt from the Act. These include confidential inter-governmental communications, information pertaining to law enforcement and investigations, trade secrets, personal information, and generally anything likely to be harmful to Canada's security interest.

NOTE: In the Supreme Court of Canada decision *Ontario (Public Safety and Security) v Criminal Lawyers' Association*, 2010 SCC 23, the Court held that the guarantee of freedom of expression under subsection 2(b) of the Charter does not guarantee access to *all* documents in government hands. In that case, the Court adopted the test for whether freedom of expression was infringed found in *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927, and determined that freedom of expression was not infringed by the *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31. See both these cases for more detailed information.

The procedure for obtaining a government record is as follows:

a) Go to http://canada.justice.gc.ca/eng/trans/atip-aiprp for the Access to Information and Privacy website, which offers a brochure about using the Act, online access to Info Source, and online forms. Alternatively, any public library provides the same information. Info Source is a directory that describes each federal government institution and the information it holds, as well as the title and address of the appropriate officer to whom requests should be sent.

b) Formally request the records by sending in the online or printed request forms, or by sending a letter. Be as specific as possible citing subject, dates, events, and individuals. Enclose a $5.00 payment, but ask that this and any other fees be waived on the grounds that the release of records would be of "general public benefit" or that similar information has been released in the past.

c) Once the institution receives a request, it has 30 days to give notice of whether access will be given. Senior officials can extend this time limit if they give notice of extension. If third parties are involved, the time limit is 80 days. If access is refused, they must inform the person making the request of the right to make a complaint to the Information Commissioner.

NOTE: It can take up to one year to receive records to which access is given. There is no meaningful redress for delays of this nature.

d) Complaints should be sent to:

Office of the Information Commissioner
30 Victoria Street
Gatineau, Quebec, K1A 1H3

Toll-free: 1-800-267-0441
Fax: (819) 994-1768
E-mail: general@oic-ci.gc.ca
Website: www.oic-ci.gc.ca/eng/

The Information Commissioner investigates complaints in private, and each party has the right to make representations. Similar to an Ombudsperson, the Commissioner can only make recommendations, and cannot directly compel the release of information. However, he or she can take the institution to Federal Court to compel the release of the information. The Commissioner is not obligated to take on a case, and if he or she refuses to do so, there is no right to appeal this refusal.

NOTE: It is helpful to check to see if the organization you are requesting information about has a form of its own. It would cut down on time for the form to go directly to the organization.

e) There is, however, a right to appeal the original denial of access; this appeal must be made to the Federal Court within **45 days** of the decision of the Information Commissioner (s 41). In court, the burden of proof is on the government to show that the information must be withheld.

E. Federal Personal Information Protection and Electronic Documents Act

1. Introduction

The federal *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 [*PIPEDA*], is intended to remedy some of the problems encountered by consumers and by businesses when information relating to consumer habits is collected to be used internally or externally by private sector organizations. *PIPEDA* is a federal law governing:

a) the collection, protection, and disclosure of personal information; and

b) the use of electronic versions of official documents on paper, in the public and private sphere.

While *PIPEDA* is a federal act, the legislation claims to have jurisdiction over the provincially regulated private sector as well as the federal sector. However, subsection 26(2) of the Act gives the Governor-in-Council the power to exempt an organization where substantially similar provincial legislation exists. Almost all provinces have enacted their own version of the Act. In October 2003, BC passed the *Personal Information Protection Act*, SBC 2003, c 63 [*PIPA*], which has been declared substantially similar legislation.

For more information on *PIPEDA*, please see:

Stephanie Perrin, Heather Black & David Flaherty, *The Personal Information Protection and Electronic Documents Act: An Annotated Guide* (Toronto: Irwin Law, 2001).

F. BC Personal Information Protection Act

The BC *PIPA* is an attempt by the province to maintain jurisdiction over the regulation of private business, historically under its control. The purpose of this Act is to govern the collection, use, and disclosure of personal information by **private** organizations. The Act has been in force since 2004 and has been declared substantially similar by the Governor-in-Council, thereby exempting organizations in British Columbia to which *PIPA* applies from application of the federal *PIPEDA*.

G. BC Freedom of Information and Protection of Privacy Act

1. Introduction

The *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165 [*FIPPA*], is similar in some respects to the federal access and privacy legislation relating to **public** organizations. As a result of this provincial legislation, there is a consistent policy regarding access and privacy for BC government ministries and agencies. The Act is significant for two reasons:

a) it has standardized decision-making criteria in regards to access and privacy; and

b) it has established a uniform appeal process.

This Act is amended from time to time. It is advisable to consult the Act for certainty. Further information about the Act can be obtained from the following organization:

Freedom of Information and Privacy Association
http://fipa.bc.ca/home/

Furthermore, the BC Civil Liberties Association has published a handbook on privacy that provides detailed information about various aspects of the law relating to privacy. It can be found online at http://bccla.org/privacy-handbook.

2. Scope of Freedom of Information Rights

Section 3 of the *FIPPA* provides that the Act applies to all records in the custody or control of a "public body", with notable exceptions in paragraphs 3(1)(a) to (k). In addition to the entities defined as public bodies in Schedule 1, including BC government ministries, municipalities, hospitals, and universities and colleges, Schedule 2 lists specific organizations that are covered by the Act, including BC Hydro, ICBC, Legal Services Society, *Mental Health Act* Assessment Committees, and the Workers' Compensation Board.

In July 1993, an amendment to the *FIPPA* expanded the scope of the legislation to include governing bodies of various professions within the scope of the Act. These professions include lawyers, accountants, engineers, teachers, doctors, and nurses (see Schedule 3).

Sections 12 to 22.1 restrict the disclosure of information. The following may **not** need to be disclosed:

a) cabinet and local public body confidences (s 12);

b) policy-oriented information (s 13);

c) legal advice (s 14);

d) information harmful to law enforcement (s 15);

e) information harmful to intergovernmental relations (s 16);

f) financially sensitive data (s 17);

g) information harmful to heritage sites or endangered species (s 18)

h) information harmful to safety (s 19);

i) confidential third-party business information (s 21).

j) information harmful to a third party's personal privacy (s 22); and

k) information relating to abortion services (s 22.1).

It is worth noting that some of the exceptions are mandatory (ss 21 and 22 on third-party business) and others discretionary (ss 13 to 19). There is also a public-interest override in section 25, which requires disclosure of information about risk of significant harm to the environment, or public health or safety, or in other circumstances where disclosure is clearly in the public interest.

NOTE: In *Re South Coast BC Transportation Authority,* [2009] BCIPCD No 20, it was decided that Translink was a public body. Thus, public disclosure of employment records for Translink employees would not be an unreasonable invasion of third party privacy. However, this was based on a rebuttal of the presumption that a disclosure of personal information is an unreasonable invasion of a third party's personal privacy if the personal information describes the third party's finances, income, etc. A change of circumstances could change the outcome. In *Greater Vancouver Transportation Authority v Canadian Federation of Students – British Columbia Component,* [2009] 2 SCR 295, Translink was found to be a government entity under section 32 of the *Charter of Rights and Freedoms* [*Charter*], and thus subject to *Charter* scrutiny.

3. Scope of Privacy Rights

Apart from allowing for access to information, *FIPPA* also has provisions restricting the collection, protection, and retention of personal information.

"Personal information" is defined in Schedule 1 of the Act as all recorded information about an identifiable individual other than contact information. The recorded information includes the individual's name, race, colour, religious or political beliefs, age, sex, sexual orientation, marital status, fingerprints, blood type, health care history, educational, financial, criminal or employment history, anyone's opinion about the individual, and the individual's personal views or opinions, except if they are about someone else.

