ALBERTA LAW ENFORCEMENT REVIEW BOARD

ARKINSTALL INQUIRY REPORT

A Call for Change in Alberta's Approach to Police Oversight

IMPORTANT NOTE: This version of the report contains a correction to the version originally posted on October 1, 2018. Please use only this version and discard any earlier downloaded version.

October 1, 2018

ALBERTA
LAW ENFORCEMENT REVIEW BOARD

October 1, 2018

Honourable Kathleen Ganley MLA
Minister of Justice and Solicitor General
Room 403, Legislature Building
10800 – 97 Avenue
Edmonton, AB T5K 2B6

Dear Minister:

On August 16, 2017, under section 17 of the *Police Act* you directed the Board to "inquire into whether any person or entity with responsibilities in connection with policing did, or omitted to do, anything to interfere with, impede, avoid or frustrate disciplinary action under the *Police Act* relating to, or public oversight of, the conduct of Calgary Police Service officers in connection with the arrest of Jason Arkinstall at Calgary, Alberta on or about August 31, 2008."

You also directed that the Board "may make findings and recommendations relating to any specific or general matters that arise from the inquiry", including "legislative, policy and practice recommendations relating to police discipline and recommendations for improvement of civilian oversight of policing in Alberta."

It is our honour to enclose with this letter the Board's report to you on the inquiry. Our report contains findings about the Calgary Police Service's handling of the Arkinstall matter. It also contains short- and long-term recommendations for much-needed changes in Alberta's police oversight scheme for disciplinary misconduct.

Yours sincerely,

David Loukidelis QC	Ellen-Anne O'Donnell	Christine S. Enns
Chair	Member	Member

1502, City Centre Place, 10025 - 102 A Avenue, Edmonton, Alberta Canada T5J 2Z2 Telephone 780-422-9376 Fax 780-422-4782
Email: lerb@gov.ab.ca www.solgen.gov.ab.ca/lerb

Table of Contents

ACKNOWLEDGEMETS

We are sincerely grateful to Barbara Newton, the statutory "secretary" to the Board, for her stellar contributions throughout the process. She was unfailingly diligent and intelligent in her approach to the organizational demands of the inquiry and worked tirelessly to support the inquiry throughout. We are also very grateful to Diana Richardson, one of the two very capable associate secretaries to the Board, who was also unflagging in her work on the inquiry. Last, but not least, we are also very grateful to inquiry counsel, Fiona Vance and Aman Athwal, whose excellent work ensured an efficient hearing and a fulsome record.

The Calgary Police Service and all other participants co-operated throughout the process, for which we are thankful. The following are the participants and interveners:

- the Calgary Police Service;
- the Calgary Police Commission;
- ASIRT;
- Director of Law Enforcement;
- Criminal Trial Lawyers' Association;
- Jason Arkinstall;[1]
- Rick Hanson;
- Alberta Crown Prosecution Service; and
- Criminal Defence Lawyers Association.

We are also grateful to all counsel involved in the inquiry and to the witnesses who testified.

[1] Jason Arkinstall did not in the end participate in the inquiry.

GLOSSARY

The following definitions are used in this report:

"Act" means the *Police Act*;

"ASIRT" means the Alberta Serious Incident Response Team;

"*Arkinstall*" means the Provincial Court judgment cited as *R v Arkinstall*, 2011 ABPC 23;

"Board" means the Alberta Law Enforcement Review Board;

"CDLA" means the Criminal Defence Lawyers Association;

"CPC" means the Calgary Police Commission;

"CPS" means the Calgary Police Service;

"Crown" means the Alberta Crown Prosecution Service;

"CTLA" means the Criminal Trial Lawyers' Association;

"FOIP" means freedom of information and privacy, referring to CPS's statutory duties and functions under the *Freedom of Information and Protection of Privacy Act*;

"IAPRO" means the Internal Affairs and Professional Standards software that CPS and other Alberta police services use to manage disciplinary investigation processes;

"JSG" means Alberta's Ministry of Justice and Solicitor General;

"PSR" means the *Police Service Regulation*, made under the Act;

"PSS" means CPS's Professional Standards Section;

"section 46. 1 notification" means a notice given by a police chief to the Minister of Justice and Solicitor General under section 46.1(1) of the Act.

EXECUTIVE SUMMARY

This is the Board's report on the inquiry it conducted at the direction of the Honourable Kathleen Ganley, Minister of Justice and Solicitor General. Our report reflects more than a year's work, establishing inquiry rules and procedures, gathering relevant records, hearing witness testimony and conducting research. The Board has given the most careful consideration to the evidence gathered during the inquiry. Our findings reflect our best assessment of what happened in relation to the Arkinstall incident and we make recommendations for improvements to Alberta's police oversight system.

One theme underlying this report is that it is time for an in-depth, expert review of Alberta's police discipline framework. We make some recommendations for reform in this report, but it is clear that a province-wide review, with significant resources and expertise, is needed to thoroughly assess the landscape, across all municipal and First Nations police services. As we discuss later, we perceive a broad consensus among police chiefs, police unions, civil liberties groups and lawyers that Alberta's oversight system is sorely in need of a thorough review and overhaul.

The Arkinstall matter illustrates this in many ways. The fact is that until ASIRT, an independent oversight agency, investigated the matter, obvious investigative steps were not taken. CPS's internal review and handling of the matter highlights problems that can occur when "the police investigate their own", both in the public's perception and in practice. By contrast, ASIRT's work in the Arkinstall matter illustrates the benefits of an independent system and underscores the need give careful thought to creation of an independent oversight body for police discipline.

It is also a fact that the Alberta scheme has never had a thorough, public review. A review was completed in Ontario in 2017, yielding the comprehensive *Report of the Independent Police Oversight Review*, authored by Justice Michael Tulloch, of the Ontario Court of Appeal. Two similar reviews have also been done in British Columbia, for example, in the past twenty years. It is time for such a review and, as we acknowledge later, the consultation process should lead to such a review.

We hope that this report will contribute to that necessary review and to changes that are clearly needed in Alberta's approach to dealing with disciplinary misconduct by police officers. It is critically important for the public to have trust and confidence in our police. Without that, police cannot do their vitally-important work to keep our communities safe

from crime and disorder. Public trust and confidence are therefore at the heart of policing and indispensable to the rule of law and public order. Alberta needs a modern, robust and balanced system of independent oversight of police conduct to ensure public trust in our police.

This perspective is developed in the recommendations we make in this report, which are reproduced as part of this summary.

The Board has made the following recommendations to the CPS for improvement in the handling of complaints about officer conduct, as well as making general recommendations aimed at significantly improving police oversight in Alberta.

Recommendations relating to the Calgary Police Service

Recommendation 1
CPS should ensure fulsome training for all professional standards investigators and personnel in order to ensure high-quality, thorough investigation of complaints. This recommendation also applies to all police services that are subject to Part 5 of the *Police Act.*

Recommendation 2
CPS should develop, or improve, its policies for deciding when it is appropriate to initiate a service investigation, and to ensure that these decisions are properly documented, are made by appropriate personnel, and are subject to robust internal checks and balances to guard against poor decision-making.

Recommendation 3
CPS should ensure that the full nature and scope of a complaint is understood, clearly defined and investigated without missing the essence of a complainant's allegations through early and meaningful consultation with the complainant.

Recommendation 4
CPS should review its policies and practices to ensure that all matters that qualify as complaints under the *Police Act* are treated as such, with formal complaint files being opened by PSS for every complaint, before any investigative steps or attempts at informal resolution are made.

Recommendation 5

CPS should undertake a thorough, expert review of its processes and practices for documenting all stages of complaints and for managing the resulting records (including clearly and thoroughly documenting all decisions along the way). PSS's commanding officer should be responsible for ensuring that complete records are kept for all complaints.

Recommendation 6

CPS should cease its practice of conducting so-called "administrative reviews" of complaints and instead ensure that PSS conducts efficient and effective investigations of each complaint.

Recommendation 7

CPS policy should require any officer who becomes aware of adverse judicial findings about, or criticism of, the credibility of any officer's sworn evidence, or about possible disciplinary misconduct or criminal actions by an officer, to report the matter immediately to PSS's commanding officer. The commanding officer should be required to consider initiating a complaint. If PSS's commanding officer decides not to initiate a complaint, she or he must be required to record written reasons for that decision in the file, with a copy of the court decision and PSS reasons being given to the chief as soon as the decision is made.

Recommendation 8

CPS policy on responding to adverse judicial findings or criticism about possible disciplinary misconduct or criminal actions by an officer should require that the chief be immediately advised of such findings or criticism, and that the chief be required to consider without delay whether a notification of serious or sensitive matters under section 46.1 of the *Police Act* should be made to the Minister. The chief should also be required to document the reasons for that decision.

Recommendation 9

CPS policy should be revised to eliminate gang membership as a ground for deciding that alleged misconduct is or is not of a serious nature.

Short-term recommendations (provincial)

Recommendation 10

Upon completion of the government's stakeholder consultations, the Minister should consider appointing a retired judge to review Alberta's police discipline framework, conduct consultations and expert research, and make recommendations on legislative amendments to modernize the framework.

Recommendation 11

The Board recommends that the Alberta Crown Prosecution Service adopt a policy on when and how individual Crown prosecutors should bring to the attention of police services any adverse findings or criticism by the courts of police officer testimony or conduct.

Recommendation 12

The government should, in collaboration with police services and commissions, make readily available to the public comprehensive, easy to understand, informational and educational materials about complaints and the police disciplinary process.

Recommendation 13

A system for providing information, procedural assistance, legal advice and representation to complainants and appellants should be explored, developed as appropriate, and made readily accessible to complainants.

Recommendation 14

A province-wide protocol should be established to ensure consistent interpretation and application of clear and comprehensive criteria for timely notifications to the Minister by police chiefs under section 46.1. In addition, section 46.1(1)(b) should be amended to clarify that there need not be a "complaint" before a chief may make a notification under section 46.1.

Recommendation 15

The *Police Act* should be amended to require a police chief to notify the police commission and the director of law enforcement, in writing, when the complaint director's recommendation to issue a section 46.1 notice is not followed, to give reasons for the decision not to notify, and, in a timely way, advise in writing how the concerns raised were in fact addressed.

Recommendation 16
The *Police Act* should be amended to clarify how sections 45(3) and (4) interact, to give clear guidance on which issues are to be decided first, and how they are to be decided. Short of this, a province-wide policy should be established to guide police services in a consistent interpretation and application of section 45(4).

Recommendation 17
Section 45(4.1) of the *Police Act* should be repealed, thereby restoring appeals to the Board, as a timely and efficient method of civilian oversight of chiefs' decisions to dismiss complaints as not of a serious nature.

Long-term recommendations (provincial)

Recommendation 18
To ensure complaints are investigated fully and effectively, the *Police Act* should be amended to give police commissions' public complaint directors the ability to: direct their police service to open complaint files, recommend the wording of allegations to be investigated, and to recommend that specific investigative steps be taken in a given case. The *Police Act* should also be amended to permit a public complaint director to recommend to the police chief when a section 46.1 notification should be made.

Recommendation 19
A meaningful effective and efficient alternate dispute resolution system should form part of any new model for police oversight in Alberta.

Recommendation 20
The recommended systemic review of Alberta's police disciplinary framework could consider recommending a centralized disciplinary system, independent of police services and commissions, which may provide some or all of the following: complaint intake; complaint streaming; complaint investigation; alternate dispute resolution; complaint disposition; reporting of outcomes (including trends in the complaints and in police discipline overall); and recommendations for training and improvements to police services.

CHAPTER 1 – INTRODUCTION

1.1 Background to the inquiry

[1] This report has its origins in an arrest that took place in Calgary just a decade ago. On August 31, 2008, two CPS officers stopped a vehicle at around 3:15 a.m. They asked the driver for his driver's licence, registration and insurance papers for the vehicle. He was not able to produce *the registration or proof of insurance*. His driver's license appeared to have been surrendered, and therefore no longer valid. Jason Arkinstall, who was in the vehicle's front passenger seat and wearing a Hells Angels shirt, produced his driver's licence. A search of Arkinstall's name in the Canadian Police Information Centre information system indicated that he was under a court-imposed condition not to leave British Columbia. He was asked to exit the vehicle, but he refused, being adamant that he was not under any court-imposed conditions.[2] The driver also refused to exit the vehicle.

[2] A verbal altercation ensued between Arkinstall and officers Sgt. Kaminski and Cst. Derrick. As he later admitted at trial, Arkinstall was both rude and belligerent with the officers as he resisted leaving the vehicle. Cst. Derrick and Sgt. Kaminski eventually tired of this behaviour and each delivered several baton strikes to the vehicle's front windows. At this point Arkinstall left the vehicle.

[3] Sgt. Kaminski handcuffed Arkinstall and handed him over to Cst. Derrick, who put him into the back of a waiting police van, backup having arrived by then. Arkinstall was taken to the CPS holding facility, where he continued to be belligerent. He was charged with three criminal offences: obstruction of justice, assaulting Cst. Derrick and uttering threats against Cst. Derrick.

[4] The Crown later dropped the charges of obstruction and assault, and Arkinstall was tried only on the charge of uttering threats. His trial in the Provincial Court of Alberta began on April 15, 2010 and, having been adjourned, concluded on November 16, 2010.

[5] A number of witnesses testified at the trial, including Arkinstall, one of his acquaintances and a number of CPS officers. Both Sgt. Kaminski and Cst. Derrick testified about the incident that led to Arkinstall's arrest and about the arrest itself. Cst. Derrick's testimony spoke to Arkinstall allegedly resisting arrest, and about his physical handling of Arkinstall. Sgt. Kaminksi testified about his involvement in the arrest, including Arkinstall's

[2] It later turned out that the information on CPIC was out of date: Arkinstall was, as he insisted, under no such condition and was free to leave British Columbia.

alleged resistance, his own interactions with Arkinstall, and his observations of Cst. Derrick's interactions with Arkinstall.

[6] During cross-examination by Arkinstall's defence counsel, both officers were shown, for the first time, a video that had been taken of the arrest. The video showed Sgt. Kaminski striking Arkinstall twice on the back of his neck with a baton and throwing Arkinstall against the front hood of the vehicle. It showed Cst. Derrick escorting Arkinstall to the rear of the police van, where Cst. Derrick struck Arkinstall on the back of the head, shoved Arkinstall head-first into the van, and slammed the van doors on Arkinstall's legs. These images were at odds with the sworn testimony of both Sgt. Kaminski and Cst. Derrick, and ultimately Judge Semenuk made findings of fact about the arrest that expressed serious concern about their testimony and actions.

[7] In his January 14, 2011 written decision to acquit Arkinstall, Judge Semenuk made this finding about Sgt. Kaminski's actions:

> [22] Realizing the gravity of the situation, the Accused [Arkinstall] told Kaminski he had enough, and that he was going to exit the vehicle. On opening the door, and raising his arms in submission, Kaminski grabbed the Accused by the arms and threw him like a rag-doll, face first, on to the hood of the Tahoe. While pulling his arms forcefully behind his back to handcuff him, the Accused complained about a shoulder injury and that he was in pain. Kaminski responded by striking the Accused forcefully with the baton twice on the back of his neck. This was witnessed by the civilian witness, Amestica, who had just arrived at the scene by taxi, after being phoned by Smitna to bring the registration and insurance documents for the Tahoe. Amestica, who standing on the sidewalk 10-15 feet away, shouted at Kaminski that he should stop hitting his friend, and that he was going to kill him, Kaminski responded "Fuck off and go away or you will go to jail too."[3]

[8] As for Cst. Derrick, Judge Semenuk made this finding:

> [23] After being handcuffed, the Accused was turned over to Cst. Derrick, who directed him to walk to the back of the police van at the scene. While walking to the back of the Van, the Accused's hands handcuffed behind his back, were lifted in the air by Constable Derrick while he was physically being directed where to go. The Accused was not putting up any resistance on the way to the back of the Van.
>
> [24] At the back of the police Van, the doors were opened by Sergeant Kaminski. At this time the Accused was taunting Constable Derrick. He called him a "coward'

[3] *R v Arkinstall,* 2011 ABPC 23, para 22 [*Arkinstall*].

> and told him to "take the cuffs off and fight like a man". He also told him he would "kick his ass." The Accused's hands, handcuffed behind his back, were lifted and he was directed by Derrick bent over and head first into the Van. On entering the Van the Accused was required to take a step up and, being off balance, he hesitated momentarily. Constable Derrick then forcefully struck the Accused in the back of the head with his right hand. Derrick then grabbed the Accused by his neck and hands and threw him headfirst on to his stomach into the back of the Van. The Accused was thrown with such force that when he landed his legs lifted into the air almost touching the roof of the Van. In an obvious burst of anger, and before the Accused had a chance to get his legs and feet inside the Van, Derrick forcefully slammed the inside cage door and outside Van doors on his legs and feet.[4]

[9] The judge also made this finding about the interaction between Cst. Derrick and Arkinstall during Arkinstall's post-arrest booking:

> During the process, the Accused's T-shirt was cut off by Constable Derrick, and his pendant and other personal items taken from him. Finally, Constable Derrick also put a "spit sock" over the Accused's head, and he was lodged in the "drunk tank". I do not accept that the Accused resisted and tried to spit on Constable Derrick during the booking process.[5]

[10] For our purposes, the key aspects of Judge Semenuk's decision are his adverse findings that the officers used excessive force and about the reliability and credibility of the sworn testimony of both Cst. Derrick and Sgt. Kaminski.[6] Judge Semenuk said this about the sworn testimony of Cst. Derrick and Sgt. Kaminski:

> His lack of notes on material particulars, the variance in his *viva voce* evidence with what the Court observed on the DVD Exhibit 2, and his being shaken on cross-examination by Defence Counsel, led to conclude that he was not a credible or reliable witness.[7]

---

[4] *Arkinstall,* paras 23 and 24.
[5] *Arkinstall*, para 26.
[6] We acknowledge that the Provincial Court found in Cst. Derrick's trial, that Arkinstall was abusive, threatening, uncooperative and physically resisting up to the time he was placed in cells. See *R v Derrick,* 2018 ABPC 4 [*Derrick*].
[7] *Arkinstall*, para 10.

[11] By contrast, Judge Semenuk found that, despite Arkinstall's admitted criminal record and his "obvious interest in the outcome of the trial, he was both a credible and reliable witness."[8]

[12] *Arkinstall* was brought to the attention of CPS no later than March 17, 2011, when it was emailed by a CPS staff sergeant to Deputy Chief Murray Stooke and in-house CPS lawyer Harold Hagglund.

[13] As will be seen below, CPS dealt with the matter by way of an "administrative review", which began in 2011 and concluded in September 2012. CPS determined that the two officers would receive counselling regarding their failure to take adequate notes, which was deemed by the CPS to be the reason for their problematic testimony in court, apparently on the basis that inadequate note-taking led to poor preparation for their court testimony. It appears that the issues raised in *Arkinstall* of excessive use of force during the original incident, and the officers' lack of credibility and reliability at trial, were not considered by the CPS to be accurate, and therefore these issues were not really addressed in the administrative review or in the counselling that followed.

[14] As we discuss in detail below, over the following several years, the CTLA, Arkinstall's lawyer, Ken Westlake, and others made repeated inquiries of CPS as to whether anything was being done about the court's concerns about Cst. Derrick's and Sgt. Kaminski's use of force and their trial testimony. In 2014, some six years after Arkinstall's arrest, and more than three years after *Arkinstall* was decided, the matter was referred to ASIRT for investigation. On March 23, 2016, ASIRT recommended that Sgt. Kaminski and Cst. Derrick be charged with criminal offences. On January 17, 2017, almost 10 years after the incident, Cst. Derrick was charged with assault and Sgt. Kaminski was charged with assault and perjury. Cst. Derrick was acquitted of assault, in *Derrick,* in 2018; the assault and perjury charges against Sgt. Kaminski were withdrawn before trial.[9]

---

[8] Record 7, *Arkinstall*, para 10. The records for the inquiry were assembled by inquiry counsel appointed by the Board. These were circulated to participants in advance of the inquiry hearing. No objections were made as to document authenticity or relevance. We note here that, for convenience, we refer below to individual documents by document numbers, *e.g.*, "Record 7", "Records 21 and 22".

[9] CPS has submitted that we should mention that Cst. Derrick was acquitted, in *Derrick,* and that the Crown dropped charges against Sgt. Kaminski in order to inform the public that the system ultimately worked because the officers were subject to accountability. This is important, CPS argued, to protect the "reputation of the criminal justice system". It is not at all clear how our mentioning the outcome of the criminal charges and proceedings protects the reputation of the criminal justice system. More to the point, this inquiry has nothing to do with accountability for individual officers. It is about CPS's internal handling of serious judicial

[15] Early in 2017, CPS and CPC both joined others, including the CTLA, in calling for an inquiry into CPS's handling of the Arkinstall matter. On August 15, 2017, the Honourable Kathleen Ganley, Minister of Justice and Solicitor General, directed the Board to conduct an inquiry into the matter.[10] The scope and focus of the inquiry is found in these excerpts from the terms of reference found in the inquiry direction:

> (a) The Board shall inquire into whether any person or entity with responsibilities in connection with policing did, or omitted to do, anything to interfere with, impede, avoid or frustrate disciplinary action under the *Police Act* relating to, or public oversight of, the conduct of Calgary Police Service police officers in connection with the arrest of Jason Arkinstall at Calgary, Alberta on or about August 31, 2008.
>
> (b) The Board may make findings and recommendations relating to any specific or general matters that arise from the inquiry. The recommendations may include legislative, policy and practice recommendations relating to police discipline and recommendations for improvement of civilian oversight of policing in Alberta.[11]

[16] A description of the steps taken by the Board in conducting the inquiry is found in Appendix 2. The list of witnesses from whom the Board heard testimony is found in Appendix 3.

1.2 Alberta's police oversight framework

[17] The findings and recommendations set out later in this report cannot be understood properly unless the reader has some understanding of Alberta's statutory scheme for oversight of police actions and conduct. This part of the report therefore offers an overview of that scheme. Appendix 4 sets out the full text of all relevant provisions of the Act. We have included it for easy reference by those who may be less familiar with the details of that scheme.

[18] The Act establishes the overall framework for policing in Alberta. Part 1 deals with administrative matters related to the Solicitor General, including the establishment of standards for providing police services, and the appointment of a director of law enforcement. The Board is a quasi-judicial body established under section 9(1) of the Act to hear appeals from decisions of the chief of police and of presiding officers in disciplinary hearings, brought either by a civilian or a police officer, and to provide civilian oversight of

---

concerns about the credibility of police testimony. The hindsight offered by the outcome of the criminal proceedings is immaterial to our concerns about CPS's response.

[10] The complete inquiry terms of reference are set out in Appendix 1.

[11] Appendix 1 is a copy of the Minister's direction.

policing in the province.

[19] Part 3 of the Act provides the authority for the establishment of municipal police services, their police commissions, including the role of public complaints director, budgeting and the like. Communities requiring services outside of municipalities are policed by the RCMP, who are not the subject of this inquiry. CPS was established under the authority of Part 3 of the Act, as was the CPC.

[20] The qualifications, appointments, liability, authority and jurisdiction of police officers, including chiefs of police, are detailed in Part 4 of the Act.

[21] Part 5 of the Act deals with complaints against police services and police officers, including police chiefs. This includes complaints of policies and services. Under this Part, an "integrated investigative unit" may be established by the Minister. Under that authority ASIRT was established to investigate complaints involving serious bodily harm or death, or of a serious and sensitive nature. The PSR provides specifics regarding the disciplinary process, including what constitutes disciplinary misconduct by police officers, and how disciplinary proceedings are to be conducted. It also provides for penalties.

[22] The *Criminal Code* of Canada provides authority for police to search, arrest, detain, and charge individuals for crimes. Section 25 provides the principles for determining the appropriateness of the use of force by police officers, and what constitutes a criminal use of force. We mention this because a section 25 analysis is a prominent feature of decisions dealing with allegedly excessive use of force by police.

[23] The Minister of Justice and Solicitor General may establish universal standards, policies and procedures for policing in Alberta. Further, each police service in Alberta has its own internal policies and procedures.

Disciplinary Procedures

The process for complaints and discipline is set out in Part 5 of the Act.

The initial complaint

[24] Section 42.1 of the Act describes who may bring a complaint, requires a complaint to be in writing and sets out the information that the complaint is to contain. A police officer, a civilian or an entity may file a complaint. Third parties may not file a complaint unless they witnessed the incident or are in a relationship to the individual who was

subjected to the alleged misconduct, or suffered injuries or loss themselves.