Public bodies can collect personal information only when authorized by legislation, for law enforcement purposes, or when necessary to the operation of a program administered by the public body (s 26).

In general, a public body must collect personal information directly from the individual (s 27). Notable exceptions include: when an alternative method is authorized by the individual, by the Privacy Commissioner, or under another statute; and when the information is used for the purpose of collecting a debt or fine or making a payment. Except where the information is collected for law enforcement purposes, the public body must also tell the individual from whom it collects personal information the purpose and the legal authority for collecting it.

The public body has a duty to ensure the information it collects is accurate (s 28). An individual has the right to request correction if he or she believes there is an omission or error in the personal information (s 29).

Heads of public bodies must protect personal information by requiring reasonable security arrangements against unauthorized access, collection, use, disclosure, or disposal (s 30). Public bodies must ensure that information in their custody is stored only in Canada and accessed only in Canada unless an individual consents otherwise, or the disclosure is allowed under the Act (s 30.1).

Employees of a public body must notify the minister when a foreign demand for disclosure is requested (s 30.2). Section 30.3 provides whistle-blower legislation to protect employees fulfilling this obligation.

Public bodies that use an individual's personal information to make decisions that directly affect the individual must retain that information for at least one year after using it, so that the individual has an opportunity to obtain it (s 31). Further, a public body can only use personal information for the purpose for which that information was obtained, or for a use consistent with that purpose (s 32).

Sections 33 to 36 deal with disclosure of personal information by a public body. These sections empower a public body to disclose personal information only under certain circumstances, such as where there is consent of the individual; where the information is used for a consistent purpose or for the purpose of complying with another enactment; where the information is used for collecting a debt, payment, or fine owing by the individual to the provincial government or a public body; where the information is used in an audit; and where the information is used by a public body or a law enforcement agency to assist in an investigation in which a law enforcement proceeding is intended or likely to result.

4. Process of Making a Disclosure Request

a) Step One: Requesting Disclosure or Correction

An individual can send a letter to a public body asking for disclosure of information pertaining to that individual or for a correction of information. If the request is for access to information, the head of the public body then has 30 days to respond (this time limit can be extended under section 10). Section 8 requires that any response must either (a) inform the individual of where, when, and how the record will be disclosed, or (b) detail the reasons the request was denied.

If the request is for a correction of information held by the public body, the head of the public body must either (a) correct the record, or (b) annotate the information with the correction that was requested. The head of the public body must next notify all other parties to whom the information in question has been disclosed within the past year.

Always check with the organization itself to see if it has its own form for requests; this makes the process much faster.

To obtain a copy of a police report, complete the form provided by the "Information and Privacy" section of the police department from which you are requesting the records (for the VPD, you will find the form here: http://vancouver.ca/police/assets/pdf/forms/vpd-form-foi-request.pdf). Include a copy of the person's driver's licence if possible, and a cover letter explaining the details of the report you are looking for. If you are asking to receive documents on someone's behalf you will also need them to sign an authorization or release.

Typically there is no charge if you are requesting documents that relate to an interaction you had with police.

If a person has been a victim of property crime, their insurance company might require them to obtain a copy of the police report. Sometimes the insurer will make the request for you. To obtain this record, fill out the request for property report form, or send in a written request with the following information: police file number, full name, current address, telephone number, location of incident, type of incident, and any other helpful details. There is a fee for this service, and the letter and payment ($53.33 including HST) should be placed in an envelope and mailed to the following address:

Attention Correspondent Unit
Vancouver Police Department
3585 Graveley St.
Vancouver, BC V5K 5J5.

See here for full details:
vancouver.ca/police/organization/support-services/request-police-report.html

For further information on the process of making a disclosure request, contact:

The Information and Privacy Commissioner for British Columbia
PO Box 9038, Stn. Prov. Govt. — Fax: (250) 387- 1696
Victoria, British Columbia, V8W 9A4 — E-mail: info@oipc.bc.ca
Telephone: (250) 387-5629 — Website: www.oipc.bc.ca

NOTE: The public body to which a request is made may charge to not only provide a copy of the record and its shipping and handling, but for the time spent locating the record and preparing it for disclosure (*FIPPA* s 75(1)). They cannot charge, however, for the first 3 hours spent locating and retrieving a record and time spent severing information (s 75(2)). Likewise, these fees do not apply to a request for the applicant's own personal information (s 75(3)). If a request for payment is made, send a letter explaining that the fee should be waived because (1) you cannot afford payment; (2) it is fair to excuse payment, or; (3) the record relates to a matter of public interest (e.g., the environment, public health and safety, etc.).

b) Step Two: Filing a Complaint with the Information and Privacy Commissioner

If the public body refuses to disclose the information or make the requested correction, the next step is to file a complaint with the Information and Privacy Commissioner. Under section 42, the Commissioner oversees the administration of the Act. An individual can ask the Commissioner to review any decision pertaining to access or correction within 30 days of notification of the decision (although paragraph 53(2)(b) allows the Commissioner to extend this limitation period). Please refer to the *FIPPA* and its regulations for a detailed description of the review process.

The Commissioner has significant power to enforce judgment (much more so than the equivalent federal official). Generally, the burden is on the public body to justify its refusal to disclose information (although there are notable exceptions pertaining to third-party interests (see s 57)). The head of a public body must comply with an order of the Commissioner unless an application for judicial review is brought within 30 days (s 59). A person other than the head of a public body who is dissatisfied

with a decision of the Commissioner may seek judicial review pursuant to the *Judicial Review Procedure Act*.

H. The BC Privacy Act

BC *Privacy Act*, RSBC 1996, c 373, makes it a "tort, actionable without proof of damages, for a person, wilfully and without claim of right, to violate the privacy of another". Subsection 1(2) of the Act entitles a person to the nature and degree of privacy that is "reasonable in the circumstances", but the Act itself gives limited guidance to the courts on what particular circumstances are deemed to be an unreasonable invasion of privacy. However, section 2 does set out a number of defences.

Most of the reported cases brought under the Act have been unsuccessful, largely because the courts have been reluctant to accept a broad view of what type of expectations of privacy are reasonable. One difficulty with the Act is that a person offended by an invasion of privacy is unlikely to seek redress through a public process that will have the effect of further airing the private matter.

Actions under the *Privacy Act* must be brought in the Supreme Court.

I. Police Information Checks (Criminal Record Checks)

Police information checks, also known as criminal record checks, consist of information which may be required by a potential employer or volunteer organization, in the later stage of their hiring process. Police information checks are conducted and provided by individual local police departments and the RCMP, who are supposed to play a neutral role in the hiring process.

Employment or volunteer candidates who are asked by their potential employer or volunteer organization to provide a police information check should be aware that potential employers and volunteer organizations may only use relevant information to determine the suitability of a candidate. In particular, the *BC Human Rights Code*, RSBC 1996, c 210, s. 13 makes it illegal to discriminate based on being convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of a person.

The British Columbia Provincial Policing Model Policy Guidelines operate to ensure that policies and practices align among police agencies in British Columbia so that citizens, employers and volunteer organizations receive consistent Criminal and Police Information Checks. The following is a summary of the Guidelines.

If working with vulnerable persons, employment or volunteer candidates may be asked by their potential employer or volunteer organization to provide a vulnerable sector check. A vulnerable person is one who, because of their age, a disability or other circumstances, whether temporary or permanent are (a) in a position of dependence on others or (b) are otherwise at a greater risk than the general population of being harmed by a person in a position of authority or trust relative to them, as defined by the Criminal Records Act.