[25] Under section 43, all complaints are referred to the chief, except complaints regarding the chief, which are referred to the appropriate police commission. A complaint must be brought within one year of when the conduct complained of occurred, or within one year from when the complainant knew or ought to have known that the conduct complained of occurred, pursuant to section 7 of the PSR.

[26] The categories of conduct that may constitute grounds for a complaint are set out at section 5 of the PSR, and are as follows:

[27] Section 5(1)(a) breach of confidence; (b) consumption or use of liquor or drugs in a manner that is prejudicial to duty; (c) corrupt practice; (d) deceit; (e) discreditable conduct; (f) improper use of firearms; (g) insubordination; (h) neglect of duty; (i) unlawful or unnecessary exercise of authority.

[28] Each category of misconduct is defined in some detail in section 5(2), noting here that "unlawful or unnecessary exercise of authority" is defined to include "applying inappropriate force in circumstances where force is used."

Chief's role in the complaint process

[29] Upon the receipt of a complaint, the chief performs a screening function to determine whether it is a complaint of service or a complaint about the conduct of a police officer. Complaints against police officers are disposed of under sections 45-48 of the Act.

[30] Under section 45(1) if a complaint is about the conduct of a police officer the chief "*shall* cause the complaint to be investigated" (our emphasis).

[31] The chief may then do one of the following:

- The chief may dismiss the complaint on the basis that there is no reasonable prospect of establishing the facts necessary to obtain a conviction at a disciplinary hearing (section 45(3));[12]

[12] This is a paraphrase of the test developed in several Alberta Court of Appeal decisions. The Court of Appeal has also said a chief may decline to order a disciplinary hearing if the chief considers there are public reasons to do so.

- If the complaint is "not of a serious nature", the chief may dispose of the matter without conducting a hearing (section 45(4));

- If the chief is of the opinion that the police officer's actions may be a contravention of a provincial or federal enactment, the chief may direct the matter to a presiding officer for a disciplinary hearing (section 45(3)); or

- If it appears to the chief before or during investigation of a complaint that it is frivolous, vexatious or made in bad faith, the chief can recommend to the police commission that the complaint be dismissed on that basis (section 43(7)).[13]

[32] A complainant must be advised of the investigation's progress every 45 days (section 45(7)).

Investigation and disposition of complaints by the Chief

[33] Each police service has a professional standards branch or department and it is responsible for handling complaints.

[34] Professional standards personnel, who are mostly police officers but may include civilian employees or retired officers, typically will gather and review evidence from the operational police file, interview the complainant and witnesses, gather documents and other evidence from the complainant, review statements given by the officers pursuant to section 10 of the PSR, then provide an investigative report to the chief.[14] The Act requires the chief to decide whether there is sufficient evidence of possible misconduct that a disciplinary hearing is warranted. If not, the chief dismisses the complaint. A chief may also, where the chief considers the conduct is "not of a serious nature," and other conditions are met, directly impose a minor penalty on the officer.

[35] If the chief directs that a disciplinary hearing be held, the chief appoints both the prosecutor ("presenting officer") and the adjudicator ("presiding officer"). The presiding officer conducts a hearing and decides, typically in a written decision, whether the officer is guilty of the misconduct charged. The decision is delivered to the chief, the complainant and the officer.

[13] If the commission dismisses the complaint, the complainant can appeal that decision to the Board.
[14] A police chief is authorized to compel the involved officers or witness officers to provide an explanatory report in writing within 10 days after the direction is made.

[36] If, however, the actions of a police officer result in "serious injury" to, or the "death" of, someone, or if a complaint is of a "serious or sensitive" nature, the Chief *must* report the matter to the local police commission and to the Minister.

[37] ASIRT is, again, an "integrated investigative unit" for serious or sensitive incidents, established under section 46.2 of the Act. ASIRT typically investigates matters referred under section 46.1. ASIRT's executive director is, under the Act, deemed to be a police chief. ASIRT is staffed by investigators who are peace officers, many of whom have law enforcement backgrounds.

Punishment for misconduct

[38] Section 17 of the PSR provides that one or more of the following punishments may be imposed upon a finding of a section 5 contravention:

- a reprimand;
- a course of treatment or participation in a rehabilitation program;
- forfeiture of hours of work accumulated through overtime (not to exceed 40 hours);
- suspension from duty without pay for a period (not to exceed 80 hours);
- reduction of seniority within a rank;
- reduction in rank;
- dismissal from the police service.[15]

[39] If the conduct of an officer constitutes an offence under the *Criminal Code* criminal charges may be laid against the officer.

[40] The PSR also permits informal steps to be taken, but only where concern about an officer's conduct does not appear to rise to the level of disciplinary misconduct. Section 6 reads as follows:

> **Counselling**
>
> **6(1)** Where a supervisor or a superior officer is of the opinion that an action of a police officer is not of a sufficient nature so as to require the action to be dealt with in accordance with section 45 of the Act, the supervisor or officer of superior rank may nevertheless counsel the police officer, orally or in writing, with respect to the performance of duty of and the action taken by the police officer.

[15] Section 8 of the PSR authorizes suspension from duty if an officer is believed to have committed an act of disciplinary misconduct. This provision is not relevant here.

> **(2)** A written record of any counselling carried out under this section may be kept on the police officer's personnel file but may not be introduced as evidence in any proceeding under the Act.
>
> **(3)** Nothing in this section shall be construed so as to prohibit the information maintained in any records kept under this section from being used for the purposes of making reviews of performance under section 4(2).

[41] This is the basis for the counselling CPS gave to the two officers involved in the Arkinstall incident. We note here that a police service cannot counsel an officer under section 6 unless a supervisor or superior officer forms the "opinion" that the officer's action "is not of a sufficient nature" that it requires the matter to be dealt with under section 45. As we discuss below, CPS chose—despite the concerns that the court had unambiguously expressed in *Arkinstall* about apparent excessive force and officer credibility—to treat the matter solely as an issue of note-taking and trial preparation. It then counselled the two officers, presumably under section 6. As we discuss later, it is not at all clear what evidentiary basis there was for forming an "opinion" that the actions were not of a "sufficient nature" to invoke section 45.

Complaints regarding a police chief

[42] Complaints regarding a chief of police are directed to the police commission in question, under section 46(1) of the Act. If the relevant police commission determines that the chief may have contravened a provincial or federal statute, including the Act and PSR, it may ask the Minister to order another police service to investigate the complaint. The commission will then conduct a hearing if the independent investigation results in a finding that there may have been a contravention.

[43] The commission has a duty to report its findings to the director of law enforcement under the Act.

[44] A decision of the commission regarding the actions of the chief may be appealed to the Board under section 43(12) of the Act.

[45] Each police commission and policing committee under the Act has a public complaint director. This position is established under section 28.1 of the Act. A public complaint director has certain complaint-related duties and functions, but has no authority to initiate or investigate a complaint. A public complaint director may receive conduct complaints, but must refer them to the chief. The public complaint director can also offer an alternative dispute resolution process for complainants, and review its delivery. A public

complaint director can review the investigation of complaints, but cannot direct the service to do anything, including to take investigative steps. Nor can the public complaint director make a section 46.1 notification.

Appeals to the Board

[46] A complainant or police officer may appeal a disciplinary decision in writing to the Board within 30 days of the receipt of the disposition, pursuant to section 48 of the Act. Within 30 days of receipt of the notice of appeal, the Board performs a streaming review under section 19.2, and may:

- dismiss the matter if, in the opinion of the Board, the appeal is frivolous or vexatious or made in bad faith;
- make a decision based on a review of the record without conducting a hearing;
- schedule a hearing of the appeal.

[47] The factors the Board must consider in its "streaming reviews" are set out in section 23.1 of the PSR.

[48] Until 2010, the Board conducted appeals *de novo*. Two Alberta Court of Appeal decisions, *Newton*[16] and *Pelech,*[17] defined our role as an appeal body more strictly and, since that time the Board has conducted appeals on the record only. The Board hears written or oral argument, or both, from the parties, but only exceptionally might we hear witness testimony. *Pelech* and *Newton*, and later Alberta Court of Appeal decisions, affirm that the Board is restricted to a review on the record that was before the police chief or presiding officer.[18] We are required to apply the deferential reasonableness standard of review. Whether that is a sufficient level of independent civilian oversight for Alberta's mostly in-house disciplinary scheme is an open question.

[49] If the Board conducts an appeal of a matter for which a disciplinary hearing was held, it may do one of the following under section 20(2):

- allow the appeal;
- dismiss the appeal;
- vary the decision appealed;

[16] *Newton v Criminal Trial Lawyers' Association*, 2010 ABCA 399 [*Newton*].
[17] *Pelech v Law Enforcement Review Board,* 2010 ABCA 400 [*Pelech*].
[18] In very limited circumstances, the Board may admit additional evidence on appeal, under section 20(1)(g).

- direct that the matter be reheard;
- affirm or vary the punishment imposed; or
- take any other action it considers proper.

[50] If the chief has dismissed the complaint without a disciplinary hearing, the Board may do one of the following under section 20(2):

- affirm the decision;
- direct that a hearing be conducted;
- direct the laying of a charge under the PSR;
- direct the matter to be reinvestigated;
- take any other action it considers proper.

[51] Board decisions may be appealed to the Alberta Court of Appeal under section 18 of the Act, although only on questions of law. The Board is bound by the decisions of the Alberta Court of Appeal.

[52] A complainant may apply for judicial review of Board decisions to the Alberta Court of Queen's Bench on questions of fact, or mixed fact and law.

[53] The director of law enforcement's role in the disciplinary process is limited, but the director of law enforcement does have the authority to initiate a section 46.1 notification in circumstances where he or she deems it appropriate, and thus can cause the matter to be investigated, usually by ASIRT. (In practice, the current director of law enforcement testified, the director of law enforcement has not done so to date. The director of law enforcement will typically invite the chief in question to make the notification, which normally happens upon request of the director of law enforcement.)

[54] Once ASIRT completes an investigation, it reports its findings to the Minister.

CHAPTER 2 - WHAT WE HEARD

[55] This part of the report summarizes the evidence that the Board heard from 15 witnesses over five days of hearings, in Calgary, in April 2018.[19]

[56] Inquiry counsel questioned the witnesses and participants were given an opportunity to cross-examine them. Witnesses were also asked questions by the Board. For the most part, the evidence spanned the period from the release of *Arkinstall* in January 2011 to the initiation of the ASIRT investigation in January 2014. Some historical context was provided regarding the Act and PSR, as well as policies and procedures in place at the time. Last, some witnesses provided their views on recommendations we might make for legislative change.

[57] This evidentiary summary should be read in light of the first part of the inquiry mandate, which is to determine "whether any person or entity with responsibilities in connection with policing did, or omitted to do, anything to interfere with, impede, avoid or frustrate disciplinary action" under the Act in relation to the Arkinstall matter.

[58] We note here that all references to an individual police officer's rank are to their rank at the time of the events discussed below, not their present rank (and noting that many who testified have retired from the CPS).

[59] CPS officers arrested Jason Arkinstall on August 31, 2008. His trial for uttering threats took place in 2010, ending in November of that year. *Arkinstall* was released on January 14, 2011.[20] The court heard testimony from multiple witnesses, including the accused, Jason Arkinstall, and the two officers whose conduct and testimony were later criticized by the trial judge, Judge Semenuk. After the two officers had testified in chief, Arkinstall's lawyer played video footage that someone had taken of the arrest. The video footage was used to cross-examine the two officers.

[60] Judge Semenuk expressed concerns about the conduct of the arresting officers with respect to their use of force and their credibility when testifying at the trial. He expressed the view that they used excessive force and found that the testimony of two of the arresting officers was neither reliable nor credible. A transcript of the trial, which was later made available to CPS, disclosed that Judge Semenuk had also expressed negative views during the trial about the officers' conducts.

---

[19] Appendix 3 is a list of the witnesses who testified.
[20] Record 7.

[61] No one involved in the trial, including the Crown prosecutor, notified any public authorities, including CPS, about the trial judge's concerns or findings. The Crown's evidence in this inquiry is that the Crown "does not have a policy or directive regarding the notification of police agencies where a court has made an adverse finding relating to the integrity, credibility or reliability of a police officer or police agency."[21]

[62] On March 17, 2011, a CPS deputy chief and a CPS in-house lawyer, respectively Deputy Chief Murray Stooke and Harold Hagglund QC, received copies of *Arkinstall* from a CPS staff sergeant. This appears to be the first time CPS management learned of *Arkinstall*. Deputy Chief Stooke forwarded *Arkinstall* to another deputy chief, Trevor Daroux, who was then the deputy chief of community policing, and CPS's Chief, Rick Hanson. Deputy Chief Stooke also forwarded it to Supt. Kevan Stuart, who was a superintendent in the chief's office and in charge of PSS.[22]

[63] Deputy Chief Stooke was the deputy chief in command of specialized investigations.[23] He was not part of the chain of command for the Arkinstall matter and played no part in what followed. He testified in the inquiry that, when he reviewed *Arkinstall*, his view was that there were serious findings by the trial judge about the use of force on Arkinstall and adverse findings regarding the credibility of the officers. He saw that this was potentially a serious matter warranting an investigation.[24] However, the official responsibility for making that determination was with the deputy chief in charge of the officers' divisions, in this case Deputy Chief Daroux.[25] As the matter had been referred to PSS, Deputy Chief Stooke believed that necessary investigative steps were underway. He was not in the loop in the matter on a go-forward basis, and was not updated during the course of the "administrative review" that followed.

[64] Harold Hagglund did not testify in the inquiry given his role as counsel to the CPS. However, the inquiry record and witness testimony showed that he was involved in the initial email string when *Arkinstall* first came to light.[26] It is also clear that he was involved in some of the communications in the early stages, in 2011, and assisted in the

[21] Agreed Statement of Facts, Exhibit 2.
[22] Record 9.
[23] He retired from this position in 2016.
[24] In testimony, then Insp. Darren Leggatt explained that a "service investigation" was a disciplinary investigation where the police service was the complainant.
[25] He retired in 2017.
[26] Record 8.

administrative review. He contacted the *Arkinstall* prosecutor, Shane Parker, by telephone to discuss the officers' testimony. On March 21, 2011, Harold Hagglund sent an email to Supt. Stuart and Insp. Catherine Light, summarizing the conversation. His email included this passage, which speaks to what the Crown prosecutor thought about the officers' testimony:

> Mr. Parker indicates that Cst. Derrick tended in response to questions to indicate that he was often unsure, Sgt. Kaminsky was more definite, and as a result according to Mr. Parker, came off much worse from the cross examination.[27]

[65] On March 28, 2011, Harold Hagglund emailed Insp. Light and Supt. Stuart, as well as Ralph Veckenstedt (a CPS officer who was assigned to PSS at the time) summarizing the circumstances surrounding Arkinstall's arrest, based on his review of the trial transcript and the judgment, and about the judge's negative findings about the credibility and reliability of the two officers.

[66] CPS produced to the inquiry Supt. Stuart's notes of a March 29, 2011 meeting he had with other CPS personnel, *i.e.*, Harold Hagglund, Ralph Veckenstedt and Rick Tuza. Supt. Stuart noted: "Harold spoke to Parker (pros). Parker said the judge could have been a lot more blunt about CPS testimony".[28] In light of the finding in *Arkinstall* that the officers' testimony was not credible, the prosecutor's comment that the Court could have been "a lot more blunt" about the officers' testimony is noteworthy.[29]

[67] Shortly thereafter, it appears, Harold Hagglund asked the Crown for the video that Arkinstall's lawyer had played at the trial during the defence cross-examination of the two officers. Because it was not immediately available, he requested it from Arkinstall's lawyer, Ken Westlake. Harold Hagglund did not receive the video from Ken Westlake until January 16, 2012.[30] After Harold Hagglund reviewed the video, he sent an email to Insp. Light, stating the following:

> In Title 2 of the DVD at about the 1:45 minute mark Arkinstall is seen to be forcefully punched in the back of the head while handcuffed and then literally thrown head first into a police van by Cst. Derrick. As indicated in my memo of March 28, 2011

[27] Record 8.
[28] Exhibit 4, page 96.
[29] We acknowledge that Supt. Stuart's notes also say, at page 97 of Exhibit 4, "should not have an impact on subsequent testimony". His notes do not indicate who expressed that opinion.
[30] Records 21 and 22.

> the contents of the video is [*sic*] at variance from the testimony of officers Derrick and Kaminski.[31]

[68] On February 14, 2012, Harold Hagglund authored a memo to Insp. Light, who at that time was an acting superintendent in Chief Hanson's office. The memo quoted extensively from *Arkinstall*, and described the conduct of the two officers and the adverse findings that the court had made about their testimony.[32]

[69] Deputy Chief Daroux testified that, within CPS, the chief or other executive officers could initiate a disciplinary investigation, known within CPS as a "service investigation", if an officer's conduct came into question. He indicated that the deputy chief, or superintendent, under whose command the officer fell could direct an investigation, and the inspector in command of PSS could also do so.[33] Other CPS witnesses differed on this score. Deputy Chief Stooke testified that PSS would review a matter and give the relevant deputy chief a recommendation on what to do, with the deputy chief being the one to decide whether to initiate a service investigation. The evidence of Insp. Leggatt and Insp. Light was to similar effect as Deputy Chief Stooke's.

[70] Chief Hanson's evidence was that, immediately upon becoming aware of the matter in March 2011, he directed Deputy Chief Daroux to initiate an "administrative review". The two officers in question, Sgt. Kaminski and Cst. Derrick, were under Deputy Chief Daroux's command.

[71] There is no dispute that the "administrative review" process that CPS used in the Arkinstall matter is not mentioned in the Act or PSR. Former and current CPS witnesses described it as an informal process for information gathering, to determine if there had been a breach of the *Criminal Code*, the Act and PSR, or CPS policy. Witnesses testified that, once information is gathered, a determination is made as to whether further action, including a service investigation or charges, were warranted. In his testimony, for example, Insp. Leggatt explained that an "administrative review" was short of a formal investigation, describing it as a "probe" for the purposes of understanding the general facts or general goings-on of a particular event.

---

[31] Records 21 and 22.
[32] Record 25.
[33] Witnesses indicated that, as a matter of administration, a CPS chief would rarely direct a service investigation.

[72] Deputy Chief Daroux testified that CPS took judicial criticism of officers very seriously, and would review such cases. He testified that he referred the matter to Supt. Stuart, who was in charge of overseeing the PSS at the time, to initiate the administrative review. Deputy Chief Daroux testified that by responding to Deputy Chief Stooke's email and copying Supt. Stuart he was directing Supt. Stuart to initiate an administrative review.[34] He testified that he expected that Supt. Stuart or PSS would contact the Crown prosecutor for his view of what had occurred at trial, and would review the trial transcripts and video.

[73] Deputy Chief Daroux also testified that he had read *Arkinstall*, but did not read the transcripts, interview the officers in question, or review their notes of the incident. He testified that he saw the video and officer notes some time after the review was completed, but was unsure of when he did so.

[74] Supt. Stuart was the superintendent assigned to Chief Hanson's office from 2010 to 2013. He was responsible for PSS, public affairs, FOIP, legal services, and administration of the chief's office. His role in disciplinary matters was to instruct PSS to conduct an administrative review or service investigation and report back to him. Supt. Stuart would then report to the deputy chief of the bureau involved, in this case, Deputy Chief Daroux. In addition, because FOIP was in Supt. Stuart's portfolio, he was responsible for overseeing any FOIP issues related to the matter, although he relied on the expertise of CPS FOIP staff on those issues.

[75] Supt. Stuart testified that in September 2011, he was instructed to initiate the administrative review. He did not recall receiving any earlier directions. He read *Arkinstall* but he never spoke to the two officers and never reviewed their notes. Supt. Stuart did not read the trial transcripts, although he did see the video, and directed PSS to conduct an administrative review.[35]

[76] It is not entirely clear from the inquiry record or testimony who (other than, it appears, Harold Hagglund) at CPS spoke to the Crown about the matter. There are some indications that Supt. Stuart did so, and was advised that the Crown had no concerns, information that he passed on to others. Deputy Chief Daroux testified that Supt. Stuart told him that he had spoken with the prosecutor, who had no concerns about the officers' testimony. In fact, Supt. Stuart testified, he did not speak to the prosecutor, and he did not recall telling anyone that the Crown had no concerns.

---

[34] Record 8.

[35]Supt. Stuart testified that he may have skimmed the trial transcripts at some point, but was unsure if he had. He later stated he did not read the transcripts.

[77] An August 14, 2012 letter from Arkinstall's lawyer, Ken Westlake, to CPS enclosed a copy of *Arkinstall* and the transcript of the two officers' testimony. He stated:

> My client has asked that I make enquiries to determine if any steps were taken to investigate those issues by the Calgary Police Department and if so, what the result of any investigation was. Please acknowledge receipt of this letter by return.[36]

[78] Supt. Stuart responded on August 21, 2012, citing privacy reasons for declining to release any information about the officers. He did not treat the letter as a complaint under the Act, nor did he forward it to PSS for that purpose. Supt. Stuart did not treat this letter as a complaint.[37]

[79] In an August 31, 2012 follow-up letter to Supt. Stuart, Ken Westlake clarified his August 14, 2012 letter:

> We wrote to formally enquire if an investigation had been undertaken regarding breaches of the *Criminal Code.* If not, then to formally lay a complaint so that an investigation would be so taken with a view to potential charges being investigated and the decision made to prosecute based on the clear corroborating evidence…Have any criminal charges been approved against any of the officers involved?[38]

[80] Supt. Stuart replied on September 10, 2012, and again did not treat the letter as a complaint:

> If you and your client wish to pursue a formal complaint into this matter, I advise you to contact the Calgary Police Service, Professional Standards Section, to initiate your complaint.[39]

[81] During his testimony, Supt. Stuart confirmed that he was familiar with the August 31, 2012, letter to the CPS from Ken Westlake, and affirmed that, in his view, the letter was not a "complaint" under the Act. Supt. Stuart viewed the letter as having sought

---

[36] Record 52.
[37] In-house lawyer Harold Hagglund also replied to the letter, unbeknownst to Supt. Stuart, advising Ken Westlake that the matter must be dealt with under the *Freedom of Information and Protection of Privacy Act* and providing the contact information for CPS's FOIP manager.
[38] Record 56.
[39] Record 59.

information, and thus invited Ken Westlake to initiate a formal complaint.[40] His September 10, 2012, response did not tell Ken Westlake that the limitation period for a complaint under the Act had passed.[41] Supt. Stuart testified that Ken Westlake could have initiated a criminal complaint under the *Criminal Code*, and this was his intended message in the September 10, 2012, response.

[82] Regarding the "administrative review", Supt. Stuart testified that he did not "get into the weeds" of the investigation, as he left such matters to PSS. Acknowledging that these events occurred several years ago, Supt. Stuart testified that he did not recall discussions with Chief Hanson, Deputy Chief Daroux, Insp. Light or Supt. McLellan about aspects of the matter. Similarly, he did not recall correspondence or email strings in which he was involved and that form part of the inquiry record. He also acknowledged that there were gaps in his note-keeping. He testified that he did not recall a memo dated May 14, 2012, discussed below, under the name of Supt. McLellan and addressed Deputy Chief Daroux. That memo stated, "I am recommending PSS conduct a criminal investigation". Supt. Stuart acknowledged in testimony that this would have raised red flags.[42]

[83] The May 14, 2012 memo was written when Supt. Katie McLellan was in charge of field operations. As noted, she recommended that PSS conduct a criminal investigation in light of comments in an appended memo from Supt. Stuart. The memo also said this, relying on Supt. Stuart's earlier memo:

> In summary, Supt. Stuart discusses a video that was recorded by an unidentified person(s) that was then entered as evidence in support of Mr. Arkinstall (case #08313349). There were parts of the video that contradicted testimony of members of the Calgary Police Service. *Supt. Stuart accurately points out that it appears the members did not intentionally mislead the courts, but rather they lacked preparation which result in deficient testimony.* Supt. Stuart contacted the Provincial Crown's office and was advised that they had no concerns with the officers' testimony.[43] [our emphasis]

[84] This said, Supt. McLellan testified at the inquiry that she did not recall having seen this memo and that, based on the language used, she did not believe she had drafted it at

---

[40] Record 59.
[41] Section 43(11) of the Act contains a limitation period of one year for a complaint to be made after the conduct complained of occurred or the complainant first knew or ought to have known that the conduct complained of had occurred, whichever occurs later.
[42] Record 43 (redacted in part).
[43] Record 43 (redacted in part).

all. Supt. Stuart also testified that he did not recall this memo. We are left to wonder who might have ghost-written this memo and to whom it might have been sent.