Vulnerable sector checks consists of screening designed to protect vulnerable persons from dangerous offenders by uncovering the existence of a criminal record, adverse police contact, and/or pardoned (or record suspension) sexual offence conviction. This level of screening is restricted to applicants seeking employment and/or volunteering with vulnerable persons.

The Guidelines stipulate that the board, chief constable, chief officer, or commissioner should ensure that:

Job applicants who work with the vulnerable sector will, at the request of their employer, receive a check that:

(a) includes a search of, at a minimum, Canadian Police Information Centre (CPIC), Police Information Portal (PIP), Justice Information (JUSTIN), and Police Records Information Management Environment (PRIME) records
(b) discloses to the applicant all warrants, outstanding charges, convictions and adverse contact
(c) does not include the disclosure of apprehensions under s. 28 of the *Mental Health Act*
(d) does include adverse contact involving the threat or actual use of violence directed at other individuals, regardless of, but without disclosing, mental health status
(e) does not include youth offences unless provided for under the Youth Criminal Justice Act
(f) does include information on a sexual offence conviction where a pardon or record suspension has been granted

Those who are not working with vulnerable persons may be asked instead to provide a non-vulnerable sector check. The Guidelines stipulate that applicants who are not working with the vulnerable sector will, at the request of their employer, receive a check that:

(a) includes a search of, at a minimum, CPIC, PIP, JUSTIN, and PRIME records
(b) discloses to the applicant all warrants, outstanding charges, and convictions
(c) does not disclose adverse contact
(d) does not include the disclosure of apprehensions under s. 28 of the *Mental Health Act*
(e) does not include youth offences unless provided for under the *Youth Criminal Justice Act*

In cases where non-disclosable information indicates a significant threat to public safety, police agencies may either refuse to complete the check or take action under their duty to warn responsibilities noted below.

Nothing in the Guidelines prevents a police agency from disclosing information under either a statutory or common law duty to provide warnings where the health, safety or wellbeing of an individual or individuals is at risk of significant harm.

Further information regarding the Guidelines, including a full list of information which should or should not be included in a Police Information Check, may be found at:
http://www2.gov.bc.ca/gov/content/justice/criminal-justice/policing-in-bc/publications-statistics-legislation/publications/police-information-checks-guidelines-for-police

Because police information checks are provided by individual police departments or the RCMP, one should consult the website of the particular police department or that of the RCMP to discover specific information, such as that pertaining to fees, accepted forms of identification, and further information on what will or will not be included in the police information check.

The following is a link to information on police information checks conducted by the Vancouver Police Department:
http://vancouver.ca/police/organization/records-checks-fingerprinting/index.html

Please consult page 36 of Chapter 1: Criminal Law, located in the Law Students' Legal Advice Program's manual for information explaining the importance of consenting to disclosure, what information third parties may find out, the impact of having a criminal record, elimination of records, and record suspensions:
http://www.lslap.bc.ca/lslap-manual-online.html

V. COMPLAINTS CONCERNING POLICE CONDUCT

A. Introduction

Individuals may be dissatisfied with the level of service given by the police. The following section outlines some of the informal and statutory procedures governing citizen complaints against police officers.

There are two main categories of police forces in BC: municipal police forces, which are governed by the BC *Police Act*, RSBC 1996, c 367, and the RCMP, which is governed by the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [*RCMPA*]. The RCMP is the policing agency in all parts of BC not served by a municipal police force. Their status as the provincial police force is authorized under section 14 of the BC *Police Act*. Municipal police forces and the RCMP will be dealt with separately, as the complaint process for each is significantly different.

NOTE: In 2012 the province opened the Independent Investigations Office ("IIO"), an independent body that reviews police incidents of severe bodily harm or death. To begin an investigation, complaints are to be filed with the Police Complaint Commissioner, who forwards it to the IIO. For further information, please see: http://www.pssg.gov.bc.ca/policeservices/iio/index.htm

B. Complaints Against a Member of a Municipal Police Force

1. General Information

Filing a police complaint against a municipal police officer is different from filing a lawsuit against a municipal police officer. Generally speaking, complaints against a municipal police officer can only lead to the officer being disciplined, and do not compensate an individual for any loss they have suffered. Filing a lawsuit against the police in civil court can lead to compensation if a person's rights were violated, but does not necessarily lead to the officer being disciplined. Parallel actions can be launched if an individual desires both compensation and disciplinary consequences for the officer involved in the incident.

The *Police Act* sets out a framework for dealing with public complaints about municipal police forces in BC. The Office of the Police Complaints Commissioner (OPCC) was created as a body independent from all municipal police forces and government ministries. Complaints continue to be investigated by police departments, but the Police Complaints Commissioner monitors how police departments investigate and conclude complaints throughout all the municipal police areas. The process is outlined below. For further information and a more detailed description of the complaint process, please refer to the OPCC website at www.opcc.bc.ca, or see Part 11 of the *Police Act*.

NOTE: Filing a police complaint, or waiting for the conclusion of criminal charges, does not extend the limitation period for filing a civil claim. If an individual wants to start a civil claim, it must be done two years from when the harm was suffered or discovered. Before beginning a civil claim for police misconduct, the individual must write a letter to the City Clerk's office relating the time, location, and nature of the alleged misconduct. This letter must be sent within 60 days of the cause of action (*Vancouver Charter*, SBC 1953, c 55, s 294). The letter provides the city with notice that a civil action will be filed, and allows a complainant to add the city as a party to the civil action at a later date. This letter does not start a complaint or a civil action in itself, but is a necessary first step that must be taken before launching a civil claim. If a letter has been sent to the City Clerk's Office within 60 days, the limitation date for filing a civil complaint is 2 years after the cause of action.

For a more detailed discussion on launching civil claims against the police see **Section III.E.2**.

NOTE: If an individual is seeking a copy of their police record, they should make this request before filing a complaint. Otherwise they must wait until after the matter has been investigated.

NOTE: Based on recommendations made in the February 2007 Report on the Review of the Police Complaint Process in BC by Josiah Wood, the *Police Act* was amended and the

new *Police Act* came into force on March 31, 2010. The OPCC website now provides an online complaint form to make the filing of complaints easier.

2. *The Complaint Process*

A member of a municipal police department engages in misconduct when they commit an offence under any provincial or federal act that would render them unfit to perform their duties or that would discredit the reputation of the municipal police department. For an exhaustive definition of misconduct, see section 77 of the *Police Act*.

Individuals can make complaints about alleged misconduct by municipal police to the police complaint commissioner. Individuals do not need to have directly witnessed the misconduct; complaints can be brought on behalf of someone or even by third-party complainants. The complaint must generally be made within **12 months** of the misconduct, but if good reasons exist, and it is not contrary to the public interest, the police complaint commissioner can extend that period.

a) *Step 1: Making a Complaint*

There are two types of complaints: registered and non-registered. When someone submits a registered complaint, they will be kept informed about the investigation and its outcome, and they have a right to appeal the result. By contrast, someone submitting a non-registered complaint does not participate any further in the process and cannot appeal the outcome.

An individual can register a complaint by submitting it either directly to the OPCC or to an on-duty police member at the station who is assigned to receive *Police Act* complaints. A non-registered complaint can be submitted orally to any on-duty member in the station or on the road.

Both types of complaints can be made through the online complaint form on the OPCC website.

b) *Step 2: Admissibility*

Before investigating a complaint, the Commissioner must first determine whether it is admissible. A complaint is admissible if it is made **within 12 months** of the incident, is not frivolous or vexation, and contains at least one allegation that, if proved, would constitute misconduct under section 77 of the *Police Act*. Complainants will be contacted to tell them whether their complaint is admissible or not. The Commissioner's determination of admissibility cannot be appealed.

Once the Commissioner determines a complaint is admissible, they will send a notice of admissibility to the complainant and to the chief constable of the department involved. The chief constable must notify the member or former member of the complaint that has been made against him or her, appoint an investigator and, depending on the circumstances of the misconduct alleged, determine whether the matter is suitable for informal resolution.

NOTE: Complaints about a municipal police department's policies or about the services it provides, rather than about a particular incident of misconduct, may still be admissible but should be submitted under a different process. Contact the OPCC office directly about these complaints.

c) *Step 3: Informal Resolution or Mediation*

A complaint may be resolved informally at any time before or during an investigation if the matter is suitable and the complainant and the police officer agree in writing to the resolution. Informal resolution or mediation is a voluntary, confidential process that provides a non-confrontational opportunity for both parties to talk to each other and hear how their actions affected the other. If a complainant does not want to meet the police officer face to face, a neutral third party or professional mediator can facilitate and help the parties reach an agreement. Within **10 business days** after agreeing to the proposed informal resolution, either party may revoke agreement by notifying the relevant discipline authority or the Commissioner in writing.

If a complainant strongly objects to his or her complaint being informally resolved, and would prefer it be investigated immediately, he or she should let the OPCC know and provide reasons. Common reasons include fear of intimidation by the officer, the wish to have it formally investigated and substantiated, and a lack of time to participate in an informal process due to economic or other circumstances. Usually this objection is sufficient to move the complaint directly to the investigation step.

A complaint may also be resolved by mediation. If the Police Complaint Commissioner agrees, a professional mediator may be appointed to assist the complainant and the officer in resolving the complaint. The mediator is selected by the administrator of the BC Mediator's Roster and is completely independent from any police department or the OPCC.

d) *Step 4: Investigation*

An investigation into a misconduct complaint is usually conducted by the originating department's Professional Standards Section. The Commissioner may, if the circumstances require, order that an external police agency conduct the investigation. The OPCC will assign the file to an analyst, who will oversee the investigation conducted by the Professional Standards investigator and ensure that the investigation is thorough, impartial, and completed in a timely manner. All investigations must be completed within six months. During the investigation, the complainant and member will be periodically updated about the investigation's progress. At the conclusion of the investigation, the investigator will submit a final investigation report to the discipline authority, who will then decide whether the allegations are substantiated and, if so, propose corrective or disciplinary measures.

What happens next in the process depends on whether the allegations are substantiated or not.

e) *If the Complaint Is Substantiated*

(1) Pre-Hearing Conference

If the discipline authority decides that the allegation of misconduct is substantiated and merits disciplinary or corrective measures, the discipline authority may conduct a confidential prehearing conference with the police officer, if doing so is not contrary to the public interest. At the hearing, the officer has an opportunity to admit the misconduct and accept disciplinary or corrective measures. If the officer and the discipline authority at the prehearing conference agree on disciplinary measures, and the

Commissioner gives his or her approval, the matter is considered resolved. This resolution is final and cannot be reviewed by a court on any ground.

(2) Disciplinary Proceeding

If a prehearing conference is not held, or if it does not result in a resolution of each allegation of misconduct against the police officer, the discipline authority must convene a disciplinary proceeding to determine appropriate disciplinary or corrective measures, within 40 business days of receiving the final investigation report. However, the discipline authority must cancel this proceeding if the Commissioner arranges a public hearing about the impugned conduct.

The complainant must receive at least 15 days' notice of a disciplinary proceeding. The complainant may provide written or oral submissions in advance of the hearing but cannot actually attend the proceeding.

The discipline authority must, if appropriate, choose measures to correct and educate officers rather than measures intended to blame and punish. Unless the Police Complaints Commissioner orders a public hearing, the resolution is final.

f) If the Complaint Is Not Substantiated

(1) Retired Judge

Previously, only a police commissioner would review the file. However, complainants can now request that the Commissioner appoint a retired judge to review the file and determine whether or not the decision was correct. The complainant must make the request in writing within **10 business days** of receiving the discipline authority's decision. It is now common to have a retired judge review the file in less serious cases. Note that there is a more realistic chance of success when the commission appoints a retired judge.

For further information, please see: http://www.opcc.bc.ca.

g) Public Hearing

The Office of the Police Complaint Commissioner ("OPCC") can order public hearings into matters involving misconduct by municipal police officers in British Columbia. After the investigation into the complaint has concluded, the complainant or the police officer may request a public hearing within **20 business days** of receiving notice of the decision, or the OPCC may initiate a public hearing itself if a public hearing is necessary in the public interest. In *Florkow v British Columbia (Police Complaint Commissioner)*, 2013 BCCA 92, the BC Court of Appeal found that under the current *Police Act* the OPCC can only hold a public hearing after certain stages of the complaint process — after the discipline authority has concluded its investigation, after the retired judge has reviewed the file, or after the disciplinary proceeding.

(1) Test for Ordering Public Hearing

In deciding whether such a hearing is necessary in the public interest, the Police Complaints Commissioner must consider all relevant factors, including:

- the nature and seriousness of the complaint;
- the nature and seriousness of the alleged harm caused by the police officer, including whether the officer's conduct has undermined public confidence in the police or its disciplinary processes;
- whether a public hearing would assist in ascertaining the truth;
- whether a case can be made that the investigation was flawed, the proposed disciplinary measures are inappropriate, or the discipline authority incorrectly interpreted the law.

After a public hearing takes place, the judge's decision is communicated to all interested parties. The parties can appeal questions of law, but not questions of fact, to the BC Court of Appeal.

For help writing a letter of complaint against the Police Department, please pick up an informational brochure from:

BC Civil Liberties Association
900 Helmken Street, 2nd Floor — Telephone: (604) 687-2919
Vancouver, BC V6Z 1B3 — Fax: (604) 687-3045

C. Complaints Against a Member of the RCMP

NOTE: In December 2014, the *Enhancing Royal Canadian Mounted Police Accountability Act,* SC 2013, c 18 [ERCMPAA], came into force. This legislation has significantly reformed the RCMP complaint process. The *ERCMPAA* made amendments to the Royal Canadian Mounted Police Act [RCMPA], which governs complaints against RCMP members.

1. General Information

Though the RCMP functions as provincial police in BC, the complaint process is governed by the federal *RCMPA*. Under the Act, a Civilian Review and Complaints Commission has been established to monitor complaints against members, to conduct its own investigations into allegations of misconduct, and to hold public inquiries into such allegations where it deems them appropriate. All members of the Commission are civilians.

During an informal resolution attempt, or a formal investigation, the complainant will likely make oral or written statements. It is unclear whether such statements could be used against the complainant in other proceedings. If a complainant is facing criminal charges or a civil action regarding the same matter, the complainant should get the advice of counsel before making any statements.

The Commission can only make recommendations to the Commissioner of the RCMP regarding disciplinary action. However, if the Commissioner of the RCMP does not act on these recommendations, the Commissioner must give reasons for not doing so in writing to the Commission. Complaints against the RCMP in BC should be directed to:

Civilian Review and Complaints Commission for the RCMP
National Intake Office
P.O. Box 88689
Surrey, BC V3W 0X1

Telephone: 1-800-665-6878
E-mail: complaints@crcc-ccetp.gc.ca
Website: www.crcc-ccrtp.gc.ca

2. The Complaint Process

a) Step 1: Making a Complaint

Individuals can make complaints orally or in writing to the relevant RCMP detachment, to the Commanding Officer of "E" Division, or to the Commission, either in Surrey or at the regional office. The complaint will be acknowledged in writing. A member of the detachment will contact the complainant, and may attempt an informal resolution of the complaint. The most effective method is generally to send a written complaint to the Commission's regional office.