[85] The memo does not explain on what basis it could endorse as accurate Supt. Stuart's assessment that the "deficient testimony" was caused by a lack of preparation, and that there was no intent to mislead the court. It bears remembering that, at that point, Supt. Stuart had not reviewed the officers' incident notes, had not spoken to the officers and had not read the trial transcripts.

[86] Insp. Light was the inspector in charge of PSS when Supt. Stuart assigned the Arkinstall matter to PSS for the administrative review. She stated that her role in PSS was to manage investigations, supervise the handling of citizen concerns, supervise operation of the department, and oversee regulatory investigations. As to the Arkinstall matter, she oversaw the collection of information and provided an overview of all of the evidence to Supt. Stuart. She testified that she was unable to complete the administrative review until after the video was obtained.

[87] Insp. Light testified that, although she viewed the video and read the trial transcripts and judgment, she did not review the officers' notes or have them interviewed. She stated it was not necessary to review officer notes or conduct interviews as there was no service investigation. We discuss later our concern that, given the information about the matter that was available to PSS, and CPS more generally, these steps were considered unnecessary because there was no service investigation. The concern arises because CPS witnesses at the same time asserted that administrative reviews were a kind of "probe", albeit informal, intended to gather information, so the general facts of a matter were sufficiently known to enable CPS to decide whether further action, including a service investigation or charges, were warranted.

[88] Insp. Light also confirmed that no PSS file number was assigned to the administrative review, again because there was no service investigation. Communications, including letters, were trackable on IAPRO, but information entered into IAPRO was dependent upon individual recipients loading letters and communications into it. In the course of an administrative review, uploading information to IAPRO was not required. As we also discuss later, this speaks to an informal, *ad hoc* approach to administrative reviews and to prudent information management.

[89] Insp. Light also testified that she relied on Harold Hagglund's interpretation of *Arkinstall* in his memo and that she agreed with his conclusions. She stated that she believed that, at some point, Supt. McLellan had recommended a service investigation.

When asked if she regarded counselling of the officers to be the appropriate route to take, she stated she did not question what her superiors told her to do. She testified that her role was to follow direction. She also did not see it as her role, as the officer then in charge of professional standards, to make recommendations about the course of action that should be taken, including whether there should be a service investigation. Insp. Light testified that the deputy chief decides whether to initiate a service investigation. This is at odds with the view expressed by Deputy Chief Daroux, who testified that the inspector of PSS has the authority to initiate a service investigation if she or he considers it warranted. Neither Insp. Light nor Deputy Chief Daroux did so in this case.

[90] The administrative review that did occur took about a year, which was not unusual according to witnesses.[44] On March 21, 2012, Deputy Chief Daroux received a memo from Supt. Stuart about the administrative review. CPS produced three versions of the memo for the inquiry.

[91] An unsigned version suggests that the two officers should be warned that a prominent member of the CDLA had made it clear to the CPC that the association was aware of the case, adding that "[t]his might be something that could be raised in subsequent court cases where the officers give evidence."[45]

[92] CPS also produced two signed versions of the March 21, 2012 memo, neither of which contained the suggestion that the officers be warned about possible future challenges to their testimony.[46] The third and fourth paragraphs of the second copy of the signed memo produced by CPS for the inquiry were redacted. The redacted paragraphs were marked with the annotation "s. 17(1), s. 24(1)(a)".[47]

[93] The first signed version of the memo produced by CPS, however, includes the paragraphs that were redacted from the second version it produced.[48] The redacted paragraphs read as follows:

---

[44] It is uncontroversial to suggest here that, given the nature of the Arkinstall matter, and the issues possibly at play, one year to conduct an informal administrative review seems excessive.
[45] Record 35.
[46] Records 36 and 37.
[47] Record 36. These are undoubtedly references to sections of the Freedom of Information and Protection of Privacy Act. The first enables a public body such as CPS to refuse to disclose information in response to an access to information request if "the disclosure would be an unreasonable invasion of a third party's personal privacy". The second authorizes a public body such as CPS to refuse to disclose "advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council".
[48] Record 36.

> Professional Standards Section has determined that the length of time from when this incident came to the attention of the Calgary Police Service has expired under the jurisdiction of the Alberta Police Act and Police Service Regulations. There has not been a public complaint filed by the Calgary Provincial Crown's office or by Mr. Arkinstall.
>
> Of note, I believe the officers involved need to be made aware of the fact that a prominent member of the Alberta Criminal Defense Lawyers Association had made it clear to the Calgary Police Commission they are aware of this and the findings of the Court in regards to the officers testimony. They have requested information from the Calgary Police Commission Public Complaint Director as to any actions taken by the Calgary Police Service against the officers. They were advised that under the Police Act and Freedom of Information and Privacy Act [sic] this information will not be made available.

[94] Deputy Chief Daroux testified that, after he received the administrative review results from Supt. Stuart, he considered a number of factors in deciding what to recommend to the Chief. In his testimony, he stated that he considered the following:

- that the philosophy for discipline in the CPS at the time was remedial rather than punitive;
- the timing of the event, which was over three years before, [49] and the "learning opportunity" to change behaviour would have been lost;
- the events as they unfolded through the reporting to him of the testimony and video;
- Arkinstall's aggressive behaviour, noting that, at the time of his arrest, Arkinstall was a Hells Angels member;
- his belief that this was an issue of poor note-taking and a lack of preparation for court and his knowledge that very few CPS officers had to testify in court;
- the increased degree of gang violence in the Calgary downtown area at the time, which the CPS was dealing with on a regular basis; and
- the absence of a formal complaint.

[95] Deputy Chief Daroux believed he had accumulated enough information—he did not say how or what this was—about the officers' conduct to decide how to proceed. He did not believe a service investigation would yield any new information. He stated that if he

[49] His reference to the event's timing can only refer to the 2008 arrest, not the 2010 testimony or the 2011 court decision, *Arkinstall*. The span between the court's findings in *Arkinstall* and the decision to counsel was by no means lengthy.

had directed a service investigation, he would not have found out anything he did not already know, so he directed that there was to be no service investigation.

[96] He also stated that he formed the opinion that the judge's findings about the officers were not supported by the evidence at trial. He did not share any basis for this view, which he acknowledged was his state of mind from early on and that his view did not change. He testified that he did not feel he had pre-determined the matter. Despite confirming that he did not review the officers' incident notes, did not speak with the officers (or other officers at the scene), and did not read the trial transcripts, he was of the view that the impugned testimony was related to a failure to keep proper notes of the matter and poor trial preparation. He also believed the force used on Arkinstall was reasonable and justified. He did not believe the matter reached the threshold for a formal PSS investigation. He did not consider initiating a section 46.1 recommendation to Chief Hanson. He determined that the appropriate course of action was to counsel the officers involved with respect to note-taking.

[97] On September 4, 2012, Deputy Chief Daroux sent a memo to Supt. Stuart indicating that the review of the Arkinstall matter had been concluded.[50] Deputy Chief Daroux testified that this memo effectively closed the Arkinstall matter as far as the CPS was concerned.

[98] We also heard from Chief Rick Hanson. Chief Hanson testified that he directed Deputy Chief Daroux to conduct an administrative review. He testified that he had met Deputy Chief Daroux sometime before May 2012 and that Deputy Chief Daroux recommended that the two officers be counselled. According to Chief Hanson, this meeting was unusual, as the chief rarely got involved in investigations, but the matter was viewed as serious enough to warrant consulting him. Chief Hanson testified that he had not spoken to the officers, had not read *Arkinstall* or the trial transcripts, and had not viewed the video, as he had left that responsibility to Deputy Chief Daroux. He stated he delegated to and trusted his officers to perform the tasks necessary to complete administrative reviews.

[99] Chief Hanson also testified that he asked Deputy Chief Daroux some probing questions at their meeting, including whether the officers intended to lie under oath; whether, in Deputy Chief Daroux's opinion, there was any intentional or criminal wrongdoing; and whether, in Deputy Chief Daroux's opinion, they had used excessive force.

[50] Record 57.

[100] He said that Deputy Chief Daroux told him that, in his opinion, there was no intentional deception, and that the officers' trial testimony was the result of a lack of adequate incident notes and a lack of preparation for court. As for the use of force, he was told that the force used was consistent with CPS training on resistant suspects, and, while the officers failed to articulate the reasons for the use of force in writing, as required by policy, the matter fell short of any criminal wrongdoing. Accordingly, Chief Hanson testified, Deputy Chief Daroux recommended to him that the officers be counselled.

[101] Given that there was no formal complaint, and given the information received from Deputy Chief Daroux, Chief Hanson testified, he agreed with the counselling recommendation and directed Deputy Chief Daroux to proceed. Chief Hanson acknowledged that this meant the decision to counsel the officers became his decision, as chief. He added that he had considered whether a service investigation was appropriate and determined it was not. He did not, at that point, turn his mind to a section 46.1 notification.

[102] Chief Hanson did not make any notes of his discussions with Deputy Chief Daroux about the Arkinstall matter. He stated that he expected others to complete documentation, which would flow through to him. He added that, had he known the matter would go on and on, he would have kept notes.

[103] The CPC became aware of the matter on February 21, 2012, when Tom Engel, a CTLA member, wrote to the CPC's then public complaint director, Shirley Heafey, and attached *Arkinstall*.[51] In his letter, he asked, "What, if anything, was done about the conduct of these officers in that case?"[52] Shirley Heafey responded on February 27, 2012.[53] She declined to provide any information, referring to privacy concerns.

[104] Shirley Heafey testified that she had an open and co-operative relationship with the CPS, and Chief Hanson in particular. She testified that Chief Hanson always provided her with the information she asked for, whether good or bad. She summarized her attempts to have the CPC's complaints oversight committee and the CPS take the Arkinstall matter seriously and deal with it as a complaint, but her efforts were frustrated by the limited authority she had under section 28.1 of the Act, which limited her to a monitoring role.

---

[51] She was the public complaints director from 2006 to 2015. Before then, she was the chair of the civilian complaints agency for the RCMP, from 1996 to 2006. Several CPS witnesses testified that Shirley Heafey was an effective public complaint director, because she asked tough questions about complaints, investigations, and timelines among other things.

[52] Record 28.

[53] Record 34.

Similarly, she testified, the CPC had no authority to act on disciplinary matters, except where a complaint pertained to the chief himself. Being a statutory body, the CPC was unable to act beyond its jurisdiction, which is set out in section 32 of the Act.

[105] She noted that, under section 32 of the Act, the CPC has the authority to conduct an inquiry into police service matters or the actions of a police officer, but testified that the CPC had never done so as far as she knew. She noted that the costs of an inquiry would be high and that the CPC's budget did not really allow for investigations to be initiated by the CPC.

[106] Heather Spicer is now the executive director of, and legal counsel to, the CPC. She started as the CPC's public complaint director in 2015. She testified only as to the role of CPC and its internal complaints oversight committee, as well as the complaint director role. She confirmed that, like Shirley Heafey, to her knowledge the CPC had never initiated an inquiry under section 32 of the Act.

[107] Heather Spicer expressed concern that the CPC's role in complaint investigations is substantially different from what members of the public, including complainants, believe it to be. She stated that, while CPC can provide recommendations to the CPS in investigations, it has no power to give directions or to require specific steps to be taken. In addition, she expressed the opinion that the limited role complainants have in the complaint process under the Act is unsatisfactory and that, overall, complainant expectations are not met by the process. She added that the provincial public complaint director in JSG's Public Security Division likewise cannot direct police services in investigations or take steps to address inadequacies.

[108] On April 26, 2012, *The Toronto Star* published a news article entitled "Police Who Lie: how officers thwart justice with false testimony", in which the author referred specifically to the CPS and the trial judge's findings in *Arkinstall*.[54] CPS witnesses testified to the Board that the matter got some traction at that point. The article was circulated among the CPS departments, including the office of Chief Hanson, PSS and CPS media relations. A response to the article was discussed at some point, according to testimony by Insp. Light, Supt. McLellan and Deputy Chief Daroux. Insp. Light was the acting superintendent in charge of media relations at the time. It was determined that the officers needed to be advised that their names were in the media. No other steps were taken, as the decision to counsel had been made.

[54] Record 40.

[109] Supt. McLellan testified that, as the superintendent of field operations, she was directed to arrange the counselling of Sgt. Kaminski, who was under her command, to address proper note-taking, but nothing else. She had seen the video of the original incident but could not recall if she saw the video before the counselling occurred. She had not read *Arkinstall*, the trial transcripts or the officers' notes. Insp. Cathy Grant and Acting Supt. Sat Parhar were under her command and she instructed them to conduct the counselling.

[110] Insp. Grant testified that, on May 10, 2012, she and Supt. McLellan counselled Sgt. Kaminski. She acknowledged that she had been instructed to counsel him about adequate note-taking, but did not review his incident notes before doing so. She had seen the video footage before then, and had "skimmed" *Arkinstall*, but had not read the trial transcripts.

[111] On July 12, 2012, Acting Supt. Parhar had Cst. Derrick under his command, and thus was tasked with counselling him about his note-taking. He sent a memo to Deputy Chief Daroux on July 16, 2012, advising that the counselling had taken place. He testified that he had not formally counselled an officer before this. He did not review Cst. Derrick's notes from the incident before doing so. Nor had he reviewed *Arkinstall* or the trial transcripts, although he had seen the video. He was not aware that credibility and excessive use of force were articulated as concerns by the trial judge. He believed the counselling session may have lasted half an hour.

[112] On September 4, 2012, Deputy Chief Daroux sent a memo to Supt. Stuart advising him that Cst. Derrick and Sgt. Kaminski had been counselled "as to their actions and perceptions derived from related court testimony in the Arkinstall matter".[55] He added that he was satisfied with the disposition and "directed" that no criminal or service investigation is warranted at this time."[56] At that juncture, in his view, the matter was closed.

[113] On December 12, 2012, Tom Engel, of the CTLA, sent a letter to a number of people. The addressees included Wendy Moshuk (the provincial complaint director), Chief Rick Hanson, Greg Lepp QC (then the head of Crown), and Shirley Heafey (the CPC's public complaint director).[57] Tom Engel's letter asked that action be taken in the Arkinstall matter because of what he alleged was serious misconduct of CPS officers. He indicated that he had received a response to a freedom of information request. He expressed concern that

[55] Record 57.
[56] Record 57.
[57] Record 62. It is to be noted that Tom Engel did not state he was writing on behalf of the CTLA. The letter appears to be from him personally.

the CPS had not brought the matter to the CPC's attention, and that there had been no civilian oversight in the matter.

[114] Tom Engel also stated that the matter was seemingly being treated as a note-taking problem, disregarding the use of force and credibility concerns articulated by the trial judge. He stated that nothing in the disclosure he had received indicated that the officers were even asked why they made what he called "false" statements. He referred to *The Toronto Star* article mentioned above. The letter added, "Justice demands that this be sent to ASIRT. Will that be done?"[58]

[115] CPS responded through its then lawyer, John Cordeau. The entirety of his December 18, 2012 letter to Tom Engel reads as follows:

> I have been retained by the Calgary Police Service in relation to your letter of December 12, 2012 concerning the Arkinstall case. Suffice to say we categorically reject your conspiratorial commentary and decline your invitation to respond further.[59]

[116] On January 10, 2013, Alan Pearse wrote a letter to a number of recipients, with John Cordeau as the recipient for CPS, Wendy Moshuk at JSG, Greg Lepp QC at the Crown, and Shirley Heafey of the CPC. This letter raised similar concerns on the CDLA's behalf, quoting from the trial judgment and ending by asking, "What, if anything, have you done about this situation?"[60] This letter was shared inside CPS. Emails among the incoming PSS commander, Insp. Grant, Supt. Stuart, Harold Hagglund and Insp. Leggatt resulted in a decision to meet and discuss the matter.[61] After, on December 12, 2013, Alan Pearse, on behalf of the CDLA, sent another letter, "To Whom It May Concern", with copies to a number of individuals, organizations, and media outlets, attaching Ken Westlake's criminal complaint letter of August 20, 2013.[62]

---

[58] Record 62.
[59] Record 66.
[60] Record 70. The letter is dated January 10, 2012, but the evidence confirms this was a slip: the year was 2013, not 2012.
[61] Record 125. Insp. Leggatt had just been assigned to lead an investigative team within the PSS in January 2013.
[62] Record 124. We take note here that, with Ken Westlake's letter attached, there is no evidence that CPS received Ken Westlake's letter until Alan Pearse's letter was forwarded to CPS on December 13, 2013.

[117] The *Calgary Herald* published an article on January 19, 2013 about the Arkinstall matter.[63] It noted that various groups were calling for an independent investigation into the allegations of excessive force and lying. The article quoted Supt. Stuart as saying that CPS had reviewed the decision, the trial transcripts and the video and had "no issue with the officers' conduct during the arrest or their truthfulness in court". The article attributed to him comments to the effect of, as the reporter put it, "the provincial *Police Act* also requires Arkinstall to file a formal complaint with Calgary police, which hasn't been done".[64]

[118] The director of law enforcement was made aware of the Arkinstall matter on December 12, 2012, when Wendy Moshuk, the provincial public complaint director, received Tom Engel's letter.[65] She brought the letter to the attention of the director at the time, Bill Meade, and also forwarded it to Gloria Ohrt, who was then the executive director of the Law Enforcement and Oversight Branch within JSG. Gloria Ohrt then uploaded the letter to the Alberta government's Action Request Tracking System as an action request. In January 2013, Wendy Moshuk received Alan Pearse's letter and linked it to the Engel letter in the tracking system. She made several attempts to have JSG respond to Tom Engel, but it would be some time before this occurred.

[119] Clifton Purvis was appointed in December 2012 as acting assistant deputy minister and acting director of law enforcement, filling the role left vacant by Bill Meade's retirement. Clifton Purvis was therefore very new to his temporary position when Wendy Moshuk brought the Arkinstall matter to his attention in January 2013. Clifton Purvis testified that he had been ASIRT's executive director from its inception in 2007 until he was appointed acting assistant deputy minister, which he said was a temporary, roughly five-month, appointment, only lasting until the position was permanently filled.[66]

[120] When he became aware of *Arkinstall* and the correspondence that the director of law enforcement had been receiving on the matter, Clifton Purvis asked Mark Neufeld, who was at the time ASIRT's executive director of operations, for a briefing note.[67] He asked for

---

[63] Record 76.
[64] Record 76. Of course, as we have already noted, under the Act a police service can initiate its own complaint where it considers it appropriate.
[65] Record 62.
[66] Clifton Purvis is now a judge of the Provincial Court of Alberta.
[67] Mark Neufeld's permanent position at the time was as assistant director of ASIRT, a role he held from 2012 to 2014. He was seconded into that position from the Edmonton Police Service, where he held the rank of Inspector. He is now the Chief of the Camrose Police Service.

the briefing note in order to create a record within JSG and so that he would be informed of the details of the matter and possible courses of action.

[121] Mark Neufeld's resulting briefing note of January 14, 2013 described the matter in detail and offered options for proceeding. These included having Chief Hanson initiate a section 46.1 notification or the director of law enforcement initiating it.[68] The briefing note summarized the trial judge's findings in *Arkinstall*, including his conclusion that the officers' testimony was neither credible nor reliable. Mark Neufeld testified to the Board that he believed it was clear that the Arkinstall matter was within the mandate of ASIRT, as it was a matter of a "serious or sensitive nature", to use the language of section 46.1, because it potentially brought the administration of justice into disrepute. In Mark Neufeld's opinion, it required an independent investigation.

[122] Mark Neufeld testified that, having reviewed the materials that Tom Engel had provided, including *Arkinstall*, the trial transcripts and the incident video, he could not understand how the assessment that the matter was a "note-taking" issue could stand. Mark Neufeld concluded that there had been an unreported use of force, as seen in the video, and that concerns about officer credibility were raised. When viewed side-by-side, the trial transcripts and video pointed to contradictory evidence from the officers. Mark Neufeld also testified that, in his opinion, if he talked to "regular Albertans", they would be uncomfortable with how the matter was dealt with and would think an investigation was warranted.

[123] In 2013, Mark Neufeld advised Clifton Purvis that the option of having Chief Hanson give notice under section 46.1(1) appeared unlikely given the Chief's unwillingness to self-initiate to date. He advised Clifton Purvis that the second option was for the Minister of Justice to direct an investigation on the Minister's own initiative, under section 46.1(2) of the Act.

[124] Having assessed Mark Neufeld's advice, Clifton Purvis directed him to contact CPS, to attempt to resolve the issue and, hopefully, have Chief Hanson initiate a section 46.1(1) notification. Clifton Purvis testified that, as ASIRT's executive director, he would have such

[68] Record 73. It is convenient to recall here the relevant parts of section 46.1 of the Act. Section 46.1(1)(b) of the Act *requires* a police chief to, as soon as practicable, notify the police commission and the minister where, among other things, a complaint is made alleging that there is "any matter of a serious or sensitive nature related to the actions of a police officer". Under section 46.1(2), the minister may, on her or his own initiative, take a number of actions where the minister becomes aware of an incident or complaint described in section 46.1(1). This includes where the minister becomes aware of "any matter of a serious or sensitive nature related to the actions of a police officer". We discuss the section 46.1 aspects of this case later.

informal conversations about investigations with police chiefs in an attempt to resolve issues, and often had these types of discussions with Chief Hanson.

[125] Mark Neufeld telephoned Supt. McLellan on January 23, 2013, to ask her to ask Chief Hanson if he would consider initiating a section 46.1(1) notification. Supt. McLellan was at the time an acting deputy chief, and this is why Mark Neufeld spoke with her. He testified that, based on his conversation with Supt. McLellan, he did not think she had seen the incident video.[69] Supt. Stuart testified that Supt. McLellan had spoken to him about the call and that he, in turn, spoke to Chief Hanson. Supt. Stuart then directed Supt. McLellan to tell Mark Neufeld that there would be no section 46.1(1) notification.

[126] Supt. McLellan phoned Mark Neufeld back the same day and, in what Mark Neufeld testified was a "stilted call", used words to the effect of, "all I have been authorized to say is that the CPS will not be making a section 46.1 notification". Mark Neufeld relayed this to Clifton Purvis in an email that same day.[70]

[127] Supt. Stuart testified that that he did not remember why Chief Hanson decided not to give notice under section 46.1(1). Chief Hanson testified that he did not recall the phone call between Supt. Stuart and Mark Neufeld about a section 46.1(1) notification.

[128] Mark Neufeld, Wendy Moshuk and Clifton Purvis all testified that they were surprised when Chief Hanson decided not to initiate a section 46.1 notification. As far as they knew, no chief had, after being prompted, ever declined to make a section 46.1 notification. The director of law enforcement had never before had to initiate the process with the Minister, because the chief in question always had. This was new territory.

[129] Mark Neufeld noted in his testimony that ASIRT cannot initiate its own investigations. It can only investigate matters referred to it under section 46.1, although it can expand such an investigation where it "becomes aware of a further incident that warrants investigating."[71]

[130] On April 30, 2013, Clifton Purvis responded to Tom Engel's December 12, 2012 letter. He acknowledged the request for a direction from the Minister. He indicated that

---

[69] For clarity, this was Mark Neufeld's impression at the time, based on the conversation. There is evidence that Supt. McLellan had seen the video by that point.
[70] Record 81.
[71] Act, section 46.2(4).

"[m]isconduct of CPS members has not been alleged" and therefore "the ability of [Shirley] Heafey, as the CPC Public Complaints Director, to assist in this matter is very limited or does not exist at all."[72] He added, "Consequently, the matter has not been subject to any oversight independent of the police service."

[131] Clifton Purvis testified that he was concerned that, as the acting director of law enforcement, if he directed the matter to ASIRT through the section 46.1(2) process, he would in practical terms be referring the investigation to himself, as he was soon to return to his role as ASIRT's executive director. This would, in his view, have given the appearance of a conflict of interest or an absence of arm's-length dealings. Given what he believed were the poor optics this would have created, he concluded that the best course was to leave the matter for the new, and permanent, director of law enforcement to decide.

[132] Clifton Purvis also testified that he expected that the new director of law enforcement would, in fact, initiate the section 46.1(2) process. He testified that he considered the Arkinstall matter to be serious but not urgent, as a significant period of time had already passed and it was not a "serious injury or death" situation, which is the kind of matter that ASIRT deals with regularly. It did not, in his view, have the same urgency as such cases, where it is vital to protect the scene or save evidence right away.