Generally, a complaint must be made within one year after the day on which the conduct is alleged to have occurred (RCMPA s 45.3(5)). However, the Commission may extend the time limit for making a complaint if the Commission is of the opinion that there are good reasons for doing so and that it is not contrary to the public interest (s 45.3(6)).

b) Step 2: Informal Resolution

If no attempt is made to resolve the complaint informally, or if the attempt is unsuccessful, a formal investigation of the complaint will be carried out. The complainant must be informed in writing of the results of the investigation.

NOTE: Under section 45.53 of the *RCMPA,* the RCMP may refuse to investigate the complaint. If they refuse, the complainant may appeal this decision to the Commission for Public Complaints.

c) Step 3: Formal Resolution

A complainant who is not satisfied with the results of the investigation may request that the Commission review the handling of the complaint. As a result of this review, the Commission may refuse to conduct a further investigation, or may conduct a public inquiry into the complaint. There is no further appeal from the Commission's decision.

D. Civil or Criminal Proceedings

Other approaches to dealing with misconduct by the police force are:

1. Asking for a criminal investigation and acting as a witness; or

2. Suing in tort to get compensation for loss.

1. Criminal Proceedings

The *Criminal Code* [*CC*] limits the criminal liability of public officers who, in the course of conducting investigations or law enforcement activities, commit acts or omissions that would otherwise constitute offences. Under sections 25.1 to 25.4 of the *CC*, a public officer would

be justified in committing an act or omission, or in directing another person to do so, that would otherwise constitute an offence, so long as the public officer:

a) is investigating criminal activity or an offence under an Act of Parliament, or is enforcing an Act of Parliament;

b) is designated as a public officer for the purposes of sections 25.1 to 25.4 by the competent authority (the Solicitor General of Canada in the case of RCMP officers; the provincial Minister responsible for policing in the case of police forces constituted under provincial laws); and

c) believes on reasonable grounds that committing the act or omission, given the nature of the offence or criminal activity being investigated, is reasonable and proportional in the circumstances.

In deciding whether the officer's act or omission is reasonable and proportional, and therefore justifiable, the courts will look at the nature of the act or omission, the nature of the investigation, and the reasonable availability of other means for carrying out the public officer's law enforcement duties.

If the public officer's act or omission is likely to cause loss or serious damage to property, the public officer would need authorization from a senior law enforcement official who believes on reasonable grounds that the act or omission is reasonable and proportional.

However, these provisions do not permit officers to cause death or bodily harm to another person either intentionally or through criminal negligence, nor do they justify conduct that violates someone's sexual integrity.

Individuals should consult the *Criminal Code* (sections 25.1 to 25.4) for further details on the limited criminal liability of public officers.

Typically speaking, the only time a police officer will be charged is either if an internal investigation is launched, or a police complaint is filed and during the course of that investigation charges are recommended.

2. Civil Proceedings

Individuals may be able to sue police officers civilly, even when they have also made a complaint. Section 179 of the BC *Police Act* specifically states that the complaint proceedings outlined above do not preclude a citizen from taking, or continuing, civil or criminal proceedings against an RCMP officer or a municipal constable for misconduct. Outside of BC, the Supreme Court of Canada ruled in *Penner v Niagara (Regional Police Services Board)*, 2013 SCC 19, that the result of the police complaint process calls for a case-by-case review of the circumstances to determine whether it would be unfair or unjust to prevent further litigation.

Typical actions that are launched against peace officers include tort actions in assault, battery, false imprisonment, or malicious prosecution. This could be helpful to individuals who have been mistreated or suffered monetary loss because of police misconduct. These actions may now be brought in Small Claims Court.

When suing the police, the complainant would usually want to sue both the police officer and his or her employer (see ss 11 and 20 of the *Police Act*). For a municipal police force this is the municipality; for the RCMP it is the Minister of Justice of British Columbia.

EXAMPLE: An action brought by a complainant named John Smith could read "John Smith vs City of Vancouver, Constable Jane Doe, and Constable Richard Roe."

If the complaint is against a municipal police force, **special limitation periods** apply. The municipality must be informed by letter of intent to sue within **60 days** (**NOTE**: filing a police complaint does **not** constitute notifying the municipality), and the notice of claim should be filed within **2 years** (see *Gringmuth v The Corporation of the District of North Vancouver,* 2002 BCCA 61). The regular Small Claims Court limitation periods apply if you are suing the RCMP or a private security guard.

NOTE: Even if a complainant has not sent a letter of intent to the municipal government, the municipal government should still be named as a party. At trial, the claimant can argue they had a reasonable excuse for failing to deliver a letter of intent to the city, and that the municipality has not been prejudiced by the failure to write the letter.

NOTE: Even if the 60 day limitation period has expired, a complainant should still send a letter of intent to the Clerk. If the municipality was provided with notice shortly after the 60 day period expired, it will be more difficult for them to argue that they were prejudiced by the failure to send the notice letter within 60 days.

NOTE: If a municipal government or Minister of Justice is willing to accept liability on behalf of its officers where liability is proven, they may ask that the individual officers' names to be removed from the lawsuit. While there may be reasons to keep the individual officers on the lawsuit, if the court finds they were left on unnecessarily, costs may be awarded against the complainant.

Both municipal police and RCMP officers are partially immune from civil liability under subsection 21(2) of the *Police Act*. However, paragraph 21(3)(a) provides that this defence does not apply if the police officer has "been guilty of dishonesty, gross negligence or malicious or wilful misconduct". In *Ward v British Columbia*, 2010 SCC 27, it was held that intentional torts do **not** qualify as wilful misconduct for the purposes of subparagraph 21(3)(a). As a result of this, it is even more important to make sure the case starts within 6 months. Please be sure to read the paragraph about civil proceedings if considering suing the police, because special limitation periods apply.

For detailed step-by-step information on suing the police (as well as private security guards), please see David Eby & Emily Rix, *How to Sue the Police and Private Security in Small Claims Court* (Vancouver: Pivot Legal Society, 2007).

VI. COMPLAINTS AGAINST SECURITY GUARDS

A. Introduction

Complaints against licensed security guards can be filed with the Registrar of Security Programs Division, Ministry of Justice. Complaints can relate to the licensing of a security business or security employee, about the conduct or behaviour of a security employee, or about the use of equipment. Filing a complaint is free. Complaining against an unlicensed guard should be done directly to the employer. Most security guards in BC are now required to be licensed under the *Security Services Act*, SBC 2007, c 30. General information and links can be obtained at www.securityandyou.ca. This website is a project of the BC Human Rights Coalition aimed at raising public awareness.

B. Filing the Complaint

Complaints must be made in writing within one year of the incident. Complaint forms can be obtained by contacting the Ministry or online.

Ministry of Justice
Policing and Security Branch, Security Programs Division
PO Box 9217 Stn Prov Govt
Victoria, British Columbia, V8W 9J1
Website: www.pssg.gov.bc.ca/securityindustry
Telephone: 1 (855) 587-0185
Fax: (250) 387-4454
Email: sgspdsec@gov.bc.ca

Once a complaint has been filed, the Registrar will determine whether the matter is within its jurisdiction. If it is, then an investigator will be assigned. The complainant will be notified of the investigation by letter. Complaints can result in a warning notice, a violation ticket, or reconsideration of the officer's licence status.

Like police, licensed and unlicensed security guards can be sued civilly.