[133] Bill Sweeney was appointed as the permanent assistant deputy minister and director of law enforcement in May 2013. Bill Sweeney testified that, soon after his appointment, he met with Clifton Purvis and Mark Neufeld, who briefed him on the Arkinstall matter and other matters. Bill Sweeney had already reviewed materials that Wendy Moshuk had given him about the matter, including *Arkinstall*, the incident video and the trial transcripts. He testified that his opinion at the time was that the matter was within the scope of section 46.1(1), as a matter of "a serious or sensitive nature". He concluded that an investigation by ASIRT was appropriate. He was also of the view that the Minister had the ability to intervene and initiate an investigation under section 46.1(2).

[134] Bill Sweeney testified that he spoke briefly to Chief Hanson at a conference in November 2013. Having reviewed the materials and, after watching the incident video, he realized that there may have been a problem with whether all of the information had been made available to Chief Hanson. He said that he was struck by the fact that Chief Hanson appeared not to have reviewed any of the materials. Concerned that Chief Hanson might have not gotten the whole story, Bill Sweeney suggested that he take a personal interest in the file and review it in detail. He also told Chief Hanson that the matter was not going

[72] Record 101.

away. Bill Sweeney testified that this conversation was brief and conceded that, as a brief conversation at a conference, it was not held under ideal circumstances.

[135] Bill Sweeney also testified that he later learned that Arkinstall's lawyer, Ken Westlake, made a formal complaint on December 12, 2013.[73] A copy of that complaint was provided to Bill Sweeney. Shortly after this, he received a call from Chief Hanson, who indicated that he would be making a section 46.1(1) notification. On January 20, 2014, Chief Hanson sent a letter to Bill Sweeney, giving notice under section 46.1(1).[74] The actual notice, which was signed by Bill Sweeney and Chief Hanson, was issued on February 7, 2014, referring the matter to ASIRT for investigation.[75] It was six years after the original incident occurred and three years since the trial judgment was issued. The referral directed ASIRT to investigate whether or not CPS police officers had assaulted Arkinstall during the arrest, whether Cst. Derrick had committed perjury at Arkinstall's trial, and whether Sgt. Kaminski had committed perjury at that trial.[76]

[136] ASIRT's investigation took over a year, which Mark Neufeld testified was not unusual.[77] ASIRT investigators reviewed *Arkinstall*, the trial transcripts, the incident video, correspondence, notes and other records. Significantly, for the first time since the 2008 incident, Jason Arkinstall, police officers and witnesses were interviewed. Further, it is at this point that the officers' notes were reviewed for the first time. The conclusions and recommendations in ASIRT's March 23, 2016 report were redacted for the purposes of this inquiry, as they arose from a criminal investigation.[78] However, ASIRT's January 17, 2017 media release about the report stated as follows:

> ASIRT executive director, Ms. Susan D. Hughson Q.C., received the complete investigation and upon reviewing it, determined that there were "reasonable grounds to believe an offence or offences were committed".[79]

---

[73] We note here that Westlake's complaint was attached to Alan Pearse's December 12, 2013 letter to CPS. Record 122.
[74] Record 138.
[75] Record 141.
[76] Record 188, page 5.
[77] He testified that ASIRT faced challenges in getting documents from the CPS in a timely fashion, and ultimately not all the documentation requested was received. An unredacted portion of the report indicates that certain documents were requested from the CPS, but were not received in the course of the investigation. ASIRT's report indicates that CPS did not provide the following documents: a March 28, 2011 memo authored by Harold Hagglund, the August 14, 2012 Ken Westlake letter, and the August 31, 2012 Ken Westlake letter. Insp. Leggatt testified that he was aware of the delay in the CPS's document production and offered to increase resources to speed up the process.
[78] Record 188. The report has been redacted by ASIRT.
[79] Record 202. As noted earlier, neither of the two officers was convicted of any offence.

[137] This concludes the summary of the evidence we heard in the inquiry hearing.

CHAPTER 3 - FINDINGS OF FACT

[138] This portion of the report sets out the Board's findings about what happened after *Arkinstall* was brought to CPS's attention. The findings, which are arranged by subject, are based on witness testimony and the inquiry record. We have also carefully considered the written and oral submissions made on behalf of participants and interveners as to the findings of fact. We summarize those submissions only where necessary to explain our findings.

3.1 Calgary Police Service

No evidence of deliberate avoidance of disciplinary action

[139] The terms of reference require us to inquire into "whether any person or entity with responsibilities in connection with policing did, or omitted to do, anything to interfere with, impede, avoid or frustrate disciplinary action" under the Act in relation to the Arkinstall matter.

[140] All CPS witnesses denied doing anything to interfere with, impede, avoid or frustrate disciplinary action in the Arkinstall matter. They also all denied witnessing anyone else within CPS doing anything to interfere with, impede, avoid or frustrate disciplinary action in that matter. All CPS witnesses were police officers at times relevant to the Arkinstall incident and its aftermath.

[141] CPS testimony was consistent with the evidence of witnesses external to the CPS, including CPC witnesses and director of law enforcement witnesses. None of them saw any sign of attempts by CPS to interfere with, impede, avoid or frustrate disciplinary action in the matter.

[142] Counsel for the CPS and for Chief Hanson urged us to expressly find that there was no evidence of deliberate attempts by anyone within the CPS to deliberately interfere with, impede, avoid, or frustrate disciplinary action in this matter.

[143] Counsel for the CTLA and CDLA submitted that none of the detailed information regarding the court testimony was passed on to the Chief, which in their view constituted gross negligence.[80] They commented on the failure of individuals down the chain in the disciplinary process to, from the outset, take obvious investigative steps in the

[80] Written submissions of CTLA and CDLA, page 7.

administrative review, including failing to review notes, video, and transcripts, and argued that this ultimately carried through to the counselling of the officers. These shortcomings were characterized as "efforts to avoid any public scrutiny".[81]

[144] The CTLA and CDLA also criticized the CPS for its failure to treat certain letters as complaints, despite clear language, and for failure to adequately document the investigative steps, meetings, discussions and decision-making that occurred during the administrative review.

[145] The CTLA and CDLA submitted that there was no independent oversight of the actions of the two officers after the *Arkinstall* decision. They submitted that there was institutional willful blindness. Calls for a service investigation went unheeded. Actual investigations and public oversight were avoided.[82]

[146] Having reviewed the testimony and the evidentiary record before us, we find no evidence of deliberate attempts within CPS to avoid, impede, frustrate or interfere with the ordinary course of the disciplinary process under the Act. There were, however, significant shortcomings in CPS's handling of the matter, as set out below.

CPS did not approach the matter reasonably

[147] We readily conclude that CPS could have—indeed, should have—handled the matter very differently. The credibility of police testimony, which *Arkinstall* clearly called into question, goes to the heart of the public's trust and confidence in police. Without that trust and confidence, police cannot expect the public's co-operation and support. Public trust and confidence are, therefore, essential for public order and, more importantly, the rule of law. Hindsight is always clearer, but we do not hesitate to find that, given the material it possessed, CPS failed to diligently and conscientiously handle the Arkinstall matter. A proper investigation may or may not have resulted in disciplinary proceedings for any police officers, but we conclude without hesitation that CPS's failure to properly and fully investigate the Arkinstall matter fell far short of what the public has every right to expect in such a case.

[81] Written submissions of the CTLA and CDLA, pages 8-9.
[82] Written submissions of CTLA and CDLA, pages 3-6.

[148] The serious deficiencies in CPS's handling of the matter can be summarized as follows (noting that we discuss the handling of the matter in more detail below):

- CPS failed to ensure that proper records of the "administrative review" were kept. This was an issue from the outset, from the time the matter landed in the office of the chief and extending throughout PSS's involvement.[83] CPS, including PSS, failed to communicate and document information reviewed, decisions taken, and reasons for various courses of action. CPS had policies about note-taking and report-writing by police officers involved in incidents. Those senior CPS officers involved in the review of this matter should have followed those same policies. Failure to do so undermines good decision-making, legal accountability and transparency. This can harm CPS's interests, the interests of complainants and officers and it is also not in the public interest.

- Witnesses acknowledged that CPS has no policies, and no standard procedures, for administrative reviews. They indicated that administrative reviews could take many forms. It became clear during the inquiry that record-keeping for administrative reviews was not as stringent as it was with formal complaints and investigations. The concrete concerns this raises are illustrated by the challenges CPS faced in ensuring that it produced all relevant documents for this inquiry.

- More fundamentally, it is evident that if a matter is concluded through this nebulous "administrative review" process without charges or a formal disciplinary investigation, as provided for under the Act and PSR, there can be no independent review, or appeal, and there is no civilian oversight.

- Chief Hanson delegated the matter to others, which is not unusual, then relied on those involved to properly inform themselves and advise him accordingly. Yet, of all the senior officers who were actually involved in the review, only one, Insp. Light, testified that she had viewed all of the undoubtedly relevant material, *i.e.*, *Arkinstall*, the trial transcript, the video of the incident, the officers' notes, and the letters to CPS raising concerns. No one spoke to the officers in question during the review. Decisions were made based on incomplete information, and a properly-

[83] We note here that CPS's failure to keep proper records hampered its efforts, which were massive, to produce records for this inquiry in a timely and fulsome manner, noting that CPS invested considerable effort, and was fully co-operative, in doing so.

informed, accurate, picture of the matter did not make its way up the chain to the chief. It is impossible to know whether the chief would have ordered a service investigation if he had been fully informed about the matter.[84] We do know, however, that not only the chief had the authority to initiate a service investigation, as the deputy chiefs and superintendent of the PSS also could have done so. Yet no senior officer reviewed all of the evidence in order to make an informed decision regarding a service investigation. The administrative review simply continued without anyone ever attempting to uncover the full picture.

- Consistent with the preceding observation, members of the so-called "large executive" at CPS very early on formed the view that the matter was only about poor note-taking and preparation for court. We are unable to discern a proper evidentiary basis for so concluding.

  As a result, it is unclear how Deputy Chief Daroux could have reached the conclusion that the trial judge's findings were not supported by the evidence, especially the judge's comments relating to reliability and credibility of the officers' testimony, when he had not reviewed information that would reasonably be necessary to form those views. He did not review the transcripts of the officers' testimony and compare it to the video. He did not review the officers' notes of the incident. He did not speak with the officers or any witnesses. He did not have other information. It is far from clear how, in this light, he could have concluded that the only issues of possible concern were note-taking and lack of preparation for court. We have the same concern about the views expressed by Supt. Stuart and Insp. Light, both of whom saw this as being a note-taking and trial preparation issue only. Only Insp. Light read the trial transcripts and the officers' notes, but no one spoke with either officer or with any witnesses.

- No one at CPS interviewed Arkinstall, the two officers, other CPS officers at the scene or any other witnesses. Some of the executive team at CPS read *Arkinstall*, and some viewed the video, but that is as far as it went, with the notable exception of Insp. Light. By contrast, CPS had in hand the repeated inquiries from Arkinstall's lawyer, Ken Westlake, which explicitly asked whether a criminal—never mind disciplinary—investigation was underway. It is abundantly fair to characterize CPS's responses to these inquiries as a brush-off.

[84] We deal with CPS's approach to the section 46.1 notification later.

- Given that only one of the senior officers involved in the review had anything approaching a fulsome picture, and given the lack of documentation as to how decisions were made, the basis for deciding that this was solely a "note-taking" problem is, to say the least, far from clear. None of those involved could explain their reasoning in their inquiry testimony. They developed what can only be described as tunnel vision about the true nature of Judge Semenuk's concerns. This contributed to the incomplete picture generated by the administrative review. The administrative review undoubtedly should have included a consideration of all of the Court's comments, and should have included a weighing of them in terms of seriousness, based on a more fulsome gathering of other available information and with an open mind. Instead, firm opinions appear to have been formed, at the earliest stages of the review, about what the concerns were, how serious they were, whether there was possible misconduct, and what the appropriate course of action was.

- Having headed down the road of an administrative review, CPS was reluctant to change course despite repeated attempts by Arkinstall's lawyer, the CTLA and the CDLA to have the matter formally explored as a complaint. Intervention by the CPC and director of law enforcement seemed to have had no impact. CPS received very detailed information from a range of sources that ought reasonably to have raised red flags for key decision-makers that a formal investigation was warranted. We are left to infer that only when media attention came to bear, raising the public perception that there were serious misconduct allegations and potentially criminal allegations, did CPS change course.

- CPS's reluctance is illustrated by its responses to letters and other queries about what it was doing. It rebuffed these inquiries, citing privacy concerns, and took the position that there had been no "official" or "formal" complaint. This completely ignored the fact that section 43(6) authorized CPS to initiate a complaint, regardless of whether someone has made an "official" or "formal" complaint. This stance on CPS's part was, at the very least, unfortunate.

- We note here that it was clear from Supt. Stuart's testimony that he understood Ken Westlake's August 31, 2012 follow-up letter to be a complaint of wrongdoing. As PSS's superintendent, he had the authority to treat Ken Westlake's letters as a "complaint" under the Act, but did not. Harold Hagglund, as counsel within PSS, also could have forwarded Ken Westlake's letters to PSS's inspector in charge, but did not do so. (There is no indication in either case that the fact that the deadline for a

conduct complaint under that Act had passed influenced anyone at CPS to not forward the matter to PSS or, later, to not give notice under section 46.1.)

- Given the communications throughout 2012 and 2013 from Arkinstall's lawyer, the CTLA and the CDLA, the CPS should have, in light of the material provided to it and the concerns expressed, initiated a service investigation. CPS has discretion under the Act about whether to internally initiate a complaint, but all of the indicators reasonably, clearly, pointed to the need for a service-initiated complaint and investigation.

- We are driven to note that some of CPS's responses, including from its then outside counsel, to individuals and entities about the Arkinstall matter on occasion did not display the degree of professionalism and respect the public would expect from its police service.

[149] We note here that CPS submitted that we ought not to criticize CPS personnel, including Deputy Chief Daroux, for concluding that the Court's adverse credibility finding in *Arkinstall* stemmed from poor note-taking. CPS contended that this view was ultimately proved correct in the criminal trial of Cst. Derrick. It argued that Deputy Chief Daroux's lifetime of professional policing experience and expertise allowed him to reach the conclusions he reached. We do not see how the outcome of Cst. Derrick's trial for assault bears on what the appropriate internal course of action could or should have been in 2011. Professional experience and expertise are important but meaningful, acceptable outcomes require that they be based on an appropriate evidentiary basis in each case. Decisions based on expertise and experience alone necessarily involve assumptions about relevant facts, which is why the public, quite reasonably, expects police to investigate, to acquire relevant evidence and only then decide whether or not to lay charges.

[150] We also note here another concern, one that has been an issue before the Board of late, is the manner in which CPS and other services define allegations for investigation after receiving a complaint. We have observed a pattern of narrowing down and restricting allegations, and therefore investigations, that an observer might think is calculated to leave as little exposure as possible for the officer. The result is that the true substance of complaints may sometimes not be completely addressed, or not addressed at all, which is unsatisfactory to the complainant and may result in appeals to the Board.

Could CPS have initiated a formal complaint investigation?

[151] Witness testimony confirmed that, beginning with the initial review of *Arkinstall* in March 2011 through December 2013, members of CPS's large executive and PSS were of the view that there was no formal complaint upon which they were required to act. When Alan Pearse sent a letter in December 2013, attaching a copy of Ken Westlake's letter of complaint dated August 20, 2013, that was the first time that CPS acknowledged that a complaint under the Act had been made.

[152] As we discuss below, earlier correspondence, including correspondence from Arkinstall's lawyer, had unambiguously raised serious concerns about the conduct of CPS officers. Yet senior CPS management did not see these as "complaints", perhaps because the word "complaint" was not used. CPS's witnesses, including Deputy Chief Daroux, Supt. Stuart and Chief Hanson, testified to the inquiry that there was no official complaint until CPS received Alan Pearse's December 12, 2013, letter which enclosed an August 20, 2013, letter to CPS from Arkinstall's lawyer.[85] There is evidence that senior CPS management considered that CPS had no obligation to initiate an investigation unless an outside complaint had been made. We note from the testimony that other services did not interpret their responsibility under section 43(6) so narrowly, and indeed endeavored to honour the intent behind the Act in this regard.

[153] Section 42.1(2) of the Act sets out who may make a complaint about the conduct of a police officer: a person to whom the conduct complained of was directed (or an agent of that person); a person who was present at the time and witnessed the conduct; and a person who was in a relationship with the person to whom the conduct was directed and who suffered loss, damage, distress, danger or inconvenience as a result of the conduct.[86] The same provision stipulates that a "complaint" must be in writing, must give the complainant's full name, the complainant's contact information, the full name of any agent for the complainant, the name of the police officer complained about (if known), the date of the alleged conduct (if known), and a description of the incident that gave rise to the alleged conduct.

[85] The evidence clearly indicates that CPS did not receive the August 20, 2013 letter until it was enclosed with Alan Pearse's December 12, 2013 letter. The reason for this is not clear. We note here that there is no evidence that Chief Hanson was aware of the Westlake correspondence at the time.

[86] Third parties at one time could complain about police conduct. This included professional groups like the CTLA and CDLA, as well as civil liberties organizations and community groups. The Act was amended effective in 2011 to eliminate third-party complaints. We make recommendations about this later.

[154] The Act does not require a form to be filled out for something to qualify as a "complaint". We take notice of the fact that, while many Alberta police services provide complaint forms for individuals who wish to complain, they also accept complaints by way of email or letter. In this case, for example, CPS treated the August 20, 2013, letter from Arkinstall's lawyer as a complaint.

[155] The testimony of CPS witnesses about what, in their view, constituted a "public complaint" under the Act, and as to why certain letters were not treated as complaints, displayed a lack of understanding about or consensus on what constitutes a "complaint". Their testimony also displayed a lack of consensus on the relevant CPS policy and procedures that should have been followed.

[156] Insp. Light, for example, testified that during her time in PSS no single person was designated to make the ultimate decision on whether correspondence received was a complaint. She indicated that sometimes correspondence was unclear, and that this would be discussed at file review meetings. Several individuals and organizations brought concerns about officer conduct to the attention of senior management at CPS over time, yet there is no indication in the material before us that CPS ever reviewed them to clarify whether a complaint as defined in section 42.1 had been made. Some CPS witnesses acknowledged, in hindsight, that they could and should have viewed various letters as complaints in the Arkinstall matter.

[157] CPS had in its hands material that clearly could have been treated as initiating a complaint within the meaning of section 42.1. Moreover, reasonably viewed, the same material could have been treated by CPS as sufficient grounds to initiate its own investigation under section 43(6) of the Act. The Board has seen other forms of correspondence–less clear and direct, for example, emails with weak, non-specific comments about an officer–being treated as complaints by other police services. Further, the Board has been involved in appeals in which some services have initiated formal service investigations of their own accord where warranted.

[158] Regarding whether there was an outside complaint to CPS, we note that, in addition to possessing *Arkinstall* and the incident video, the CTLA wrote to the CPC on February 21, 2012, asking what was being done about the officers involved. This was not

treated as a complaint, since the CTLA and the letter's signatory, Tom Engel, did not meet the Act's definition of a person who can make a complaint.[87]

[159] CPS also later received an August 14, 2012, letter from Arkinstall's lawyer, Ken Westlake. The letter enclosed *Arkinstall* and the trial transcripts, expressly raised conduct allegations and asked what steps had been taken to investigate the officers. The letter also suggested there might have been criminal conduct in relation to the trial testimony. Given its contents, this letter from Arkinstall's lawyer clearly could have been treated as a complaint, but it was not.[88] CPS instead responded by stating that privacy laws precluded disclosure of any information, including about "past, current or pending internal and criminal investigations."[89]

[160] CPS received a December 12, 2012 letter from Tom Engel, which was also sent to the CPC, the Crown, and the provincial public complaint director. The letter asked that ASIRT be requested to investigate the matter. CPS did not treat this as a complaint, since Tom Engel did not have standing under section 42.1.[90]

[161] Setting aside CPS's undoubtedly formalistic approach to whether a "complaint" had been made, this same material, and other knowledge that CPS possessed, could have formed the basis for a complaint initiated by CPS on its own motion. CPS had plenty of information available to it, had it assessed that information, raising concerns about the credibility of the officers' testimony. It also possessed information and allegations about alleged assault by CPS officers. In addition to the various letters and accompanying material submitted by Arkinstall's lawyer, Tom Engel and Alan Pearse, CPS had access to *Arkinstall*, the incident video, the trial transcripts and the officers' notes of the incident. Some individuals within CPS appear to have realized that aspects of the situation warranted deeper examination. It is not a stretch by any means to suggest that there was ample material that should have properly caused CPS to initiate and investigate a complaint under section 43(6). It did not do so.

[162] It is helpful to review here some of Mark Neufeld's testimony related to complaints. In his view, there should be an independent third party or entity deciding how to handle incoming complaints, including serious and sensitive matters. He was of the view that some

---

[87] Records 30 and 45. We note here that, on July 9, 2012, the CTLA made an access to information request to CPS for all records relating to CPS's response to *Arkinstall* and to the *Toronto Star* series, "Police Who Lie", which cited the Arkinstall matter as an example of cases in which police testimony had been called into question.
[88] Record 52.
[89] Record 54.
[90] Record 62.

of the early letters that had raised the Arkinstall matter were properly considered to be "complaints", and should have been treated as such. His view is that, where there is a *prima facie* concern about an incident, debating whether there is a "complaint" or not does not serve the public interest. It only causes delays when it is in everyone's interest to investigate and resolve the matter in a timely way. He believes that, where there is an issue of public trust, a police chief should use his or her power to initiate a complaint because it is the right thing to do and the cleanest approach. He also noted that timeliness is important so that evidence is preserved.

[163] We acknowledge that police services must exercise a degree of judgment when assessing whether correspondence they receive constitutes a "complaint". In this case, we conclude, CPS undoubtedly, and regrettably, took a narrow and formalistic approach to that determination. We concur with the observation expressed by Mark Neufeld, now the Chief of the Camrose Police Service, that, when a matter is ambiguous, a police service should err on the side of caution and investigate concerns or allegations as a complaint. Consistent with this, the Board's view is that, where serious allegations against a police officer are brought to the attention of her or his police service, but no formal complaint has been made, a chief should err on the side of caution and initiate a complaint under section 43(6) without hesitation.

Concerns about the "administrative review"

[164] Instead, what ensued in this case was the so-called "administrative review". This has no evident legislative basis; the Act does not expressly authorize such a process. Nor did CPS have any policies or procedures delineating when, how or why such reviews were to be conducted. The evidence suggests that administrative reviews were conducted in an *ad hoc*, highly informal and poorly-documented fashion.

[165] In this case, the evidence is that none of the individuals directly involved in this administrative review, or in the chain of command pertaining to the disciplinary aspects of the matter, had a complete picture of the situation. Again, witness testimony confirms that, of all of the senior CPS officers involved, only a single one of them—Insp. Light—took the trouble to review *Arkinstall*, the trial transcripts and the video. This could only result in none of those involved having anything approaching a reasonable basis on which to properly, prudently, address the concerns raised in *Arkinstall*.

[166] It is also troubling that not even Insp. Light reviewed the officers' notes, even though CPS had from a fairly early stage decided any concerns were about note-taking and

poor trial preparation. Nor did Insp. Light or any of the other senior officers involved interview the officers in question.[91] Nor is there any evidence before us to suggest that, with the one exception noted above, anyone involved in the review spoke to any other officers, or witnesses, about the original incident or about what transpired at Arkinstall's trial.[92] This did not prevent all involved from concluding—on what basis we cannot tell—that poor note-taking and poor trial preparation were to blame. The evident lack of any interest in looking into the court's criticism of the use of force is equally difficult to explain.

[167] This table illustrates the situation in advance of CPS's conclusion of the administrative review, with the marks indicating whether the stated material was reviewed by the named individuals:

Witness	Judgment	Transcript	Video	Notes	Officers Interviewed
CPS					
Hanson	X	X	X	X	X
Daroux	✓	X	X	X	X
Stuart	✓	X	✓	X	X
McLellan	X	X	✓	X	X
Light	✓	✓	✓	X	X
Grant	✓	X	✓	X	X
Parhar	X	X	✓	X	X
CPC					
Heafey	✓	✓	✓	X	X
DLE					
Moshuk	✓	✓	✓	X	X
Purvis	X	X	X	X	X
Sweeney	✓	✓	✓	X	X
ASIRT					
Neufeld	✓	✓	✓	✓	✓

[91] We acknowledge that concerns might be raised if they were interviewed before a complaint had been made. There are, after all, rights to be protected and, in the ordinary case, processes to be followed. The fact that no one at CPC or the director of law enforcement reviewed the notes or interviewed the officers is irrelevant, given the roles and authority of the CPC and director of law enforcement, which are at best incidental as regards the discipline framework under the Act. We also note that the director of law enforcement ultimately did prevail on CPS to give notice under section 46.1, and did not need to see the notes or speak with the officers to decide that the notification was warranted.