NOTE: In *Vancouver Area Network of Drug Users v. British Columbia Human Rights Tribunal*, 2015 BCSC 534, the BC Supreme Court rendered a decision regarding the Downtown Ambassadors, private security guards hired by the Downtown Vancouver Business Improvement Association to patrol public space. The Vancouver Area Network of Drug Users (VANDU) alleged that the guards discriminated against individuals who appear to be homeless or addicted to drugs by limiting their access to public space (e.g., sidewalks) on the basis of race, colour, ancestry, and physical and mental disability, contrary to section 8 of the BC *Human Rights Code*. The Court found that the Downtown Ambassadors program had engaged in discriminatory conduct against homeless people. Although homelessness is not a condition protected under the *Human Rights Code*, race and disability are. VANDU successfully argued that homeless people are disproportionately Aboriginal and disabled, and that these findings were enough to show discrimination. At this time, the Court has sent the case back to the BC Human Rights Tribunal to determine whether the discriminatory conduct can be justified.

NOTE: Pivot Legal Society claims this case is an example of why social condition should be included as an enumerated ground. Please see the Pivot Legal blog for further information: http://pivotlegal.org/pivot-points/blog/tribunal-member-qualifies-downtown-ambassadors-decision.

NOTE: Individuals should be cautioned that this complaint process may not achieve satisfactory results. The Security Programs Division is limited in its ability to successfully review the conduct of security guards, both because of statutory limitations to its powers and budget constraints.

VII. THE RIGHT TO VOTE

A. Introduction

The right to participate in the selection of their elected representatives is a basic right enjoyed by the citizens of any democracy. While this has always been recognized to some extent in Canada, in 1982 the right to vote was entrenched in the constitution by section 3 of the *Canadian Charter of Rights and Freedoms*. Under section 3, "[e]very citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein".

While this right is qualified by section 1 of the *Charter*, it is not subject to the overriding power provision (the "notwithstanding clause") of section 33. As a result, any government wishing to place restrictions on the right to vote must do so in a manner that is reasonable and demonstrably justified in a free and democratic society.

In this chapter, the discussion of voting rights will focus primarily on the requirements a person must meet to be eligible to vote in provincial, federal, and municipal elections.

B. British Columbia Provincial Elections

Eligibility requirements for BC provincial elections are outlined in the *Election Act*, RSBC 1996, c 106. Individuals should consult this Act for a specific problem as the Act is too lengthy to be discussed in detail in this chapter.

1. General Information

The province is divided into various electoral districts, each represented by an elected Member of the Legislative Assembly (MLA). Each district has a registrar of voters whose duty is to ensure that the election of candidates in that district is carried out properly. The elections process is supervised by the Chief Electoral Officer. Elections BC can be contacted at:

Elections British Columbia
P.O. Box 9275 Stn
Provincial Government
Victoria, BC V8W 9J6

Toll-free: 1-800-661-8683
Telephone: (250) 387-5305
Website: www.elections.bc.ca

2. Who Is Eligible to Vote

Section 29 of the *Election Act* sets out who is eligible to vote in provincial elections. It states that in order to be eligible to vote in an electoral district, an individual must be a Canadian citizen over the age of 18, must be a registered resident of the electoral district, must have been a resident of British Columbia for at least six months, and must not be otherwise disqualified.

Although the requirement for individuals to be resident in British Columbia for six months seems to constitute a violation of section 3 of the *Charter*, case law has held similar provisions to be constitutional. In *Re Yukon Election Residency Requirements,* [1986] 2 BCCR (2d) 50 (CA), BC's Court of Appeal sitting as the Yukon's Court of Appeal upheld a 12-month residency requirement imposed by the territorial government. The court found that this was a reasonable limit that was justified because of the desirability of having only persons familiar with local conditions voting for local representatives.

Section 30 disqualifies the following individuals from voting: the chief electoral officer, the deputy chief electoral officer, and anyone prohibited from voting under Part 12 of the *Election Act*.

Keep in mind that this is just a general guide, and is not meant to be an exhaustive list. Consult the *Election Act* for more detailed and extensive information.

Section 32 of the *Election Act* provides that individuals may only vote in an electoral district in which they are resident. The Act defines a residence as the place where a person's habitation is fixed, and to which, if he or she is absent, he or she intends to return. Note the following additional considerations:

- Leaving one's home temporarily does not affect one's residency status, but if a person leaves with the intention to remain away either indefinitely or permanently, that person loses their status as resident in BC.

- Persons entering the province temporarily are not considered to be resident for election purposes.

- Generally, a person's residence is the place where their family resides, but if a person moves out of the family home and does not intend to return, the person's residence will be the new place they have moved to.

- Single people reside where they sleep, regardless of where they eat or work.

- A change of residence occurs only if a person moves to and intends to remain in another place.

- Canadian military personnel who reside in BC do not lose their resident status by leaving the province for extended periods of time in the course of their employment. Spouses and children who accompany military personnel may also retain their BC residence status.

3. Registration and Voting Procedures

Eligible voters who are not presently on the voters' list in their district may obtain an application form from the registrar of the Electoral District in which they reside. Occasionally the Registrar General will hire Deputy Registrars to visit residences to obtain new applications.

Upon receiving an application and being satisfied that the application is valid and correct, the District Registrar will add the applicant's name to the voters' list. That person is then eligible to vote in the next provincial election.

An eligible voter may also register at a voting place on the day of the election. Amendments to the *Election Act* enacted in 2008 require that the applicant produce identification in the form of either:

a) one document, issued by the Government of British Columbia or Canada, that contains the applicant's name, photograph, and place of residence;

b) one document, issued by the Government of Canada, that certifies that the applicant is registered as an Indian under the *Indian Act* (Canada); or

c) at least 2 documents of a type authorized by the chief electoral officer, both of which contain the applicant's name and at least one of which contains the applicant's place of residence.

Alternatively, section 41.1 allows eligible voters without documentation to be "vouched" for by a voter registered in the applicant's electoral district with documentation, a family member, or "a person having authority under the common law or an enactment to make personal care decisions in respect of the applicant."

NOTE: In the 2013 provincial election, prescription pill bottles or inhalers with the applicant's name were accepted as a valid form of identification. This was done to address the unique challenges the homeless and those without government-issued identification face when exercising their right to vote.

When an election writ is issued, the District Registrar will advertise in newspapers announcing the closing day for applications to register.

According to the court in *Hoogbruin v BC (Attorney General)* (1985), 70 BCLR 1 (CA), individuals have a constitutional right to use absentee ballots. The procedure for absentee balloting is outlined in section 105 of the *Election Act*. Section 27 requires that general voting day for an election is the 28th day after the date on which the election is called. If that day is a holiday, the election will be on the next day that is not a holiday. Subsection 76(1) makes advance polls

available from noon to 9 p.m. on the Wednesday, Thursday, Friday, and Saturday of the week **preceding** election day. On election day itself, polls are open from 8:00 a.m. to 8:00 p.m.

If a voter does not understand English, subsection 269(3) states that a sworn interpreter may be used to translate the required oath to the voter. Under subsection 269(4), before acting as a translator under subsection (3), an individual must make a solemn declaration that the person will be able to make the translation and will do so to the best of his or her abilities.

Section 109 deals with special circumstances whereby voters with physical disabilities or difficulties in reading or writing are able to get assistance in marking their ballots.

Employees are entitled by section 74 to four **consecutive** hours off during poll hours to attend a polling station, without loss of wages. However, the employer is entitled to choose which four hours are most convenient.

Upon arrival at the polling station, the voter must sign his or her name in a voting book (s 274), and confirm present address. Refusing to comply with this demand will disqualify the voter. Upon receiving a ballot, the voter proceeds to a screened compartment, marks the ballot and returns the ballot to the Returning Officer, who, in full view of the voter, must place the ballot in the ballot box. The voting must be by a secret ballot as per section 90. Each individual present at a voting place, including people such as voters and ballot counters, must not interfere with an individual marking a ballot, attempt to discover how an individual voted, or communicate information regarding how another person voted or marked their ballot. The voter is then required to leave the premises.