[92] Harold Hagglund, in-house CPS counsel, did speak with the Crown counsel who prosecuted the Arkinstall matter. CPS witnesses testified they were not required to obtain statements from the officers or to interview them, as there was no service investigation.

[168] There is, again, no evidence to explain on what basis everyone involved could reasonably have concluded that this was solely about poor note-taking and court preparation. This is difficult to explain given the trial judge's concerns in *Arkinstall* about the credibility and reliability of police testimony and excessive use of force. The information that went up the chain of command, from Insp. Light at PSS, to Supt. Stuart, to Deputy Chief Daroux, and ultimately to Chief Hanson, did not provide a complete picture of what had transpired during the arrest or at trial.[93]

[169] We are able to express this view thanks to the testimony we heard and, to a far lesser extent, the records before us. We say this because the review was, to say the least, poorly- and sparsely-documented. No file number of any kind was assigned and such sparse documentation of the administrative review process as was created was not centrally managed or retained. Meetings, conversations and email communications during the information-gathering and decision-making process were inadequately documented or not documented at all. Although some documents created or received during the review were uploaded to IAPRO, this was not mandated.[94]

[170] Several CPS witnesses testified as to their recollections, assisted by notes taken at the time. Unfortunately, some were unable to read their notes with certainty many years after the fact. Often the notes were so scant it was unclear what had been discussed or decided. In some instances, CPS witnesses were unable to recall, even with their notes, the specifics of what had transpired. Some of them had no notes of meetings, conversations or decisions, and there were examples of this right up the chain of command.

[171] There are numerous CPS documents, including memos, contained in the inquiry record that have no date, no clear authorship and no signature. It was unclear when some documents were sent, or whether they were in fact even sent. One example of the poor documentation is the memo purported to have been written by Supt. McLellan. Again, she did not recall ever having seen it, let alone having drafted it, and, based on its wording, she testified she did not believe she drafted it at all.[95]

---

[93] That is not to say that no one at the CPS viewed *Arkinstall*, the trial transcripts and the incident video. The difficulty is that those who did so, Deputy Chief Stooke and Harold Hagglund, were not in the chain of command. It is noteworthy that both were of the opinion that a service investigation was warranted.

[94] Setting aside the accountability and transparency concerns that the review's poor documentation raises, we note that CPS effectively had to construct a file for the review in order to respond to its document production obligations for this inquiry.

[95] Records 43 and 44.

[172] Related to this concern is the concluding memo sent by Supt. Stuart to Deputy Chief Daroux.[96] The signed memo, which we can reasonably infer was the version Deputy Chief Daroux received, was silent as to Supt. Stuart's view that the issue was about lack of preparation, with no intent to mislead the court. It was also silent about the Crown having been contacted. It is striking that, after a year-long fact-finding "administrative review", the memo was devoid of any information about what steps were taken, what the review uncovered, and of any conclusions about what might have happened. The only aspect of the memo that approaches a substantive contribution is the statement that the one-year complaint period under the Act had, after the year-long administrative review, elapsed. Nor did the memo make any recommendation about the way forward, leaving it to Deputy Chief Daroux to give direction.

[173] Another concern with the administrative review approach, at least in this case, relates to the chain of command. The chain of command in this matter was complicated and, we conclude, did not unequivocally make any one senior officer accountable for adequately reviewing the matter. The chain of command issues, we conclude, partly explain how certain aspects of the case were not fully addressed until January 2014.

[174] The chain of command was complicated from the outset. Chief Hanson directed Deputy Chief Daroux to undertake the administrative review and Deputy Chief Daroux then directed Supt. Stuart to move ahead with it. Supt. Stuart then tasked Insp. Light with the review, and Insp. Light looked to PSS staff to do the work. While each of these individuals acquired some information about what had transpired during the arrest and in court, none of them had the whole picture. More importantly, none of them were given, or assumed, responsibility for having as fulsome a picture as possible of the events before reaching any conclusions, in order to effectively delegate, or to report back up the chain of command.

[175] These aspects of the administrative review will, if followed in future, create significant problems. Here, opinions were formed at the earliest stages of the review about what the concerns were, how serious they were, whether there was possible misconduct, and what the appropriate course of action was. CPS's approach to the review, such as it was, contributed to the view formed early on that this was only about poor note taking and preparation for court. Given the material actually available, and the absence of any information contradicting that material, the basis for this conclusion is far from clear, but a systematic, diligent review, involving further inquiries, could have avoided the tunnel vision that CPS senior management developed.

[96] Record 36.

[176] The CPS's decision to pursue an *ad hoc*, ill-documented review, without supporting policies or procedures, and without a clear chain of command, raises real accountability concerns. Administrative reviews of this kind were not reported to the public complaint director, and thus were not reported to the CPC, as is required in the case of service investigations. This runs counter to the spirit of the role of the public complaint director and commission to provide a form of oversight over how CPS deals with disciplinary matters.

[177] Nor are decisions made after such an administrative review subject to oversight by the Board. Administrative reviews are not mentioned in the Act, and a chief's decision based on such a review is not subject to oversight by the Board. We have no oversight authority unless a police chief has disposed of a complaint under section 45 of the Act. The result is that there is no independent oversight of allegations or concerns dealt with through an "administrative review".

Inadequate preparation for the officers' counselling

[178] Given the scope and outcome of the administrative review, the two senior CPS officers who were directed to counsel each of the two officers were tasked only with addressing the adequacy of their note-taking. Neither of the senior officers was given any underlying material in order to properly prepare for the counselling. Neither of them reviewed the officers' notes in question or otherwise informed themselves in detail about the specific issues surrounding the officers' conduct. This adds to the impression that the counselling was a mere formality and, of course, it did not touch on issues of credibility or reliability of testimony, or the potentially excessive use of force commented on by the trial judge.

Issues surrounding serious incident reporting

[179] Section 46.1(1)(b)(ii) of the Act requires a police chief to, "as soon as practicable", notify the police commission and the Minister where a "complaint" is made alleging that there "is any matter of a serious or sensitive nature related to the actions of a police officer."[97] (We note that the CPS protocol now refers to "matters or complaints".)

[97] Section 46.1(1)(a) also requires a police chief to, "as soon as practicable", notify the commission and the Minister of an incident involving "serious injury to or the death of" any person that may have resulted from the actions of a police officer.

[180] The evidence before us suggests that this provision may have been treated as discretionary in this instance. It is not. It is mandatory: the Act says the chief "shall" notify the commission and Minister as soon as practicable.

[181] The CPS did not give notice under section 46.1 notification until it considered that an official "complaint" had been filed. Such a complaint was not received, CPS witnesses testified, until December 12, 2013.

[182] CPS's evidence suggests that it interprets section 46.1(1) to mean that notice cannot be given unless there is a formal outside "complaint" about an officer. This is untenable, since a chief undoubtedly has authority under section 43(6) to lay a complaint on his or her own motion. If a chief concludes, based on information brought forward or based on internal information or inquiries, that a matter qualifies as a complaint and then initiates a complaint, that is adequate for section 46.1(1) purposes. If the chief then concludes that the complaint involves a matter of a serious or sensitive nature, referral to the Minister is mandatory.

[183] It is also helpful to note here Mark Neufeld's testimony about the interpretation and application of section 46.1. He testified that Alberta's police services interpreted and implemented section 46.1(1) in varying ways. He testified that, in his experience, the CPS was slower to refer matters to the Minister under section 46.1(1) than other police services.[98]

[184] We conclude that, had CPS recognized any of the above-referenced letters as a formal complaint, or had it initiated a complaint based on an appropriate analysis of the available material, the matter readily could have been seen—as CPS ultimately did see it—as involving a matter of a "serious or sensitive" nature. The referral to the Minister would then have occurred in a much more timely way than it did, some three years after *Arkinstall* was issued.

3.2 Calgary Police Commission

[185] There is no evidence to suggest that the CPC or any of its employees or commission members did anything to interfere with, avoid or frustrate disciplinary action under the Act, in relation to the Arkinstall matter.

[98] It is also noteworthy that ASIRT asked for but did not receive all of the documents it requested from the CPS. This may have been due in part to poor record-keeping.

[186] The CPC's public complaint director, in the Board's view, did everything within her authority under the Act to have the Arkinstall matter investigated. However, her authority was so limited that there was little she could do beyond letter-writing and conversations to move the matter forward. She had the power to monitor disciplinary complaints, but no power to act upon problems without a complaint being in progress.

[187] The limits of the CPC's authority, including that of its public complaint director, were acknowledged by several participants and interveners to the inquiry in their written submissions.[99] It was submitted that the CPC has no power under the Act to initiate a complaint, investigate a complaint, direct the chief to initiate a complaint or advise the chief or the director of law enforcement to make a section 46.1 notification.

[188] Likewise, there was little the CPC, as an oversight body, could do to move the matter along. Although CPC can provide recommendations to the CPS in investigations, it has no power to give directions or to require specific steps to be taken.

[189] The CPC has no authority under section 31 of the Act to insist on a service investigation, or investigative steps, no role in investigations, and no investigative power of its own. The CPC has no power under section 46.1 to notify the Minister of a serious matter, and no statutory relationship with the director of law enforcement in the sense of reporting problems within CPS. Its power to initiate an inquiry under section 32 was not exercised; this was reportedly due, in part, to a lack of staff and financial resources to undertake an inquiry. CPC also submitted that its section 32 jurisdiction is limited and that this is a factor in its not initiating section 32 inquiries.

[190] The limited role the CPC, like all police commissions, has in the complaint process under the Act is unsatisfactory to public complainants and provides no real oversight of the disciplinary process.

3.3 Director of law enforcement

[191] The provincial public complaint director in the JSG's Public Security Division also cannot direct police services in investigations or take steps to address inadequacies. This role has essentially the same limitations as CPC's public complaint director.

[99] Written submissions of CPC paras 11-15; written submissions of the CTLA and CDLA; CPS reply submissions, paragraph 15(e).

[192] Also, regarding the JSG, the director of law enforcement became involved in the Arkinstall matter late in the day. There is no evidence to suggest that anyone within the director of law enforcement did anything to interfere with, avoid or frustrate disciplinary action under the Act, in relation to the Arkinstall matter.

[193] The Arkinstall matter was not brought to the attention of the director of law enforcement until December 2012.[100] The matter was brought to the attention of the acting assistant deputy minister, by the provincial complaint director, who, upon receipt of correspondence, assembled and posted all the incoming documentation on the matter to an internal information management resource. The acting assistant deputy minister took over a very large and diverse portfolio–whose role, in part, included acting director of law enforcement–at a time of upheaval in the department as a result of a changing of the guard, and a prison strike in Edmonton, requiring a huge time commitment by everyone in the department. Nonetheless, when apprised of the correspondence the department had received, he took immediate steps to inform himself of the facts and to determine possible courses of action.

[194] He requested and was provided with a comprehensive briefing note, suggesting two possible courses of action, one being that he initiate a section 46.1 notification. He did not. It was reasonable for him to conclude that it would be inappropriate for him to initiate the section 46.1 notification. The ministry had never previously taken that step, he was in the role temporarily, and he would be returning to his role as executive director at ASIRT shortly, thus referring the matter to himself. He opted instead to attempt to have the notification made by the CPS, as had always been done.

[195] As soon as the permanent appointment of the assistant deputy minister was made, the acting assistant deputy minister met with and briefed him on the Arkinstall matter, emphasizing that action was required. We have described above how CPS ultimately acquiesced and gave the section 46.1 notification. We find that nothing either the acting or permanent director of law enforcement did causes concern.

3.4 ASIRT

[196] ASIRT was not directed to conduct an investigation until February 7, 2014. Again, under the Act, it has no power to initiate investigations in its own right. The ASIRT investigation was thorough and its report was timely. There is no evidence to suggest that anyone at ASIRT did anything to interfere with, avoid or frustrate disciplinary action in the

[100] Director of law enforcement's written submission, para 5.

Arkinstall matter. To the contrary, ASIRT took the investigation further than anyone had to date. Its investigation included reviewing *Arkinstall*, the transcripts, the video, the officer notes, correspondence and memos, and ultimately, interviews of Jason Arkinstall and the subject officers. ASIRT was the first entity to look at all of the evidence in the matter and to draw informed opinion and charges were laid as a result.

CHAPTER 4 – RECOMMENDATIONS TO IMPROVE POLICE OVERSIGHT

[197] In the second part of the terms of reference, the Minister directed that the Board "may make findings and recommendations relating to any specific or general matters that arise from the Inquiry." In this part of the report we make specific recommendations to CPS for improvement of its handling of complaints or concerns about the officer conduct. We also make general recommendations aimed at significantly improving police oversight in Alberta.

[198] Our broader law reform recommendations proceed from the undeniable fact that Alberta's oversight scheme for disciplinary misconduct is dated and weak, and that a root and branch review is needed. Submissions regarding the need for a full review and reform were received by the inquiry from the CPS, the CPC, ASIRT, the CTLA, the CDLA, Chief Hanson, and ACPS. This view is shared by a broad spectrum of observers, including municipal police chiefs, police unions and defence counsel associations.

4.1 Recommendations made to us by participants and interveners

[199] The recommendations received in the course of the inquiry and through the written submissions of participants and interveners are set out below in summary form.

Recommendations by CPS

[200] CPS counsel acknowledged that the inquiry testimony highlighted areas of weakness in CPS's approach to documenting matters and record-keeping.

[201] Regarding its own policies and procedures, CPS's submissions mention the need for better documentation for factors considered in its decisions, including articulating why CPS decides to not itself initiate its own complaint (what CPS calls a "service investigation"), with appropriate documentation of decisions. It mentions the need to segregate and manage records of counselling. It also mentions the need to have a better identification system for documents saved to its electronic filing system. More substantively, it acknowledges the need to clarify how decisions are made to distinguish between complaints, service investigations and criminal proceedings. There is mention of the need for a mechanism for screening criticism in judicial decisions. CPS also refers to the need for quicker handling of possible section 46.1 notifications.

[202] Regarding amendments to the Act, CPS mentioned: the need for clarification or expansion of section 46.1 of the Act regarding when notifications are required; clarification of the word "serious" in section 45(4) of the Act; increased levels of police training and support; and a more collaborative less adversarial process.

Recommendations by CPC

[203] CPC's submissions recommended that the government consult the public and other stakeholders regarding changes to the Act. It also supports the recommendations made in Ontario by Justice Tulloch. For CPC, foundational principles of an improved system should include these: articulation of roles and mandates; accessibility to the public and ease understanding; encourage participation by marginalized groups; provide proper funding and administrative support; investigate in timely fashion; participants to track and report on performance.

Recommendations by director of law enforcement

[204] The director of law enforcement stated that part of the director's role is to advise the Minister directly on statutory issues, such that it was not appropriate to make recommendations. The director did, however, make two non-statutory recommendations. He recommended that there should be a coordinated provincial policy for police services' responses to judicial criticism (with the agreement of federal and provincial prosecutors) and assessment of body-worn cameras as a potential means of monitoring police interactions with the public. (On the latter, he acknowledged that this would require assessment of, and policy development for, privacy issues, data storage, disclosure and other technical issues.)

Recommendations by ASIRT

[205] Regarding any changes to the Act as it affects ASIRT, ASIRT noted that, while the recommendations made by Justice Tulloch may provide a starting-point for discussion, that report made recommendations specific to Ontario, and were based on a different model of civilian oversight of police. While those recommendations may serve as a starting point here, caution is needed. Caution is also needed regarding some parties' recommendations for changes to ASIRT's workflow and reporting relationships. ASIRT argued any such changes could fundamentally alter the model on which ASIRT was founded and on which it has operated for ten years. Any such changes would be wide-reaching and should only be undertaken after extensive study.

Recommendations by CTLA and CDLA

[206] These groups submit that any recommendations for change should suggest a new process that ensures reasonably expeditious proceedings from initial complaint to final disposition and involves truly independent investigations. They argued for a complete review and reform of Alberta's oversight of police conduct. They contended that ASIRT should be authorized to self-initiate a section 46.1 investigation, with section 46.1(b) being clarified to require a chief to notify the relevant police commission (and the Minister) where the chief is aware of any matter of a serious or sensitive nature related to a police officer.

[207] They suggested that Alberta should have an independent police oversight body, with all complaints being investigated through a provincial unit. They argued that the Act should be amended to re-instate third-party complaints, by repealing or amending section 42.1. Another change would be to restore the right of appeal to the Board from decisions to treat misconduct as "not of a serious nature" (by repealing section 45(4.1) of the Act). In addition, the one-year time limit in section 43(11) for the bringing of complaints should be repealed, or there should be authority to allow time extensions.

[208] Crown counsel should be required to report judicial criticism of police to the director of law enforcement, the Minister and the relevant police chief.

[209] Police commissions should have the power to order a chief to investigate a complaint and to report to the director of law enforcement. There should be a transparent process for appointing police commissioners.

Recommendations by Crown

[210] Many participants recommended that the Crown should be required to report judicial criticism of police officers to the director of law enforcement or the relevant police chief. The Crown submitted that the Board does not have any authority to make recommendations regarding the Crown.

[211] The Crown recommended that there should be an independent investigative body for reasonable complaints of potential criminal conduct falling outside of ASIRT's mandate, with authority to lay charges against officers. It also suggested there is a need for a clear legislative or policy guideline to effectively screen complaints to ensure those responsible are not inundated with frivolous and vexatious complaints.

Recommendations by witnesses

[212] Deputy Chief Stooke recommended that there be a no-fault system, emphasizing alternative dispute resolution, which encourages self- and peer-reporting, in order to determine quickly what went wrong during an incident, and to take immediate remedial measures, all of which would make for better policing. He believes that disciplinary measures, including counselling, should be remedial not punitive, to help improve future performance. For example, protection of officers by virtue of involuntary statements impedes meaningful discussions with officers after incidents, and limits discussion of immediate remedial measures. This is problematic, causes discoverability issues and delays correction.

[213] He also suggested that police should not dictate what the disciplinary system looks like. Rather, they are one of the stakeholders, in addition to the public, who should be consulted in a review of the Act.

[214] Wendy Moshuk stated that the high level of deference to chiefs undermines oversight objectives, and impedes commissions. She said an independent body should be established to address day-to-day complaints. She further recommended that police commissions should be given the power to direct section 46.1 notifications, third parties such as the CTLA should be permitted to make complaints, as they have made meaningful and important complaints in the past, and there should be a duty on the Crown to report judicial criticism.

[215] Chief Hanson recommended that police recruits should be trained provincially, so that training is consistent across the province. This could fix problems routinely identified in the complaint process, and ultimately reduce the number of complaints. He also stated that body-worn cameras should be used by all officers on active duty.

[216] Mark Neufeld made several recommendations. He stated that, if there is an incident of concern to the public or a matter that brings the administration of justice into disrepute, but there is no complaint, a police service should err on the side of caution and conduct a service investigation. He agreed with others that the language of section 46.1 should be clarified, so that notification is available even if no formal “complaint” has been made to the service. He also stressed the need for timely notifications under section 46.1. Last, he recommended that there should be a means to independently screen complaints, as there is a disparity between chiefs of police as to how they handle complaints. Consistency is needed.

[217] Judge Purvis recommended that ASIRT be given the authority to initiate investigations, as it already has the ability to expand an investigation once it is assigned. He also recommended that ASIRT should report to "legislative counsel", instead of the director of law enforcement, to maintain independence.[101]

4.2 Board recommendations

[218] Our terms of reference authorize us to make recommendations relating to any specific or general matters that arise from the inquiry. This part of the report makes recommendations to CPS for improvement of its handling of complaints about its officers' conduct. Later, we make general recommendations aimed at significantly improving police oversight in Alberta.

Recommendations relating to the Calgary Police Service

[219] Many of the recommendations below relating to CPS may also apply to the other Alberta police services that are subject to Part 5 of the Act. We are not suggesting any of them has inadequate or inappropriate policies, procedures or practices.[102] This inquiry merely offers an opportunity, pending reform, to support both CPS and other services in ensuring they implement best practices in discharging their disciplinary responsibilities under Part 5 of the Act.

Training for CPS professional standards personnel

[220] This inquiry underscores the need for CPS and other services to ensure that complaints are investigated by fully-trained professional standards personnel. A significant feature of CPS's handling of the Arkinstall matter—a feature we hope is unique—is that the "administrative review" was to a large extent handled by executive officers within CPS, not line PSS personnel. Steps that the "administrative review" investigation should have taken were not pursued. While this might in part have been due to the absence of clearly-articulated procedures and processes at the time, obvious investigative steps were overlooked at various stages of the process. While we acknowledge that the reasons for this are unclear, we raise the training issue to guard against similar defects in the future. Fulsome training for professional standards investigators, clear lines of authority and

[101] The Board understands that "legislative counsel" may be intended to refer to the Legislature.

[102] To be clear, we have not reviewed the policies, procedures or practices of any other service. Where we make a recommendation that is stated to apply to the other services, we do so simply to assist them in ensuring they continue to follow best practice.

responsibility, and policies and procedures for conducting efficient and effective investigations are all necessary, and indeed, vitally important.

[221] We make this observation mindful of the Board's civilian oversight mandate. Although the Court of Appeal has not definitively established when that mandate may be triggered, it has spoken of investigations that are tainted, flawed, grossly inadequate or compromised. When we send a matter back for further investigation, or a new investigation, we are mindful of the burden this places on the service, the complainant and the officer. The best way to avoid this is to ensure that a full and proper investigation is done in the first place.

Recommendation 1: CPS should ensure fulsome training for all professional standards investigators and personnel in order to ensure high-quality, thorough investigation of complaints. This recommendation also applies to all police services that are subject to Part 5 of the Police Act.

Responsibility for CPS initiating complaints

[222] Our review of CPS's policies raised concerns about the state of its process for deciding when a service investigation—meaning a complaint initiated by CPS itself—is appropriate. There does not appear to be any policy or protocol for making or documenting such decisions. The process must, of course, be consistent with the Act, *e.g.*, the Act's definition of a "complaint", and the PSR's definitions for the various categories of misconduct. There needs to be clear responsibility and protocol within PSS for making these decisions.

[223] There is also a need for better documentation of these decisions, improved guidance on who makes these decisions, and internal checks and balances to guard against poor decision-making in this area.

Recommendation 2: CPS should develop, or improve, its policies for deciding when it is appropriate to initiate a service investigation, and to ensure that these decisions are properly documented, are made by appropriate personnel, and are subject to robust internal checks and balances to guard against poor decision-making.

Ensuring CPS understands the nature and scope of the complaint

[224] Once a complaint is filed, PSS should make efforts to properly understand what the scope of the complaint is and to ensure the complaint investigation fully encompasses the complainant's concerns. Too often, we receive appeals from across all services that to some degree flow from the fact that the police service has defined the allegations for investigation or disciplinary charges, too narrowly or incompletely. In such cases the service has missed the mark, and has left the essence of the complaint either inadequately addressed or not addressed at all.

[225] We acknowledge that specific, well-articulated allegations are necessary, so that proper investigations are done and so that the police officers being investigated know the nature and scope of the allegations against them. However, we are concerned that sometimes police services fail to fully comprehend or pursue an effective and complete inquiry into what is being alleged overall. We are also concerned that when police services itemize incidents into multiple narrow, specific allegations, action by action, this can result in an outcome that minimizes and dismisses the events in their totality.

[226] In our experience, this often results in dissatisfied complainants, who perceive that they have not been heard. The Board may determine that the matter should be sent back for further investigation if it concludes that the service's articulation of the complaint, and thus the investigation, missed the mark such that the investigation was flawed, or the outcome was unreasonable. However, this is time-consuming and ineffective for complainants, police officers and police services. Everyone has an interest in the timely, efficient and appropriate investigation of complaints the first time around. It is therefore important that CPS and other police services take care to ensure that the nature and scope of each complaint is fully and fairly articulated at the outset. A key aspect of this is to ensure that professional standards personnel communicate right away with each complainant, to ensure they have the necessary understanding of the concerns being raised and have confirmed the nature and scope of the complaint.

Recommendation 3: CPS should ensure that the full nature and scope of a complaint is understood, clearly defined and investigated without missing the essence of a complainant's allegations through early and meaningful consultation with the complainant.

CPS should not downgrade complaints to mere concerns

[227] An area of considerable concern for the Board is CPS's practice of screening possible complaints as either "concerns" or "complaints". In this case, for example, we have seen how CPS appears to have treated correspondence from Arkinstall's lawyer expressing concerns, even potentially criminal allegations, and requiring a response, but not treating these concerns as a complaint. Instead, CPS told Arkinstall's lawyer that, if Arkinstall wished to complain, he should fill out the proper form. Again, the Act does not require a would-be complainant to fill out one form or another. Section 42.1 stipulates what must be contained in a complaint and provides only that it must be in writing.

[228] Of greater concern is CPS's practice, at least at the time this matter arose, of sometimes treating what was clearly intended to be a complaint about misconduct as a mere "concern". We have observed that, where CPS has categorized something as a "concern" and thus something less than a true complaint, CPS has not followed the processes and rules established under Part 5 of the Act. In short, we are concerned that CPS has *de facto* operated its own version of "off-the-books" oversight, without clear policies and processes and none of the legislated protections of Part 5. We make no comment on whether, given the explicit direction of the Legislature through Part 5 of the Act, CPS has the legal authority to divert matters in this way.

[229] If someone lodges allegations of misconduct that, reasonably interpreted, fall under the Act and the PSR, CPS should treat them as a complaint, regardless of whether the magic word "complaint" is used and even if the individual has not used whatever complaint form CPS might have established. CPS policies and internal guidance must ensure that, when CPS receives allegations or concerns that could reasonably qualify as a "complaint" under the Act, they are not downgraded into something less, which is then handled informally and not adequately documented. The public interest requires more transparency and accountability.

Recommendation 4: CPS should review its policies and practices to ensure that all matters that qualify as complaints under the Police Act are treated as such, with formal complaint files being opened by PSS for every complaint, before any investigative steps or attempts at informal resolution are made.

CPS should ensure proper record-keeping in relation to complaints

[230] Also, regarding record-keeping, CPS needs to improve documentation of the full range of its activities in relation to complaints, whether external or internally-initiated. As noted earlier, the inquiry has shown that CPS's documentation of the Arkinstall matter was sparse and, bluntly put, haphazard. Nor was it managed well, as is reflected in the extensive efforts CPS had to make to identify, retrieve and disclose relevant records to the Board for this inquiry.

Recommendation 5: CPS should undertake a thorough, expert review of its processes and practices for documenting all stages of complaints and for managing the resulting records (including clearly and thoroughly documenting all decisions along the way). PSS's commanding officer should be responsible for ensuring that complete records are kept for all complaints.

CPS should eliminate "administrative reviews"

[231] We have seen how CPS's pursuit of a so-called "administrative review" in the Arkinstall matter resulted in an outcome that is far from satisfactory. Again, this may in part have been due to the absence at the time of any clear policy for such reviews. A key point, however, is that Part 5 of the Act must be respected. A police service simply should not ignore the Legislature's direction by in effect creating its own local law. The authority of a chief to command the police service is important, but the law of the province must be respected. If a complaint is received, Part 5 must be followed. We have made it clear that CPS should not be downgrading complaints into concerns, and it certainly ought not to continue to use administrative reviews to deal with complaints. Indeed, the Board had not, to our knowledge, heard of "administrative reviews" before this inquiry. They appear to be unique to CPS, with no other Alberta service being involved in such a practice as far as we are aware.

[232] Once a "complaint" within the meaning of section 42.1 has been made, therefore, CPS must comply with Part 5 of the Act and conduct a proper investigation. Section 45(1) of the Act provides that, where a chief has received a complaint about an officer, "the chief shall cause the complaint to be investigated." While the Act does not stipulate what an "investigation" involves, the duty to "investigate" surely means more than a "review" (whatever "administrative" means). The Board's experience in handling matters arising across Alberta makes it clear that our police services have a very good idea of what an "investigation" involves and does not involve. CPS itself has a professional standards

section, and we are of the clear view that an informal, light-touch "administrative review" is not a proper investigation of the kind the Legislature intended. Alberta's citizens expect police to diligently and professionally investigate offences and it is reasonable to expect this of CPS.

Recommendation 6: CPS should cease its practice of conducting so-called "administrative reviews" of complaints and instead ensure that PSS conducts efficient and effective investigations of each complaint.

CPS should ensure follow-up on judicial criticism

[233] As we discuss below, the Crown has no policy requiring prosecutors to bring judicial criticism of officer testimony or actions to the attention of police services. At the time of the events underlying this inquiry, CPS had no policies or procedures for how to respond when it learned of such criticism. Documents produced for the inquiry indicate that this policy gap has been filled at CPS: CPS adopted a policy on "adverse" judicial or crown criticism of CPS officers or policies in 2014.[103]

[234] CPS policy in this area should be revised to ensure that whenever any individual CPS officer learns that a court has made adverse findings about, or criticized, the credibility of an officer's sworn evidence, or has suggested possible misconduct, that officer must bring the matter to the attention of PSS's commanding officer without delay. Further, PSS's commanding officer should then be required to consider initiating a complaint by CPS, *i.e.*, what CPS calls a "service investigation". If PSS's commanding officer decides not to do so, she or he must be required to record written reasons for that decision in the file, with a copy of the court decision and PSS reasons being given to the chief as soon as the decision is made.

[235] Nothing less than the rule of law is at stake if police officers are not truthful, especially where they give sworn evidence, whether at trial or in court documents such as search warrant applications. Indeed, police services must treat adverse judicial criticism or findings about police officer credibility extremely seriously.

[103] CPS produced a copy of this policy for the inquiry.

Recommendation 7: CPS policy should require any officer who becomes aware of adverse judicial findings about, or criticism of, the credibility of any officer's sworn evidence or about possible disciplinary misconduct or criminal actions by an officer, to report the matter immediately to PSS's commanding officer. The commanding officer should be required to consider initiating a complaint. If PSS's commanding officer decides not to initiate a complaint, she or he must be required to record written reasons for that decision in the file, with a copy of the court decision and PSS reasons being given to the chief as soon as the decision is made.

Ensuring criminal allegations are reported to CPS's Chief

[236] In potential criminal cases, the matter should immediately be escalated to the chief, so the chief can decide whether the matter is of a serious or sensitive nature, such that notice should be given under section 46.1 of the Act.

[237] More broadly, we note here that the drafting of section 46.1(1)(b) is, like so many other provisions in the Act and the PSR, in need of significant improvement. Section 46.1(1)(b) says that a chief must consider giving notice where a "complaint" may be of a serious or sensitive nature. This appears to require that someone has made a complaint, or that the chief has already self-initiated a complaint. In cases that appear sensitive or serious, therefore, CPS would be advised to initiate its own complaint before making the section 46.1 determination. More generally, section 46.1(1)(b) should be amended to clarify that it is not necessary for a "complaint" to exist before a chief can notify under that section, noting that no sound policy reason exists for maintaining the present language of section 46.1(1)(b).

Recommendation 8: CPS policy on responding to adverse judicial findings or criticism about possible disciplinary misconduct or criminal actions by an officer should require that the chief be immediately advised of such findings or criticism, and that the chief be required to consider without delay whether a notification of serious or sensitive matters under section 46.1 of the Police Act should be made to the Minister. The chief should also be required to document the reasons for that decision.

CPS should eliminate alleged gang membership in categorizing complaints

[238] On the issue of policy, we have concerns about CPS policy in place during the Arkinstall matter on the classification of complaints as not of a serious nature. CPS policy at the time of the incident stated as follows:

> 10. A risk that treating it as serious will contribute to developing a culture of fear that will encourage officers to avoid high-risk-of-a-complaint work such as policing gangs or organized crime.[104]

This causes us considerable concern.

[239] Section 45(4) of the Act provides that a chief may dispose of a complaint if the chief "is of the opinion" that alleged misconduct is "not of a serious nature".[105] Section 19(1.1) of the PSR requires the chief to consider the factors set out in that section in determining "whether a matter may be disposed of" as not of a serious nature. These include whether the conduct may be a criminal offence, a breach of the *Canadian Charter of Rights and Freedoms*, or deceit. The PSR does not say that the chief cannot consider other factors, although this is arguably the intent.

[240] Regardless, a policy that accounts for whether a complainant may be a gang member is hardly consistent with the policy underlying a chief's legislated authority to dismiss a complaint as not serious. At the very least, a chief's decision to treat a complaint as not serious simply because a complainant is (or is alleged to be) a gang member could conceivably result in potentially serious misconduct by an officer not being addressed and remedied.

[241] We readily acknowledge that criminal gangs must be combatted. We also acknowledge that gang members may seek to intimidate officers, including by making unfounded complaints as a form of harassment. However, a policy of this kind is not the way to weed out unmeritorious complaints (particularly in light of the fact that there is no right of appeal to the Board in such cases, and thus no practicable oversight).[106] If unwarranted complaints are made by gang members, there are plenty of other tools under the Act to deal with those. Giving a chief the authority to consider actual or alleged gang

---

[104] Record 2, appendix 1 PSS file decision flow chart.
[105] Certain restrictions apply under the PSR, notably including the need in certain cases for the officer involved to consent to this being done.
[106] Only costly and lengthy judicial review proceedings are, at present, available to provide oversight of such decisions.

membership is not the way to approach the matter. The seriousness of an officer's conduct must be assessed with regard to the nature of the officer's conduct. Treating a complainant's putative gang membership, or other characteristics of a complainant, as relevant to deciding whether misconduct is "not of a serious nature" is not appropriate. Again, the focus must be on the officer misconduct, not the characteristics of the complainant (even where the complainant's characteristics are chosen, such as through gang membership).

Recommendation 9: CPS policy should be revised to eliminate gang membership as a ground for deciding that alleged misconduct is or is not of a serious nature.

4.3 Our systemic recommendations for the future

[242] It is trite to say that public trust and confidence in our police is at the heart of our model of policing and is vital to its success. If the public does not trust the police to use their considerable powers fairly and lawfully, they will lose confidence in the police. This can harm the ability of police to do their jobs and, more important, endanger the rule of law. It is therefore critically important for Alberta to have an effective system of oversight for police conduct. It is beyond debate that both the police and the public will have confidence in oversight only if it is fair, impartial, objective and transparent. Public and police confidence in oversight also demands a meaningful degree of independent oversight, and some observers may well contend that a system entirely independent of a given police service is essential to ensure confidence in the disciplinary process. Jurisdictions across Canada have for years grappled with these considerations in creating their police oversight systems, and these factors would doubtless be faced by the independent review we urge the government to commission.

[243] Keeping these considerations in mind, we have divided our recommendations into short-term solutions and longer-term solutions. The short-term recommendations are low-hanging fruit that can be acted upon quickly—perhaps even in a miscellaneous statutes amendment bill—if government wishes to do so, pending the outcome of our recommended systemic review.[107] Enactment of those changes would materially improve the working of the existing Act and PSR pending reform.

[107] We acknowledge the short-term recommendations may instead be put on hold pending the review's outcome.

Short-term recommendations (provincial)

Review and reform of police discipline across Alberta

[244] The Minister has recently embarked on a process of preliminary consultations with stakeholders, including the Board, regarding potential reforms to the Act and the PSR. The Board understands the goal is to assess input that the Minister receives and then decide how to proceed with possible reforms to Alberta's police oversight system. The Board strongly supports this consultation and believes that, once the Minister has assessed what she learns, the next step should be for the provincial government to appoint a retired judge to conduct a comprehensive review of policing oversight in Alberta and make recommendations for systemic reform.[108]

[245] Any law reform recommendations must proceed from the undeniable fact that Alberta's oversight scheme for disciplinary misconduct needs a root and branch review. Thoughtful and constructive submissions about reform were received from inquiry participants and interveners alike. While the nature and scope of the reforms they suggested varied, it is fair to say there was a broad consensus among them that legislative reform is needed. This view is shared by a broad spectrum of other observers, including other municipal police chiefs and police unions.[109]

[246] The inquiry terms of reference expressly authorize us to make recommendations for improvement of civilian oversight of policing in Alberta. We welcome this mandate, but we are sensitive to the fact that, by its nature, this inquiry has largely focused on a single matter and on the practices and policies of only one of Alberta's several municipal police services. There is a much wider and more complex context to be considered, across police services large and small, urban and rural, First Nations and other police services. We have, therefore, concluded that only an expert in-depth review in light of that larger picture can lead to well-informed, carefully-considered systemic recommendations that so many observers recognize are needed for policing in Alberta.

---

[108] This approach has been followed in other Canadian jurisdictions, leading to important changes to police oversight. Examples include the recent review of shootings involving CPS officers, conducted by the Hon. Neil Wittman QC, the review of police oversight in Ontario conducted by Justice Michael Tulloch, and reviews conducted in British Columbia by the Hon. Wally Oppal QC and the late Hon. Josiah Wood.

[109] The Board is aware of this consensus based on media reports and discussions with police and union leaders.

[247] We trust that experts in policing and police oversight would be retained to support this onerous yet crucial review. We recommend the team be led by a retired judge with extensive knowledge of policing in Alberta. Some of the witnesses we heard from in the inquiry had tremendous insight into the challenges facing modern policing and police discipline. We believe there are a number of individuals who would make tremendous contributions to this undertaking.[110]

Recommendation 10: Upon completion of the government's stakeholder consultations, the Minister should consider appointing a retired judge to review Alberta's police discipline framework, conduct consultations and expert research, and make recommendations on legislative amendments to modernize the framework.

Provincial policy and guidance on key issues

[248] We learned through the inquiry that the Crown does not have a policy on notifying police services of judicial criticism of, or adverse findings about, police conduct, including relating to the credibility of police testimony. It appears that it is left to individual prosecutors to decide whether the relevant police service should be notified.

[249] Prosecutors play a crucial role in the administration of justice. They are impartial and enjoy independence from police and the executive in discharging their prosecutorial functions. Among other things, prosecutors have a duty to ensure that justice is done in each case, not to secure a conviction.

[250] In light of the vital role of Crown prosecutors, it is in the public interest for them to bring to the attention of police, situations in which the judiciary has criticized the conduct of an officer. This is especially true where a judge has made adverse findings about the credibility of an officer's sworn testimony to the court (or has simply expressed doubts about credibility). The proper administration of justice requires that police testimony, especially in support of criminal prosecutions, be the whole truth and nothing but the truth, or else miscarriages of justice might occur. Moreover, where a court has made adverse findings about credibility, the officer's ability to testify in future cases is vulnerable to successful attack. This impairs the effectiveness of the police service. Neither situation is in the public interest.

[110] We were very impressed, for example, by the in-depth knowledge and expertise of, in particular, Judge Purvis, retired deputy chief Murray Stooke and Chief Mark Neufeld relating to policing and police oversight.

[251] It is also in the public interest for police services to be alerted by Crown prosecutors when they become aware of any adverse judicial findings or criticism about other kinds of officer conduct, whether it is conduct that may be a criminal offence or disciplinary misconduct.

[252] The Board, therefore, encourages all Crown prosecutors to immediately notify the professional standards branch or department of the relevant police service of any adverse findings about or criticism of officer credibility, or about conduct that may be an offence or disciplinary misconduct.

[253] We believe that the Crown should have a policy on this point. In its inquiry submissions, the Crown argued that the Board has no authority to make recommendations relating to the Crown. Our recommendation does do not purport to bind the Crown in any way. In addition, the suggested policy relates to post-prosecution matters, which in no way affects the independence of Crown prosecutors in the actual prosecution of offences.[111]

Recommendation 11: The Board recommends that the Alberta Crown Prosecution Service adopt a policy on when and how individual Crown prosecutors should bring to the attention of police services any adverse findings or criticism by the courts of police officer testimony or conduct.

Informing and educating the public

[254] Another pressing issue is the lack of comprehensive yet easy to understand information resources and advisory support for citizens. The vast majority of appellants who appear before us are self-represented complainants who have no legal training, and who have had little if any real involvement—other than, perhaps, an interview by a professional standards investigator—in the handling of their complaint.

[255] The Board makes information available to appellants, through our website, in person and on paper. We are working to enhance those materials, to give appellants better information (while always remaining neutral, as we must). Various police services likewise provide some information on their websites for the public. Some information is also provided by public complaint directors at police commissions.

[111] The possibility of an appeal in a given prosecution does not change this.

[256] The government should consider, in collaboration with police services and commissions, offering centralized and thorough information to citizens and complainants through a set of comprehensive yet easy to understand informational resources. Various channels exist for communication of information to citizens about their rights in this area. Websites are fine, but many individuals who appear before the Board have little if any meaningful access to the internet. Printed materials are also fine, but the delivery channels for these can be spotty. Community groups and social service organizations can assist, of course, and, coupled with more traditional communication methods, they should be part of the approach to better support citizens with information about their rights and obligations in the complaint process.

[257] Another desirable reform—one that should be enshrined in an overhauled framework—is to require police services to keep complainants meaningfully informed about the progress of their complaint. Individualized update letters or emails could enhance the chances of complainants buying into the result of their complaint where it is dismissed. There is some risk that this requirement could become an exercise in bureaucratic form-letter writing or, at the other end of the spectrum, impose a considerable interim reporting burden. An acceptable middle ground should be possible.

Recommendation 12: The government should, in collaboration with police services and commissions, make readily available to the public comprehensive, easy to understand, informational and educational materials about complaints and the police disciplinary process.

Legal advice and support for complainants

[258] Another need, not unique to this area of the law, is for legal advice for complainants and would-be complainants. Board staff provide information to appellants to help them understand the appeal process, but the Board cannot, and does not, become their advocate.[112] Few complainants are able to afford legal counsel in order to make a complaint, much less to challenge the outcome before the Board or in the Courts. Well-informed legal advice, and personal representation, should be available for citizens who, on their own, face challenges navigating the current system. Once again, community groups and social service organizations may play a role, as can student-run law clinics in the larger centres.

[112] As an aside, we note that counsel for police chiefs and for respondent officers commendably often assist appellants in similar ways—always within the limits of their professional duties to their clients—while also making the appeal process more efficient and, ultimately, effective all around.

Recommendation 13: A system for providing information, procedural assistance, legal advice and representation to complainants and appellants should be explored, developed as appropriate, and made readily accessible to complainants.

Clarify language and operation of section 46.1

[259] This inquiry illustrates the need for clear guidance for police services on the interpretation and application of section 46.1 of the Act. It is abundantly clear that opinions differ on what might be a "serious" or "sensitive" incident for notification purposes. The provision could be clarified, to provide further guidance, or the government could publish a policy statement through the director of law enforcement, to guide police services in applying this section. Either way, as this matter demonstrates, chiefs across the province should have clear guidance, ideally from the director of law enforcement, to assist them in deciding whether to give notice to the director of law enforcement under this section.

[260] Further, section 46.1(1)(b) should be amended to clarify that it is not necessary for a "complaint" to exist before a chief can notify the Minister under this section, noting that no sound policy reason exists for maintaining the present language of section 46.1(1)(b).

Recommendation 14: A province-wide protocol should be established to ensure consistent interpretation and application of clear and comprehensive criteria for timely notifications to the Minister by police chiefs under section 46.1. In addition, section 46.1(1)(b) should be amended to clarify that there need not be a "complaint" before a chief may make a notification under section 46.1.

Transparency around section 46.1 notifications

[261] In support of the recommended section 46.1 amendment, police chiefs should be required to notify the commission and the director of law enforcement in writing, when a recommendation to issue a section 46.1 notice is not followed, detailing the reasons for the decision not to notify, and, in a timely way, advise in writing how the concerns raised were in fact addressed.

Recommendation 15: The Police Act should be amended to require a police chief to notify the police commission and the director of law enforcement, in writing, when the complaint director's recommendation to issue a section 46.1 notice is not followed, to give reasons for the decision not to notify, and, in a timely way, advise in writing how the concerns raised were in fact addressed.

Better guidance on what misconducts are "not of a serious nature"

[262] As noted earlier, under section 45(4) of the Act and section 19 of the PSR, a chief may dispose of a complaint on the basis that it is "not of a serious nature". Section 19 of the PSR sets out factors that the chief must consider in assessing whether to exercise this authority. The existing factors are of little assistance, but further, clearer guidance is needed. We recommend that government consider what other factors might usefully be included in section 19 of the PSR, to better support police chiefs in making section 45(4) determinations.

[263] A related recommendation has to do with the interplay between sections 45(3) and (4). The Board's recent experience is that police services across the province approach the matter in different ways. There are two schools of thought among police services on how this analysis should be done. On the one hand, some chiefs will assume the allegation itself is not serious, and dismiss it under 45(4) as not serious, without forming the opinion that the conduct occurred. On the other hand, some chiefs will first make a determination of misconduct, by forming an opinion under section 45(3) based on evidence that the alleged contravention has occurred, then decide whether it is not of a serious nature, and then dispose of it as such. This leads to the perception, rightly or wrongly, that the provision is being used inappropriately by some police services to avoid the appeal process before the Board. It suffices to say that the Act should be amended to clarify how these two provisions interact, to give clear guidance on which issues are to be decided first, and how they are to be decided. Short of this, a province-wide policy should be established to guide police services in a consistent interpretation and application of section 45(4).

Recommendation 16: The Police Act should be amended to clarify how sections 45(3) and (4) interact, to give clear guidance on which issues are to be decided first, and how they are to be decided. Short of this, a province-wide policy should be established to guide police services in a consistent interpretation and application of section 45(4).

Restoring Board oversight of whether misconduct is "not of a serious nature"

[264] The next issue is section 45(4.1) of the Act, which a number of observers have said should be repealed. Section 45(4.1) is a recent feature of Alberta's oversight scheme. It bars any appeal from a police chief's decision under section 45(4) of the Act that the misconduct is "not of a serious nature". In such cases, a chief can dispose of the complaint summarily while imposing minor discipline on the officer.[113] Section 45(4.1) came into force in 2011, having been touted as an efficiency improvement. Its impact has been to force complainants–and in some cases, police officers–to seek judicial review in the Court of Queen's Bench. They are denied the less-costly and timelier recourse of an appeal to the Board, an expert tribunal. Many see this as an access to justice issue, but it is also an oversight issue, since the ban on appeal to the Board means police services are much less likely to have to justify their decisions when section 45(4) is invoked.

Recommendation 17: Section 45(4.1) of the Police Act should be repealed, thereby restoring appeals to the Board, as a timely and efficient method of civilian oversight of chiefs' decisions to dismiss complaints as not of a serious nature.

Long-term recommendations (provincial)

Enhancing police commissions' oversight role

[265] We heard throughout the inquiry that the CPC has no real authority in disciplinary matters, except to provide information and updates to complainants and to monitor the complaint process. It has no statutory authority to take proactive or remedial steps when a complaint is not adequately addressed. Province-wide, under the Act in its present form, there is no authority for police commissions to truly provide independent oversight of internal disciplinary processes for their police services. Pending a full review of police oversight in Alberta, this issue could be addressed in the short term by providing commissions, through their public complaint directors, the ability to direct their police service to open complaint files, the ability for public complaint directors to recommend the wording of the allegations to be investigated, and the ability to recommend that specific investigative steps be taken in a given case. We also believe that the Act should be amended to enable a public complaint director to recommend to the chief that a section 46.1 notification be made in appropriate circumstances.

[113] The Board has held that section 45(4.1) has this effect and the Court of Appeal has confirmed this: *Fermaniuk v Knecht,* 2017 ABCA 342.

Recommendation 18: To ensure complaints are investigated fully and effectively, the Police Act should be amended to give police commissions' public complaint directors the ability to: direct their police service to open complaint files, recommend the wording of allegations to be investigated, and to recommend that specific investigative steps be taken in a given case. The Police Act should also be amended to permit a public complaint director to recommend to the police chief when a section 46.1 notification should be made.

Independent oversight agency

[266] Consistent with what we learned from the inquiry submissions, and from what we have learned from other Canadian jurisdictions, a revamped police disciplinary framework will only be effective, and accepted by the public, if it is subject to robust, independent civilian oversight.

[267] One model for civilian oversight would be to create an independent provincial agency to receive all complaints about police misconduct. The agency would independently screen all would-be complaints to ensure they fall under the Act and then perform a range of other functions. As a hybrid, police services could continue to receive complaints, but be required to forward them to the agency within a prescribed timeline. This could be desirable for several reasons. It could facilitate citizens' access to the complaints process and help foster the desirable perception that each service remains involved in the process from the outset.

[268] An important feature might be to mandate that the agency must designate all matters that meet legislated criteria as valid complaints. The agency also could be given the sole authority to assess complaints and articulate the types of misconduct alleged and thus to be investigated. If the wrong police service has been identified in a complaint, the agency could correct this and act on it.