C. Federal Elections

The rules and regulations governing federal elections are set out in the *Canada Elections Act*, RSC 2000, c 9, and its subsequent amendments. Many of these rules and regulations are similar to those applicable to BC provincial elections discussed above. A brief survey of the federal Act is included below.

Canadian citizens who are 18 years of age or older on election day are generally eligible to vote in federal elections (s 3). Under the statute, persons can be disqualified from voting for a variety of reasons (e.g., for incarceration or for corrupt or illegal practices).

However, the Supreme Court of Canada struck down the prohibition preventing inmates from voting in *Sauve v Canada (Chief Electoral Officer)*, 2002 SCC 68. A key consideration in this decision was that, by denying the vote to all prisoners, the Act failed to balance the right to vote against the seriousness of the conduct of prisoners. The Federal Court of Canada has held that people with mental disabilities do have the right to vote: see *Canadian Disability Rights Council v Canada*, [1988] 3 FC 622.

While federal residency requirements do exist, they are more relaxed than those applicable to BC provincial elections. A person may vote only once, in the area in which she is "ordinarily resident". This is defined in much the same way as "resident" is defined in section 32 of BC's *Election Act*. A person who moves between the enumerator's visit and the day of the election could be forced to vote in the former riding if ordinarily resident there when the enumeration occurred.

Provisions of the *Canada Elections Act,* SC 2000, c 9 deny the vote to most citizens who have resided outside of Canada for more than five years. The recent Ontario decision *Frank v. Canada (Attorney General)*, 2015 ONCA 536 confirmed that Canadian citizens who have resided outside of Canada for five or more years are generally not permitted to participate in Canadian elections. To regain the right to vote, these citizens must return to live in Canada.

All voters must present one piece of government-issued ID with a photograph and residential address before being allowed to vote. If a voter cannot provide the required photo ID, he or she may still be allowed to vote if he or she does one of two things (s 143):

1. Provides two pieces of acceptable identification to establish the voter's identity, at least one of which establishes the voter's residence (a list of "acceptable identification" is to be published by the Chief Electoral Officer); or

2. Provides two pieces of identification that establishers the voter's name, and then establishes his or her residence by swearing an oath in writing that attests to where they live. The voter must also be accompanied by an individual who is registered to vote in the same polling division, has proper identification, and vouches for the person without ID under oath and in the prescribed form. An individual can only vouch for one person at an election, and an individual who has been vouched for cannot vouch for someone else.

These requirements pose significant challenges to low-income individuals who may have no form of official identification. Further difficulties are created by the rule that an individual may only vouch for one other individual and the requirement that the voucher live and be on the elector's list in the same polling station as the intended vouchee. The constitutionality of these requirements was challenged in the British Columbia Supreme Court in *Henry v Canada (Attorney General),* 2010 BCSC 610. In that case, the court found that the legislation was inconsistent with the electoral rights guaranteed in section 3 of the *Charter,* but constituted a reasonable limit prescribed by law and was demonstrably justifiable in a free and democratic society under section 1 of the *Charter*.

The provisions relating to vouching, as described above, were brought into force by the *Fair Elections Act* on December 2014. Under the new provisions, voters who have identification but cannot prove residence will be allowed to sign an oath attesting to where they live, which must then be corroborated by the oath of another voter. However, this leaves voters who have no identification whatsoever with little recourse. This controversial measure could significantly inhibit the ability of low-income citizens and students to vote. Consequently, in June 2014, the Council of Canadians and the Canadian Federation of Students announced their intention to challenge this legislation in the Ontario Superior Court on the grounds that it violates section 3 of the *Charter*.

Many other provisions of the *Canada Elections Act*, such as an employee being entitled to receive time off work to cast a ballot, provisions for people with disabilities, and balloting procedures are very similar to BC provincial regulations and thus are not repeated here. Further inquiries can be sent to Marc Mayrand, the current Chief Electoral Officer, at:

Elections Canada
Chief Electoral Officer
257 Slater Street
Ottawa, Ontario K1A 0M6

Telephone: 1-800-463-6868
Website: www.elections.ca

Note: Canada's federal election laws were recently overhauled by the controversial *Fair Elections Act,* which received royal assent in June 2014. Most provisions of the *Fair Elections Act* have come into force. A number of sections will come into force by an order by the Governor in Council or on dissolution of Parliament, the latter of which will occur at some point prior to the 2015 Federal Election.

Major changes to the *Canada Election Act* include provisions intended to increase penalties for offences, reduce voter fraud, and empower political parties to drive voter turnout. Specific changes include removing vouching in favour of an oath system where a voter has identification but cannot prove current residence; moving investigations from Elections Canada to the Director of Public Prosecutions; limiting the powers of Elections Canada; increasing donation limits; adding constraints on robocalls; and some changes to third-party advertising.

D. Municipal Elections

Municipal election procedures are outlined in the *Local Government Act*, RSBC 1996, c 323, beginning at section 33. Please note, however, that elections in the City of Vancouver are governed by a separate provincial act, the *Vancouver Charter*, SBC 1953, c 55.

To be eligible to vote, a person must normally be a Canadian citizen and 18 years of age or older on the day the election is held. A person thus qualified must be a Canadian citizen and a resident of BC for six months immediately before election day. Furthermore, to be qualified, the person must have been a resident of the jurisdiction (as per s 50) for at least 30 days immediately before election day.

A person who qualifies as outlined above with the exception that he or she does not reside in the municipality may still vote in an election if he or she is the owner or tenant of property in that municipality (s 51). The general residency rules are similar to those outlined in the BC *Election Act*.

Applications to register should be made to the clerk of the municipality.

Voters who are not yet registered on election day may apply to have their name added to the list on election day in a manner similar to that used in provincial elections (see ss 57-57.1).

A person who is unable to produce identification can be registered as a voter. In order to do so, the individual must complete an application for registration and be accompanied by someone who is a registered voter in the applicant's electoral district, an adult family member, or someone who has the authority to make personal care decisions in respect of the applicant. The applicant and the voucher must both make a solemn declaration, in writing, as to the applicant's identity and place of residence. A person can only vouch for one person, and an individual who has been vouched for cannot vouch for another person.

NOTE: A literal interpretation of both the *Canada Elections Act* RSC 2000, c 9, and the BC *Election Act*, RSBC 1996, c 106, suggests that it is practically impossible for a homeless person to vote. However, the provincial electoral officer facilitates voting by homeless people through an administrative policy of allowing a flexible definition of "residence".

VIII. COMPLAINTS AND APPEALS REGARDING THE UNIVERSITY OF BRITISH COLUMBIA

The Alma Mater Society (AMS) Ombuds Office and the AMS Advocacy Office work hand-in-hand to assist students who are in conflict with the University of British Columbia.

A. The AMS Ombuds Office

The AMS Ombudsperson can assist both graduate and undergraduate students who feel that they have been treated unfairly or need to approach the University or the AMS to resolve a conflict. The Ombudsperson acts impartially, is independent of any administrative body, and provides confidential service. The office is an excellent resource for resolving disputes with the university and university authorities such as Campus Security, Campus RCMP, the Dean's Office, and Booking Services. The office provides the following services:

- conflict management services to AMS clubs and constituencies undergoing internal conflicts;
- facilitating and negotiating resolutions between students and the University;
- receiving and investigating complaints about the AMS;
- preparing students for meetings with university representatives;
- helping students with appeals;
- providing conflict resolution workshops;

- advising students about their options and resources;
- assisting students with academic disputes (disputing grades, disputes between graduate students and supervisors, withdrawals, quality of instruction, etc.); and
- assisting students with non-academic disputes (housing appeals, financial aid, and registration issues).