[269] In addition, the agency could decide whether a matter should be addressed through an alternative dispute resolution process or formal investigation and disposition. This might be the case, for example, where the complainant has indicated in the complaint, expressly or by necessary implication that the matter could be sent to an alternative dispute resolution process. In addition, if it appears to the agency that a complaint may be frivolous or vexatious—determined according to clearly-articulated legislative standards—the agency would be empowered to refer the matter to a streaming review process and disposition where appropriate, subject to procedural safeguards and oversight.

[270] The agency's exercises of discretion at any step in the process should be subject to meaningful criteria stated either in law or policy approved by the Minister after consultation with police services and other stakeholders.

[271] From the receipt of the complaint until its resolution, the agency would be required to thoroughly document all steps that it takes, including all interactions with complainants and officers, investigative steps, consultations among personnel, and decision-making. Decisions would be sufficiently detailed and intelligible to allow for effective review.

Determining who should investigate complaints

[272] A significant policy consideration would be whether the central agency should conduct the disciplinary investigations, whether it should designate another service or agency to investigate, or whether investigations should remain within the police service involved. If so, should the agency be required to monitor the progress of individual investigations, with the ability to intervene and either direct or recommend investigative steps to be taken, or assume the investigation itself?

When to proceed to alternative dispute resolution

[273] We should underscore here our conviction that, whatever model is chosen, Alberta's oversight system should give prominence to meaningful, timely alternative dispute resolution processes to handle complaints about police misconduct. Many complaints are about rudeness or other incivility, for example. In these cases, a simple apology, offered through an alternative dispute resolution process, may well suffice, and be appropriate (perhaps backed up by some non-disciplinary training for the officer). In such cases, expenditure of public funds through formal investigation and disposition of the complaint hardly seems appropriate. If both parties are willing to participate, this would be the preferred approach.[114]

[274] There will, on the other hand, be cases where alternative dispute resolution is not appropriate. Where there has been misconduct such as deceit in court testimony, or use of force that verges on (or is) criminal, alternative dispute resolution surely is not suitable. In the first case, of course, no individual's rights or interests are at stake, but if an individual has complained about the testimony, the public interest implications are such that

[114] A case might even be made for diverting a complaint to a summary dismissal where a complainant has unreasonably refused to participate. We recognize that this raises concerns, and any such off-ramp would need to be tightly circumscribed and properly overseen, ultimately by a body outside the service.

alternative dispute resolution should not be used. The same holds for the second example, where an individual's interests are involved, but egregious misuse of force militates against alternative dispute resolution being an appropriate approach. Any oversight system that features alternative dispute resolution, as should be the case, must have limits to ensure it cannot be used to limit or avoid appropriately robust responses to serious complaints.

Recommendation 19: A meaningful effective and efficient alternate dispute resolution system should form part of any new model for police oversight in Alberta.

Measuring and reporting on trends in the disciplinary system

[275] A central agency could be tasked with tracking all complaints province-wide. It could be required to create statistics that support public accountability for the agency and further, that support the monitoring and evaluation of complaints service-by-service and across the province. It would report annually to the Minister, and through the Minister to the public, on all aspects of the agency's work and provincial trends in disciplinary complaints and outcomes.[115] This would contribute to enhancing and maintaining public trust, confidence and support of police and the oversight system.

[276] Centralized complaints analysis that identifies trends is important because it supports timely and well-informed expert guidance for police services. Analysis might identify whether, for example, officers are increasingly using force. If this is confirmed, perhaps through further investigation, services can take steps to improve training, adjust policy, and communicate with officers. The JSG would also be able to assist, either in support of responses by individual services, or by adjusting policy and standards provincially.

[277] At present, public complaints directors within each police commission fulfil many of the agency functions just described. A police commission can receive complaints relating to the police service the commission oversees, with the public complaint director in practice doing this. The public complaint director also has the authority to monitor complaints investigations that the service conducts. The central agency could assume these functions, with the possible added authority to require investigative steps to be taken or to assume the investigation.

[115] These reporting requirements are examples only: there are likely to be other desirable reporting requirements.

Financial implications

[278] A centralized independent agency would potentially have significant cost and administrative implications for the province, with the funding model for centralized investigations being a significant issue.

[279] We heard in the inquiry about the staggering numbers of complaints currently being received and processed by CPS. We also learned that, at least until recently, the Edmonton Police Service's largest investigative department was its Professional Standards Branch.[116] We cannot comment on the situation with other police services, but we raise the issue of the current and perhaps growing costs of having individual professional standards resources within each police service. It may be that a centralized system could reduce the overall cost of delivering complaint and disciplinary processes in the province. This is a factor that should be measured and weighed against the projected costs of a centralized agency.

[280] Earlier we mentioned the short-term need for better information resources and legal supports for citizens and complainants. We note here that any objectives to meaningfully overhaul Alberta's police oversight system must successfully tackle these issues in the long term if those objectives are to succeed.

Recommendation 20: The recommended systemic review of Alberta's police disciplinary framework could consider recommending a centralized disciplinary system, independent of police services and commissions, which may provide some or all of the following: complaint intake; complaint streaming; complaint investigation; alternate dispute resolution; complaint disposition; reporting of outcomes (including trends in the complaints and in police discipline overall); and recommendations for training and improvements to police services.

[116] This was evidence given by Chief Mark Neufeld, who not long ago commanded Edmonton's Professional Standards Branch.

CONCLUSION

[281] We have considered extensive amounts of testimony and hundreds of pages of records in assessing CPS's handling of the Arkinstall matter. Its response to the serious concerns brought to its attention offers an objective lesson in how police services can improve their handling of such matters under Alberta's present disciplinary framework. The Arkinstall matter also illustrates the need for short-term improvements to that framework, as well as the need for a comprehensive, in-depth review. Our goal in this report is to address all of these matters in a manner that contributes to enhanced oversight for police conduct.

APPENDIX 1

Inquiry Terms of Reference

I, the Honourable Kathleen Ganley, Minister of Justice and Solicitor General of Alberta, make the following directions pursuant to s. 17(1)(c) of the *Police Act,* RSA 2000, c.P-17 as amended:

1. I direct the Alberta Law Enforcement Review Board ("the Board") to conduct a public inquiry into the matters respecting policing and a police service as outlined below that have arisen from the case of Jason Arkinstall.

2. The Board shall conduct a public inquiry in accordance with the procedures and powers set out in s. 20(1) of the *Police Act* and the Board's Appeal Policies and Procedures.

3. The Board may permit participation by, and receive evidence from, all persons or entities that it deems appropriate, including the Criminal Trial Lawyers Association, the Calgary Police Commission, the Calgary Police Service, the Alberta Serious Incident Response Team and the Director of Law Enforcement.

4. The Board is authorized to hear and decide all questions necessary or incidental to the inquiry, including all questions relating to timing and scheduling, and any adjournment applications based on related criminal proceedings.

5. The Board shall submit a report to me setting out its inquiry findings and recommendations. The report shall be submitted to me within 1 years from the date of this direction. In the event that the inquiry has not concluded within that 1 year, the Board shall then provide me with an estimate of the time required to conclude the inquiry and shall submit its report to me within 3 months after the inquiry concludes.

6. (a) The Board shall inquire into whether any person or entity with responsibilities in connection with policing did, or omitted to do, anything to interfere with, impede, avoid or frustrate disciplinary action under the *Police Act* relating to, or public oversight of, the conduct of the Calgary Police Service police officers in connection with the arrest of Jason Arkinstall at Calgary, Alberta on or about August 31, 2008.

   (b) The Board may make findings and recommendations relating to any specific or general matters that arise from the inquiry. The recommendations may include legislative, policy and practice recommendations relating to police discipline and recommendations for improvement of civilian oversight of policing in Alberta.

APPENDIX 2
Description of Inquiry Steps

Upon receiving the Minister's direction to conduct this inquiry, the Board chair, David Loukidelis QC, assigned himself and two other Board members, Christine S. Enns and Ellen-Anne O'Donnell, to conduct the inquiry. The Board appointed Fiona Vance as inquiry counsel and Barbara Newton, Board secretary, as inquiry secretary, to administer the inquiry. Fiona Vance was joined by her colleague, Aman Athwal.

The following timeline describes key procedural steps and decisions along the way:

July 26, 2017	Board letter to likely participants, notably CPS,directing the production of relevant documents.
December 12, 2017	Board meeting with prospective inquiry participants to receive input on procedural matters, assist the Board in identifying potential witnesses and consider the status of the parties in the inquiry.
December 13, 2017	Board invitation for applications for standing in the inquiry, with a deadline of January 5, 2018.
December 14, 2017	Board issued notices for production of documents to all participants, with a deadline of December 22, 2017.
January 4, 2018	Board filed originating application with the Court of Queen's Bench, asking the Court to determine whether CPS's claims of solicitor-client privilege over numerous documents that it had produced but were redacted for the inquiry.
January 11, 2018	Participant status granted to CPS, CPC, DLE, Jason Arkinstall, ASIRT and the CTLA, and intervener status granted to the CDLA and Crown.
January 12, 2018	Inquiry rules and forms circulated to participants for input.

January 16, 2018	Preliminary index of documents circulated to participants and interveners for input.
January 18, 2018	Notice to participants of the February 2018 hearing dates to hear any applications brought in advance of the inquiry hearing.
January 29, 2018	Inquiry rules and forms finalized and established.
February 8, 2018	Board decided on applications from the CTLA to add documents and witnesses, and from the CPS to add or remove documents. Some documents were added or removed, but no witnesses were added.
February 29, 2018	Associate Chief Justice Rooke decided that he was not satisfied with CPS's evidence in support of its claim of solicitor-client privilege. He ordered CPS to better identify the documents with descriptors while preserving privilege, for review by the Board. The Board was satisfied with further evidence provided by the CPS in support of privilege.
March 21, 2018	Application for participant standing in the inquiry received from Rick Hanson, former CPS Chief.
March 29, 2018	Board required participants to execute undertakings regarding use and disclosure of inquiry documents.
April 2, 2018	Discontinuance of the Board's originating application regarding the solicitor-client privileged documents.
April 3, 2018	Participant status granted to Rick Hanson (former CPS chief) in the inquiry.
April 5, 2018	Inquiry documents index and the final set of inquiry documents issued to participants and interveners.
April 16-20, 2018	Board conducted the oral inquiry hearing in Calgary, hearing witness testimony from 15 witnesses.

APPENDIX 3
List of Witnesses

The witnesses from whom the Board heard oral testimony are listed below, by organization. The witnesses were chosen by inquiry counsel from the group of potential witnesses that she interviewed. Inquiry counsel prepared "will-say" statements based on the interviews and witnesses were chosen from the interviewed group.

The positon that each witness held at the time of the events covered by the inquiry is noted beside each witness's name (noting that the police rank of some individuals has changed since then, and some have retired):

Calgary Police Service

Trevor Daroux – Deputy Chief
Kathy Grant – Inspector
Rick Hanson - Chief of Police
Darren Leggatt – Inspector
Catherine Light - Inspector
Katie McLellan - Superintendent
Sat Parhar – Acting Superintendent
Murray Stooke - Deputy Chief
Kevan Stuart - Superintendent

Calgary Police Commission

Shirley Heafey - Public Complaint Director
Heather Spicer - Public Complaint Director

The Board notes here that, in light of some of the testimony of Shirley Heafey about her work at CPC, CPC applied to the Board to admit a rebuttal affidavit from Ellen Wright, who was CPC's executive director when Shirley Heafey was CPC's public complaint director. The Board determined that Shirley Heafey's testimony, which provided her uncorroborated individual perspective, was irrelevant to the inquiry. The Board, therefore, declined to admit Ellen Wright's affidavit, which was also not relevant to the inquiry.

Alberta Serious Incident Response Team

Mark Neufeld - Executive Director, Operations

Director of Law Enforcement (Alberta Justice and Solicitor General)

Clifton Purvis - Acting Assistant Deputy Minister and Acting Director of Law Enforcement
Bill Sweeney - Assistant Deputy Minister and Director of Law Enforcement
Wendy Moshuk - Provincial Public Complaint Director

Alberta Crown Prosecution Service

No witnesses testified for the Crown. An agreed statement of facts was entered into evidence instead. The relevant parts of that statement are as follows[117]:

> 1. The ACPS does not have a policy or directive regarding the notification of police agencies where a court has made an adverse finding related to the integrity, credibility or reliability of a police officer or police agency.
>
> 2. The ACPS relied on prosecutors to use their discretion to notify their supervising lawyers or police agencies when issues of integrity, credibility or reliability have arisen in either court proceedings or investigations, regardless of whether a court has made an adverse ruling.
>
> 3. The Special Prosecutions Branch, the office responsible for the prosecution of Jason Arkinstall, does not have polices or directives regarding the notification of police agencies where a court has made an adverse finding relating to the integrity, credibility or reliability of a police officer or police agency.
>
> 4. The Specialized Prosecutions Branch relies on prosecutors to use their discretion to notify supervising lawyers or police agencies when issues of integrity, credibility or reliability have arisen in either court proceedings or investigations, regardless of whether a court has made an adverse ruling.

[117] Exhibit 2.

APPENDIX 4

Police Act Excerpts

Definitions

1 In this Act,

(a) "Board" means the Law Enforcement Review Board;
(b) "Chair" means the Chair of the Board;
(c) "commission" means a police commission established under section 25 or 28;

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

(d.1) "complaint" means a complaint under section 42.1

(e) "council" means

(i) the council of a city, town, village, summer village, specialized municipality, municipal district or Metis settlement;

(ii) in the case of a hamlet, the council of the municipal district in which the hamlet is situated;

(iii) in the case of an improvement district, the Minister responsible for the Municipal Government Act;

(iv) in the case of a special area, the Minister responsible for the Special Areas Act;

(f) "Director" means the Director of Law Enforcement appointed under section 8;

(g) "Minister" means the Minister designated under section 16 of the Government Organization Act as the Minister responsible for this Act;

(h) "municipal police service" means a police service established under section 27;

(i) "municipality" means a city, town, village, summer village, specialized municipality or municipal district and includes a Metis settlement;

(j) "peace officer" means a person employed for the purposes of preserving and maintaining the public peace;

(k) "police officer" means an individual who

(i) is appointed under section 36 as a police officer or a chief of police,

(ii) is a member of the Royal Canadian Mounted Police,

(ii.1) is appointed under section 5 as a police officer, or

(iii) is a member of the provincial police service;

(l) "police service" means

(i) a regional police service;

(ii) a municipal police service;

(iii) the provincial police service;

(iv) a police service established under an agreement made pursuant to section 5;

(m) "policing committee" means a policing committee established under section 23;

(n) "provincial police service" means the Royal Canadian Mounted Police where an agreement is entered into under section 21(1);

(o) repealed 2010 c21 s2;

(p) "regional police service" means a police service established under section 24.

(q) repealed 2006 cP-3.5 s38.

Part 1 – Administration

Responsibility of Ministers

2(1) The Minister is charged with the administration of this Act.

(2) Notwithstanding anything in this Act, all police services and peace officers shall act under the direction of the Minister of Justice and Solicitor General in respect of matters concerning the administration of justice.

Responsibility of Government for policing

3 The Government of Alberta is responsible for ensuring that adequate and effective policing is maintained throughout Alberta.

Minister's responsibility for policing standards

3.1 The Minister may, subject to the regulations,

(a) establish standards for

(i) police services,

(ii) police commissions, and

(iii) policing committees, and

(b) ensure that standards are met.

Part 2 – Law Enforcement Review Board

Law Enforcement Review Board
9(1) The Lieutenant Governor in Council shall establish a board to be known as the "Law Enforcement Review Board" composed of not fewer than 3 members appointed by the Lieutenant Governor in Council.

(2) At least one member of the board shall be an active member of The Law Society of Alberta.

(3) A member of the Board must be appointed for a term of not more than 3 years and, subject to the Alberta Public Agencies Governance Act and any applicable regulations under that Act, is eligible for reappointment.

(4) Notwithstanding that the term of office of a member of the Board may have expired, the member continues to hold office until

(a) the member is reappointed,

(b) a successor is appointed, or

(c) a period of 6 months has elapsed,

whichever occurs first.

(5) The members of the Board shall be paid

(a) fees or remuneration, and

(b) expenses for subsistence and travelling while absent from their ordinary places of residence in the course of their duties as members of the Board,

as prescribed by the Lieutenant Governor in Council in accordance with any applicable regulations under the Alberta Public Agencies Governance Act.

(6) If regulations under the Alberta Public Agencies Governance Act apply in respect of fees, remuneration or expenses to be paid to members of the Board, those regulations prevail, to the extent of any conflict or inconsistency, over any regulations prescribing fees, remuneration or expenses under subsection (5).

Jurisdiction of the Board
17(1) The Board

(a) may, on its own motion, conduct inquiries respecting complaints,

(a.1) shall conduct reviews of decisions of a commission referred to the Board under section 43(12)(b)(i),

(b) shall conduct appeals referred to the Board under section 48 in accordance with section 19.2,

(c) shall at the request of the Minister conduct inquiries in respect of any matter respecting policing or police services, and

(d) shall conduct appeals under section 21 of the Peace Officer Act.

(2) If the Board is of the opinion that the actions of a police officer who is the subject of an appeal or an inquiry may constitute an offence under an Act of the Parliament of Canada or the Legislature of Alberta, the Board shall refer the matter to the
Minister of Justice and Solicitor General.

(3) Notwithstanding that the actions of the police officer have been referred to the Minister of Justice and Solicitor General under subsection (2), if the Board is of the opinion that those actions also constitute a contravention of the regulations governing the discipline or the performance of duty of police officers, the matter, as it relates to that contravention, may be proceeded with by the Board unless the Minister of Justice and Solicitor General directs otherwise.

Appeal to Court of Appeal
18 The decision of the Board in respect of a matter appealed to it under section 48 may,

(a) within 30 days from the day that the Board gives its decision, and

(b) with the permission of a single judge of the Court of Appeal,

be appealed to the Court of Appeal on a question of law.

Matters governing hearings, inquiries and appeals
20(2) Where the Board concludes an appeal

(a) in the case of an appeal commenced under section 48 from a matter in respect of which a hearing was held, the Board may

(i) allow the appeal,

(ii) dismiss the appeal,

(iii) vary the decision being appealed,

(iv) direct that the matter, subject to any directions that the Board may give, be reheard under section 45 or 46, as the case may be,

(v) affirm or vary the punishment imposed, or

(vi) take any other action that the Board considers proper in the circumstances,

and

(b) in the case of an appeal commenced under section 48 from a matter in respect of which a hearing has not been held, the Board may

(i) affirm the decision made under section 47,

(ii) direct that a hearing be conducted under section 45(3) or 46(4), as the case may be,

(iii) direct

(A) the chief of police, in the case of a complaint made in respect of a police officer, or

(B) the commission, in the case of a complaint made in respect of a chief of police,

to lay a charge under the regulations governing the discipline or the performance of duty of police officers,

(iv) direct

(A) the chief of police, in the case of a complaint made in respect of a police officer, or

(B) the commission, in the case of a complaint made in respect of the chief of police,

to have the matter investigated again,

(iv.1) take any action required by the Peace Officer Act, or

(v) take any other action that the Board considers proper in the circumstances.

Part 3 – Police Services and Commissions

Commissions

28(1) A council, other than one that is party to an agreement entered into under section 22 or 24, that

(a) has a municipal police service, or

(b) has the approval of the Minister to establish a municipal police service,

shall establish a police commission.

28(3) A commission shall consist of not fewer than 3 nor more than 12 members.

Commission's responsibility

31(1) Where a commission has been established, the commission shall, in the carrying out of its responsibilities, oversee the police service and for that purpose shall do the following:

(a) allocate the funds that are provided by the council;

(b) establish policies providing for efficient and effective policing;

(c) issue instructions, as necessary, to the chief of police in respect of the policies referred to in clause (b);

(d) ensure that sufficient persons are employed for the police service for the purposes of carrying out the functions of the police service.

(2) Every police officer

(a) is, after the establishment of a commission, subject to the jurisdiction of the commission, and

(b) shall obey the directions of the commission.

(3) Notwithstanding subsections (1) and (2), a commission shall not issue an instruction to a police officer other than to the chief of police.

(4) Where an employee other than a police officer is employed for the police service, the commission may release the employee from the police service subject to the provisions of any collective agreement that applies to that employee.

(5) Where a commission has been established, the council shall not, except as permitted under this Act or the Police Officers Collective Bargaining Act,

(a) perform any function or exercise any power in respect of the police service that the commission is empowered to perform or exercise, or

(b) issue any instructions to a police officer.

(6) The council is,

(a) for the purposes of the *Police Officers Collective Bargaining Act*, the employer of police officers, and

(b) for the purposes of the *Labour Relations Code*, the employer of persons other than police officers, who are employed for the police service.

(7) The council is liable for any legal liability that is incurred by the commission.

Commission inquiry

32(1) A commission may conduct an inquiry into any matter respecting the police service or the actions of any police officer or other person employed for the police service.

(2) A commission may designate from among its members a committee of one or more persons to conduct an inquiry under this section.

(3) Subject to subsection (5)(a), where more than one person is to conduct an inquiry under this section, the commission shall designate one of its members to act as the chair of the inquiry.

(4) Where a commission intends to conduct an inquiry under this section, it shall before commencing the inquiry advise the Minister of its intention to conduct the inquiry.

(5) The Lieutenant Governor in Council may by order appoint a person

(a) to act as the chair of the inquiry, or

(b) to conduct the inquiry on behalf of the commission.

(6) Where the Lieutenant Governor in Council makes an order under subsection (5)(b), the person so appointed shall, in the place of the commission or any committee of the commission, conduct the inquiry under this section on behalf of the commission.

(7) The persons conducting an inquiry under this section have, for the purpose of conducting that inquiry, all the powers of a commissioner under the Public Inquiries Act.

(8) Where, from the evidence before the inquiry, the chair of the inquiry is of the opinion that there is sufficient evidence that the actions of a specific police officer constitute or may constitute a contravention of the regulations governing the discipline or the performance of duty of police officers, the chair shall report that matter to the commission.

(9) On receiving a report under subsection (8), the commission shall proceed to have the actions of the specific police officer dealt with under Part 5.

(10) Notwithstanding that a report is made under subsection (8), the persons conducting the inquiry may proceed with the inquiry but shall not make any recommendations concerning the disposition under Part 5 of the matter in respect of which the report was made.

(11) When an inquiry is completed, the chair of the inquiry shall provide a written report of the findings of the inquiry and any recommendations

(a) to the commission, and

(b) to the Minister.

(12) The Board shall not commence an inquiry under section 17(1)(a) with respect to a matter that is the subject of an inquiry being conducted under this section until the inquiry under this section is completed.

(13) Where the Board is conducting an inquiry under section 17(1)(a), a commission shall not commence an inquiry under this section with respect to a matter that is the subject of the Board's inquiry until the Board's inquiry is completed.

(14) The expenses of an inquiry conducted under this section must, unless otherwise provided for by an order of the Lieutenant Governor in Council, be paid for by the council.

Part 4 – Police Officers

Duties of chiefs of police

41(1) The chief of police of a police service established under section 24 or 27 is responsible for the following:

(a) the preservation and maintenance of the public peace and the prevention of crime within the municipality;

(c) the maintenance of discipline and the performance of duty within the police service, subject to the regulations governing the discipline and the performance of duty of police officers;

(d) the day to day administration of the police service;

(e) the application of professional police procedures;

(f) the enforcement of policies made by the commission with respect to the police service.

(2) For the purposes of subsection (1), the chief of police shall issue orders and make directives as the chief of police considers necessary.

(3) The chief of police is accountable to the commission for the following:

(a) the operation of the police service;

(b) the manner in which the chief of police carries out the responsibilities under subsection (1);

(c) the administration of the finances and operations of the police service in keeping with the yearly plan or any amendments to it that the commission may make;

(d) the reporting to the commission of any information concerning the activities of the police service that the commission may request, other than information concerning individual investigations or intelligence files;

(e) the reporting to the commission of any complaint made against the police service or its members, the progress of any investigation or informal resolution process regarding the complaint, the reasons for any delays and the manner in which the complaint is resolved.

(4) A commission shall not issue an instruction under section 31(1)(c) that is inconsistent with the duties and responsibilities conferred on the chief of police under this section.

Part 5 – Complaints and Discipline

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

(2) The following persons may make a complaint referred to in subsection (1):(a) a person to whom the conduct complained of was directed;

(a) a person who was present at the time the incident occurred and witnessed the conduct complained of;

(b) an agent of a person referred to in clause (a);

(c) a person who

(i) was in a personal relationship with the person referred to in clause (a) at the time the incident occurred, and

(ii) suffered a loss, damage, distress, danger or inconvenience as a result of the conduct complained of.

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

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

(a) the full name of the complainant;

(b) the complainant's contact information, including the complainant's

(i) address,

(ii) telephone number,

(iii) cellular telephone number, if available, and

(iv) electronic mail address, if available;

(c) if the complaint is made by an agent of the complainant, the agent's full name and contact information

(d) if the complaint is in respect of the conduct of a police officer,

(i) the date of the alleged conduct, if known,

(ii) the identification of the police officer, if known, and

(iii) a description of the incident that gave rise to the alleged conduct;

(e) if the complaint is in respect of a policy or service of a police service, sufficient

information to identify the policy or service complained of;

(f) any other information requested by the chief of police, the officer in charge of a police service, the Public Complaint Director, the Regional Public Complaint Director or the Provincial Public Complaint Director;

(g) any other information prescribed in the regulations.

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

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

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

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

(3) Repealed 2010 c21 s12.

(4) On receipt of a complaint under subsection (1), the chief of police shall determine whether the complaint or a portion of the complaint is a complaint as to

(a) the policies of or the services provided by the police service, or

(b) the actions of a police officer.

(5) A complaint or that portion of the complaint that is a complaint

(a) as to the policies of or services provided by the police service shall be disposed of in accordance with section 44, and

(b) as to the actions of a police officer shall be disposed of in accordance with sections 45 to 48.

(6) Where the chief of police initiates a complaint with respect to a police officer, the chief shall deal with it in the same manner as if it were made by another person and referred to the chief under subsection (1).

(7) If, at any time before or during an investigation into a complaint under subsection (1), it appears to the chief of police that the complaint is clearly frivolous, vexatious or made in bad faith, the chief may recommend in writing to the commission that the complaint be dismissed.

(8) On consideration of the recommendation of the chief of police under subsection (7), and after reviewing the written complaint and making any inquiries the commission considers necessary, the commission may dismiss the complaint or direct the chief to deal with the complaint in accordance with this Part.

(9) If, at any time before or during an investigation into a complaint under subsection (2) or section 46(1), it appears to the commission that the complaint is clearly frivolous, vexatious or made in bad faith, the commission may dismiss the complaint.

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

(10) Where a complaint is referred to the commission under section 44(1) and it appears to the commission at any time that the complaint is clearly frivolous, vexatious or made in bad faith, the commission may dismiss the complaint.

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

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

(a) the conduct complained of occurred, or

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

whichever occurs later.

(12) If the commission decides under subsection (8), (9), (9.1), (10) or (10.1) to dismiss a complaint, the commission shall notify the complainant and the police officer who is the subject of the complaint, if any, in writing of

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

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

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

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

to review the decision.

(13) If the chief of police or the commission dismisses a complaint under subsection (11), the commission shall notify the complainant and the police officer who is the subject of the complaint, if any, of the decision in writing.

(14) A request by a complainant under subsection (12)(b) for review of a decision of the commission must be in writing and set out the complainant's reasons for requesting the review.

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

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

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

Complaints re policies and services
44(1) Where a complaint is a complaint as to the policies of or services provided by a police service, the chief of police shall review the matter, and

(a) take whatever action the chief considers appropriate, if any, or

(b) refer the matter to the commission for it to take whatever action it considers appropriate.

(2) On the disposition of a matter by the chief of police or the commission under subsection (1), the chief shall advise the complainant in writing

(a) as to the disposition of the matter in respect of which the complaint was made, and

(b) of the complainant's right to appeal the matter to the commission if the complainant is not satisfied with the disposition of the matter.

(3) Where a complaint is disposed of under subsection (1), the complainant may, within 30 days from the day the complainant was advised of the disposition of the complaint, appeal the disposition of the complaint to the commission.

(4) Where the disposition of a complaint is appealed to the commission under subsection (3), the commission shall

(a) review the matter, and

(b) take whatever action it considers appropriate, if any.

(5) Notwithstanding subsection (4), a commission may appoint a committee consisting of not fewer than 3 members of that commission to conduct appeals made to the commission under subsection (3).

(6) Where a committee of the commission finishes conducting an appeal under this section, it shall make a recommendation to the commission with respect to the disposition of the appeal.

(7) On reviewing the recommendation made under subsection (6), the commission shall take whatever action it considers appropriate, if any.

(8) The commission or, where a committee of the commission is conducting an appeal, the committee, may conduct a hearing into the matter being appealed.

(9) On disposing of an appeal, the commission shall advise the complainant in writing as to the disposition of the appeal.

(10) The chief of police shall make a report in writing to the commission of al complaints made as to the policies of or services provided by the police service and the disposition by the chief of the complaints.

(11) The chief of police, in the case of a complaint under this section, must advise the complainant in writing at least once every 45 days as to the status of the complaint.

(12) A copy of the document sent to the complainant under subsection (11) must be provided to the commission.

Complaints re police officers
45(0.1) For the purposes of this section and sections 46 and 46.1, "police service" includes the Royal Canadian Mounted Police and a regional, provincial or municipal police service established under an enactment of another province or territory.

(1) Where a complaint is a complaint as to the actions of a police officer other than the chief of police, subject to sections 43 and 43.1, the chief shall cause the complaint to be investigated.

(2) If, after causing the complaint to be investigated, the chief of police is of the opinion that the actions of a police officer may constitute

(a) an offence under an Act of the Parliament of Canada or the Legislature of Alberta, the chief shall refer the matter to the Minister of Justice and Solicitor General, or

(b) a contravention of the regulations governing the discipline or the performance of duty of police officers, the chief shall cause the matter to be proceeded with under subsection (3).

(3) Where the chief of police is of the opinion that the actions of a police officer constitute a contravention of the regulations governing the discipline or the performance of duty of police officers, the chief of police, or a person designated by the chief of police who, pursuant to the regulations, is eligible to serve as the presiding officer at a hearing, shall conduct a hearing into the matter as it relates to that contravention.

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

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

(5) If a police officer is the subject of an investigation or hearing, the chief of police or the commission may request the chair of the commission to make arrangements for another police service to provide the necessary police officers to conduct the investigation, present the case or preside at the hearing, or perform any combination of those functions, as the case may be, if in the opinion of the chief of police or of the commission,

(a) there is not a police officer in the chief's police service who has sufficient rank and experience to carry out the functions, or

(b) it would be in the public interest to have one or more police officers of another police service carry out the functions.

(6) Where a police officer of another police service carries out any functions pursuant to arrangements made by the chair of the commission under subsection (5), that police officer has, for the purposes of carrying out those functions under subsections (1) to (4), the same powers as a chief of police.

(7) If a complaint is being investigated under this section, the chief of police must advise the complainant in writing at least once every
45 days as to the progress of the investigation.

(8) A copy of the document sent to the complainant under subsection (7) must be provided to the commission.

Complaints re chiefs of police
46(1) Where the chair of a commission receives a complaint as to the actions of the chief of police, subject to sections 43 and 43.1, the chair shall refer the complaint to the commission.

(2) If, after reviewing the complaint, the commission is of the opinion that the actions of the chief of police may constitute

(a) an offence under an Act of the Parliament of Canada or the Legislature of Alberta, or

(c) a contravention of the regulations governing the discipline or the performance of duty of police officers, the chair of the commission shall request the Minister to request or direct another police service to investigate the complaint.

(2.1) If the Minister receives a request from the chair of the commission under subsection (2), the Minister may request or direct that another police service investigate the complaint.

(2.2) Where a chief of police or a police officer of another police service carries out an investigation pursuant to a request or direction made under subsection (2.1), that chief or police officer has, for the purposes of carrying out the investigation, the same powers as a chief of police.

(3) If the chief of police or the police officer in charge of the police service requested or directed under subsection (2.1) to carry out the investigation is of the opinion that the actions of the chief that are the subject of the investigation constitute

(a) an offence under an Act of the Parliament of Canada or the Legislature of Alberta, that chief or police officer shall

(i) refer the matter to the Minister of Justice and Solicitor General, and

(ii) advise the commission of that chief's or police officer's findings, unless the Minister of Justice and Solicitor General otherwise directs, or

(b) a contravention of the regulations governing the discipline or the performance of duty of police officers, that chief or police officer shall refer the matter to the commission.

(4) Where a matter is referred to the commission under subsection (3)(b), the commission shall conduct a hearing into the matter as it relates to the contravention of the regulations governing the discipline or the performance of duty of police officers.

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

(6) The commission may appoint a lawyer to present to the commission the matter that is the subject of the complaint.

(7) If a complaint is being investigated under this section, the chair of the commission must advise the complainant in writing at least once every 45 days as to the progress of the investigation.

(8) A copy of the document sent to the complainant under subsection (7) must be provided to the Minister.

Serious incidents and complaints
46.1(1) The chief of police shall as soon as practicable notify the commission and the Minister where

(a) an incident occurs involving serious injury to or the death of any person that may have resulted from the actions of a police officer, or

(b) a complaint is made alleging that

(i) serious injury to or the death of any person may have resulted from the actions of a police officer, or

(ii) there is any matter of a serious or sensitive nature related to the actions of a police officer.

(2) The Minister, when notified under subsection (1) of an incident or complaint or on the Minister's own initiative where the Minister becomes aware of an incident or complaint described in subsection (1), may do any one or more of the following:

(a) request or direct that another police service provide a police officer to assist and advise the police service investigating the incident or complaint;

(b) request or direct another police service to conduct an investigation into the incident or complaint, which may include taking over an ongoing investigation at any stage;

(c) appoint one or more members of the public as overseers to observe, monitor or review an investigation to ensure the integrity of the process of the investigation;

(d) in accordance with section 46.2, direct the head of an integrated investigative unit to conduct an investigation into the incident or complaint, which may include taking over an ongoing investigation at any stage.

(3) A chief of police or police officer acting under subsection (2)(a), (b) or (d) or a person appointed under subsection (2)(c) shall report as required to the Minister.

(4) If the chief of police or police officer in charge of the police service conducting an investigation under subsection (2)(b) or (d) is of the opinion that the actions of the police officer that are the subject of the investigation constitute

(a) an offence under an Act of the Parliament of Canada or the Legislature of Alberta, the chief or police officer shall

(i) refer the matter to the Minister of Justice and Solicitor General, and

(ii) advise the commission and the chief of police of the police service under investigation of the chief's or police officer's findings, unless the Minister of Justice and Solicitor General otherwise directs,

(b) a contravention of the regulations governing the discipline or performance of duty of police officers, the chief or police officer shall refer the matter to the chief of the police service under investigation where it concerns the actions of a police officer, or to the commission where it concerns the actions of the chief of police, to be dealt with in accordance with this Part,

(c) a matter of the policies of or services provided by the police service under investigation, the chief or police officer shall refer the matter to the commission.

(5) The Minister may authorize and provide for the payment of remuneration and expenses to a person appointed under subsection (2)(c).

(6) A chief of police or police officer of another police service who is assisting with an investigation under subsection (2)(a) or conducting an investigation under subsection (2)(b) or (d) has, for the purposes of assisting with or conducting that investigation, the same powers and duties as a chief of police.

(7) A chief of police or police officer of another police service referred to in subsection (6) must advise a complainant, if any, in writing at least once every 45 days as to the status of the complaint.

(8) A copy of the document sent to a complainant under subsection (7) must be provided to the commission.

(9) Where a chief of police or police officer of another police service carries out any functions pursuant to a request or direction made under subsection (2), that police officer may also be requested to present the case or preside at the hearing of the complaint, and if so requested, that police officer has, for the purpose of carrying out those additional functions, the same powers as a chief of police.

(10) The Minister may delegate in writing the Minister's powers, functions and responsibilities under this section to the Director of Law Enforcement.

(11) The costs and expenses that result from

(a) a request or direction made by the Minister under subsection (2)(a), (b) or (d) shall be borne by the police service that is the subject of the investigation, unless otherwise directed by the Minister, and

(b) an appointment by the Minister under subsection (2)(c) shall be borne by the Government of Alberta.

Integrated investigative unit

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

(2) The Minister may

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

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

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

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

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

Conduct of hearing

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

(a) a notice in writing of the time, place and purpose of the hearing shall be served on the person who is the subject of the hearing at least 10 days before the commencement of the hearing

(b) a notice in writing of the time, place and purpose of the hearing shall be served at least 10 days before the commencement of the hearing on any other person, in addition to the person referred to in clause (a), as the person conducting the hearing directs;

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

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

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

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

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

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

(d.2) if a witness fails to attend or to answer questions or refuses to participate or to follow processes or conducts himself or herself in an inappropriate manner, the person conducting the hearing may dismiss the witness and continue with the hearing;

(e) the person conducting the hearing may receive any evidence presented that the person considers relevant to the matter being heard and is not bound by the rules of law respecting evidence applicable to judicial proceedings;

(f) repealed 2005 c43 s9;

(g) all oral evidence received shall be taken down in writing or recorded by electronic means;

(h) all the evidence taken down in writing or recorded by electronic means and all documentary evidence and things received in evidence at a hearing form the record of the proceeding;

(i) the person conducting the hearing may from time to time adjourn the hearing;

(j) the person in respect of whom the complaint is made is entitled

(i) to appear before the person conducting the hearing,

(ii) to make representations to the person conducting the hearing, and

(iii) to be represented by a lawyer or an agent;

(k) a witness, other than one employed for a police service, attending a hearing is entitled to the same fees and allowances as a witness summoned to attend at the Provincial Court unless otherwise provided for by a regulation made under this Act.

(2) Notwithstanding that the actions of a police officer have been referred to the Minister of Justice and Solicitor General under section 45(2)(a) or 46(3)(a), if the person who referred the matter to the Minister of Justice and Solicitor General is of the opinion that those actions also constitute a contravention of the regulations governing the discipline or the performance of duty of police officers, the matter as it relates to that contravention shall be proceeded with under section 45(3) or 46(4), as the case may be, unless the Minister of Justice and Solicitor General otherwise directs.

(3) Notwithstanding section 45(3) or 46(4), where a matter that is referred to the Minister of Justice and Solicitor General under section 45(2)(a) or 46(3)(a) is also to be proceeded with under section 45(3) or 46(4), the hearing of the matter under section 45(3) or 46(4) may be deferred until the proceedings respecting the offence are concluded.

(4) On considering a matter that is the subject of a complaint,

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

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

may dismiss the matter or, subject to the regulations, take any action against the person in respect of whom the complaint is made that

(c) the chief of police or the chief's designate, in the case of a complaint under section 45, or

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

considers proper in the circumstances.

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

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

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

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

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

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

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

Application
47.1 The amendments to section 47 made by the *Police Amendment Act, 2005 (No. 2)* apply only to hearings that commence after the coming into force of that Act.

Appeals to the Board
48(1) Where a chief of police or another police officer in respect of whom a complaint is made feels aggrieved by the findings or any action taken against the chief or police officer under section 47(4), the chief or police officer may, within 30 days from the day the chief or police officer was advised under section 47(5) of the findings and any action taken, appeal the matter to the Board by filing with the secretary to the Board a written notice of appeal setting out the grounds on which the appeal is based.

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

Complaints re RCMP

49 Notwithstanding sections 43 to 48 and subject to any agreement entered into between the Government of Canada and the Government of Alberta or a municipality, as the case may be, any complaints in Alberta with respect to members of the Royal Canadian Mounted Police shall be resolved in accordance with the laws governing complaints and discipline within the Royal Canadian Mounted Police.

50 Repealed 2006 cP-3.5 s38.

Use of evidence

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

(a) a hearing under this Act, or

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

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

Report of complaints

52 A police service shall, in respect of a complaint made under section 44, 45 or 46.1, and the commission shall, in respect of a complaint made under section 46, at the end of the month in which the complaint is made or within a longer period of time as prescribed by the Director of Law Enforcement, advise the Director of the complaint and, after the disposition of the complaint, advise the Director as to how the complaint was disposed of and provide any other information respecting the investigation requested by the Director in a manner acceptable to and within a time period specified by the Director.

Validation of hearings under Part 5

52.1 Despite any decision of a court to the contrary made before or after the coming into force of this section,

(a) a hearing conducted under this Part,

(b) a decision made pursuant to a hearing conducted under this Part, and

(c) everything done in respect of a hearing conducted under this Part

by a former police officer or a former member of the judiciary, including a former judge of the Court of Queen's Bench or the Provincial Court, on or after May 1, 2011 and before the coming into force of this section, is not invalid by reason of the presiding officer conducting the hearing being a former police officer or a former member of the judiciary, including a former judge of the Court of Queen's Bench or the Provincial Court.

Police Service Regulation Excerpts

Definitions
1 In this Regulation,

(a) "Act" means the Police Act;

(b) "cited officer" means a police officer charged with contravening section 5;

(b.1) "person in charge of the investigation" means the officer in charge of an investigating police service under section 46.1(2) of the Act or the head of an integrated investigative unit under section 46.2 of the Act, as the case may be;

(c) "police officer standards of competency" means, with respect to the carrying out of the duties of a police officer, those basic standards of skill and knowledge referred to in section 3(1);

(d) "presenting officer" means a police officer or lawyer referred to in section 14;

(e) "presiding officer" means a person referred to in section 13 conducting a hearing under Part 5 of the Act;

(f) "record" includes

(i) any book, record, document, account, statement, report, return or other memorandum of information whether in writing or in electronic form or represented or reproduced by any other means, and

(ii) the results of the recording of details of electronic data processing systems and programs to illustrate what the systems and programs do and how they operate;

(g) "senior officer" means a police officer who

(i) holds a rank of not less than inspector, or

(ii) is designated by the chief of police as a senior officer for the purposes of this Regulation.

Misconduct of a police officer
5(1) A police officer shall not engage in any action that constitutes one or more of the following:

(a) breach of confidence;

(b) consumption or use of liquor or drugs in a manner that is prejudicial to duty;

(d) corrupt practice; (d) deceit;

(e) discreditable conduct;

(e) improper use of firearms; (g) insubordination;

(h) neglect of duty;

(i) unlawful or unnecessary exercise of authority

Counselling
6(1) Where a supervisor or a superior officer is of the opinion that an action of a police officer is not of a sufficient nature so as to require the action to be dealt with in accordance with section 45 of the Act, the supervisor or officer of superior rank may nevertheless counsel the police officer, orally or in writing, with respect to the performance of duty of and the action taken by the police officer.

(2) A written record of any counselling carried out under this section may be kept on the police officer's personnel file but may not be introduced as evidence in any proceeding under the Act.

(3) Nothing in this section shall be construed so as to prohibit the information maintained in any records kept under this section from being used for the purposes of making reviews of performance under section 4(2).

Time limits
7(1) A police officer shall not be charged with contravening section 5 at any time after 6 months from the day that a complaint is made in accordance with section 43 of the Act.

(2) Subject to section 47(2) and (3) of the Act, where a hearing is to be held under the Act, the hearing shall be commenced no later than 3 months from the day that a police officer is charged with contravening section 5.

(3) Where a hearing is commenced under the Act it shall, subject to section 47(1)(i) of the Act, be completed within a reasonable time and without undue delay.

(4) Notwithstanding that time limits are prescribed under this section, the commission may, if it is of the opinion that circumstances warrant it, extend any one or more of those time limits.

(5) The time limits set out in subsections (1) and (2) do not apply in respect of a matter where the Law Enforcement Review Board has ordered under section 20(2) of the Act that a hearing or rehearing of the matter be conducted.

Charging of police officer
11(1) Where a police officer is to be charged with contravening section 5, the charge shall be in writing and shall

(a) identify the specific offence under section 5 that the police officer is charged with, and

(b) state the date, time and place that the police officer is to appear before a hearing into the offence.

(2) A charge prepared in accordance with subsection (1) may be in the form set out in the Schedule.

(3) A charge prepared under this section shall have attached to it

(a) a statement setting out the particulars of the actions of the police officer that constitute the contravention of section 5, and

(b) a list of witnesses and a statement of the evidence to be introduced as evidence in the hearing.

(4) A copy of the charge and attachments shall be served on the cited officer at least 10 days before the commencement of the hearing.

Presiding Officer
13(1) Any of the following persons may serve as the presiding officer at a hearing:

(a) subject to subsection (1.1), a currently serving or former police officer;

(b) a former member of the judiciary, including judges of the Court of Queen's Bench and the Provincial Court.

(1.1) A police officer serving as a presiding officer pursuant to subsection (1)(a) must be senior in rank to the cited officer.

(2) A person who meets the requirements of subsection (1) but who has direct knowledge of the investigation of the complaint is not eligible to be appointed to preside at a hearing arising from that investigation.

Punishment
17(1) Where at a hearing it is determined that a cited officer is guilty of contravening section 5, the presiding officer shall impose on the cited officer one or more of the following punishments:

(a) a reprimand;

(a.1) a course of treatment or participation in a rehabilitation program;

(b) forfeiture of hours of work accumulated through overtime, not to exceed 40 hours;

(c) suspension from duty without pay for a period not to exceed 80 hours of work;

(e) reduction of seniority within a rank; (e) reduction in rank;

(f) dismissal from the police service.

(2) Where the punishment to be imposed on the cited officer is dismissal, the presiding officer may, if he is of the opinion that the circumstances warrant it, permit the cited officer to resign from the police service within the time specified by the presiding officer instead of being dismissed

(3) In addition to any penalty applied pursuant to subsection (1)(a) to (f), the cited officer may also be directed to undertake special training or professional counselling.

(4) Notwithstanding subsection (1), where the presiding officer

(a) is not the chief of police, and

(b) makes a finding that the cited officer is guilty of a contravention under section 5,

the presiding officer may, before determining the punishment to be imposed on the cited officer, consult with the chief of police with respect to the punishment to be imposed.

Minor contraventions
19(1) Where a matter is disposed of under section 45(4) of the Act without conducting a hearing, the chief of police

(a) may

(i) dismiss the matter,

(ii) issue an official warning, or

(iii) take any other action that in the opinion of the chief of police is appropriate in the circumstances,

or

(b) with the agreement of the cited officer, may

(i) issue a reprimand,

(ii) order the forfeiture of hours of work accumulated through overtime, not to exceed 40 hours, or

(iii) suspend the police officer from duty without pay for a period not to exceed 80 hours of work.

(1.1) For the purpose of determining whether a matter may be disposed of in accordance with subsection (1), the chief of police shall consider the following factors:

(a) whether the conduct of the cited officer

(i) may constitute an offence under the *Criminal Code (Canada)*,

(ii) may constitute a breach of the *Canadian Charter of Rights and Freedoms*, or

(iii) consisted of an act of deceit;

(b) whether the cited officer's behaviour is non-cooperative or obstructive;

(c) the cited officer's disciplinary record.

(2) Repealed AR 44/2011 s9.

(3) Repealed AR 136/2008 s9.

Return of back pay, etc.
20 Where a police officer is charged with a contravention of section 5 and

(a) the charge is withdrawn,

(b) the police officer is found not guilty of the charge, or

(c) the police officer is found guilty but on appeal is found not guilty of the charge,

any punishment imposed on the police officer shall be rescinded and any pay, benefits or time forfeited or lost by reason of the suspension shall be returned to the cited officer.

Records of discipline
22 When, and only when,

(a) a period of 5 years has elapsed from the day that punishment is imposed on a police officer for a contravention of section 5, or

(b) a period of not less than one and not more than 3 years, as specified in writing by the chief of police, in respect of a police officer, or the commission, in respect of the chief, has elapsed from the day that an action is taken in respect of a police officer under section 19(1),

if during that time no other entries concerning a contravention of this Regulation have been made on the police officer's record of discipline, any record of the punishment, the contravention or the action taken shall

(c) be removed from the police officer's record of discipline and destroyed, and

(d) not be used or referred to in any future proceedings respecting that police officer.

Application to chief of police
23 This Regulation applies to a chief of police in the same manner as it applies to a police officer except that any duty or responsibility that is placed on the chief of police under this Regulation shall be carried out by the commission.

Factors to be considered by Board
23.1(1) In this section, "Board" means the Law Enforcement Review Board.

(2) The following factors are to be considered by the Board in deciding whether an appeal may be concluded in accordance with section 19.2(1)(b) of the Act:

(a) whether the record before the chief of police was tainted, flawed or grossly inadequate;

(b) the complainant's conduct during the investigation, including whether the complainant actively participated in the investigation;

(c) whether the appeal raises issues of acceptability of police conduct or the integrity of the discipline process.