Appeals may be filed at the office or online. The Ombuds Office is staffed 30 hours per week and may be contacted at:

The AMS Ombuds Office
NEST 3119 - 6133 University Boulevard
Vancouver, BC V6T 1Z1
Website: www.ams.ubc.ca/services/advocacy-ombuds/ombuds-office
Email: ombudsperson@ams.ubc.ca
Telephone: (604) 822-4846
Fax: (604) 822-9019

B. The AMS Advocacy Office

In situations where a student needs to appeal a final decision made by a department, faculty, or University representative, the AMS Advocacy Office can provide assistance by giving the student advice on their rights and responsibilities, assisting them with drafting letters and documents and representing students who must go before formal hearings at the University. Some of the specific issues the Advocacy Office helps with are:

- student discipline cases (plagiarism, cheating, and non-academic discipline);
- academic appeals;
- residence or other UBC housing issues;
- parking disputes;
- requests for information under the *Freedom of Information and Protection of Privacy Act*; and
- library fine appeals.

The AMS Advocacy Office can be contacted at:

The AMS Advocacy Office
AMS NEST 3118
Vancouver, BC V6T 1Z1
Telephone: (604) 822-9855
Website: www.ams.ubc.ca/services/advocacy-ombuds/advocacy-office/
Email: advocate@ams.ubc.ca

IX. COMPLAINTS AND APPEALS REGARDING SIMON FRASER UNIVERSITY

A. The SFU Office of the Ombudsperson

Similar to the AMS Ombudsperson, and performing most of the same functions, the SFU Office of the Ombudsperson can assist students in resolving conflicts with Simon Fraser University. Contact the current Ombudsperson at:

The SFU Office of the Ombudsperson
Jay Solman, Ombudsperson
2266 Maggie Benston Centre
Burnaby, British Columbia, V5A 1S6
Telephone: (778) 782-4563
Website: www.sfu.ca/ombudsperson.html
Email: jsolman@sfu.ca

X. COMPLAINTS AGAINST DOCTORS

If you wish to file a complaint against your doctor, there are four options:

1. Talk to your doctor
2. File a complaint with the College of Physicians and Surgeons of BC (this is the regulating body for doctors in BC)
3. Speak to a lawyer or the police for advice if you believe your doctor has violated a criminal law
4. Speak to a lawyer for advice about suing the doctor (i.e., medical malpractice)

NOTE: Even if you file a complaint with the College, you are still able to take steps 3, 4, or both.

There is no specific time frame in which to file a complaint; however, the sooner it is filed, the easier it will be to investigate.

To file a complaint, there are three steps:

1. Complete and submit a Complaint Form (found on the College's website).
2. Make the complaint in writing; include your name, address, telephone number, the name and address of the doctor, the facts of the incident, and permission to send a copy of the complaint to your doctor.
3. Send the written complaint to:

Complaints Department
College of Physicians and Surgeons of BC
300 – 669 Howe Street
Vancouver BC V6C 0B4

Once the College reviews the written complaint, it will begin an investigation. This includes obtaining further relevant information and, potentially, relevant medical records. The physician will respond to the complaint. The College's Inquiry Committee (made up of senior doctors and members of the public) will conduct a review of your complaint. If the College finds the complaint is valid, the physician may be expected to change aspects of his or her practice, or undertake further education. The College may also issue remedial advice or reprimand the physician if there is a significant departure from the CMA Code of Ethics. In extreme cases, the College may prohibit a physician from practising medicine.

Please note that there is a special procedure for sexual misconduct complaints. You can either phone the College immediately at 604-733-7758 or submit a letter outlining the incident.

For further information:

Canadian Bar Association
http://www.cba.org/bc/public_media/health/423.aspx

College of Physicians and Surgeons of British Columbia
https://www.cpsbc.ca/for-public/file-complaint

XI. COMPLAINTS AGAINST LAWYERS

If you wish to file a complaint against your lawyer, there are several options. First, before taking any legal action, you may wish to talk or write to your lawyer about the issue. If speaking directly with your lawyer fails, you can file a complaint with the Law Society, the body that regulates lawyers in BC. Send complaint letters to 845 Cambie Street, Vancouver BC, V6B 4Z9, fax them to 604-605-5399, or submit them online at the BC Law Society's website: http://www.lawsociety.bc.ca.

The Professional Conduct Department will review the complaint against the lawyer. If they find they have no authority to investigate the complaint, they will close the file. Otherwise, they will contact the lawyer for a response.

The Law Society discipline hearings are similar to court hearings. A hearing can lead to a reprimand of the lawyer, a fine up to $20,000, conditions set upon the lawyer, suspension of the lawyer, or disbarment of the lawyer. Law Society decisions are not always final and can be appealed.

For further information on the complaint process, phone the Law Society at 604-669-2533 or 1-800-903-5300.

If it is the lawyer's fee that is the problem, there are two solutions:

1. Consult the Registrar of the BC Supreme Court to review the bill. If you have not already paid for it, you have one year from the date of the bill to apply to the registrar. However, if you have paid for it, you only have three months to apply. The registrar will hold a hearing where you and your lawyer are present. The registrar will decide the fee.
2. Use the Law Society's free fee mediation service. The mediator will help all parties reach a settlement.

The Law Society cannot help with disputes over money or property. If you believe your lawyer has acted negligently, you can seek legal advice from another lawyer about your options.

The Law Society of BC
http://www.lawsociety.bc.ca/page.cfm?cid=25&t=Complaints
http://www.lawsociety.bc.ca/page.cfm?cid=468&t=Quick-Facts-about-Complaints-and-Discipline

Canadian Bar Association
http://www.cba.org/bc/public_media/lawyers/436.aspx

APPENDIX A – GLOSSARY

Certiorari: a formal request to a court challenging a legal decision of an administrative tribunal, judicial official, or organization, in which the requester alleges that the decision has been irregular or incomplete, or that there has been an error of law

Indigency: lack of ability to pay; it is a legal reason to have certain fees waived in the purpose of fairness

Mandamus: a writ which commands an individual, organization, administrative tribunal, or court to perform a certain action, usually to correct a prior illegal action or failure to act

Ombudsman: a person who acts as a trusted intermediary between an organization and its body of citizens or constituents

Onus of proof: one's duty or responsibility to prove one's case

APPENDIX B – SAMPLE LETTER OF INTENT TO SUE THE CITY AND/OR POLICE

August 4, 2016

Reply to: [Name]
Direct Line:
E-mail:

City of Vancouver
453 West 12th Avenue
Vancouver, BC V5Y 1V4

Attention: City Clerk

Dear Sir/Madam,

Re: [NAME] – Incident with VPD – [DATE OF INCIDENT]

I am writing this letter to give you notice of the time, place and manner of damages caused to me by Vancouver Police Department officers pursuant to section 294(2) of the *Vancouver Charter*.

On [DATE OF INCIDENT] at approximately [TIME OF DAY] .. [*enter a brief description of the events*]

Because of the actions of the VPD officers, I have suffered the following injuries:

1.
2.
3.

I am now contemplating a civil suit against the officers involved and the City of Vancouver for [*enter a brief description of the legal cause of action, i.e. assault and battery, negligence, or breach of Charter rights*].

The VPD incident number in this matter is [ENTER INCIDENT # IF KNOWN – IF UNKNOWN THEN DELETE]

Sincerely,

[NAME]