



David Asper Centre for Constitutional Rights
UNIVERSITY OF TORONTO

**Brief on Bill C-3 (Historical): An Act to amend the
Royal Canadian Mounted Police Act and
the Canada Border Services Agency Act and to make consequential
amendments to other Acts**

*Prepared by the David Asper Centre for Constitutional Rights'
Working Group on Indigenous Rights*

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About the David Asper Centre for Constitutional Rights

The David Asper Centre for Constitutional Rights is a centre within the University of Toronto, Faculty of Law devoted to advocacy, research, and education in relation to constitutional rights in Canada. The Centre houses a unique legal clinic that brings together students, faculty, and members of the legal profession to work on significant constitutional cases. Through the establishment of the Centre, the University of Toronto joins a small group of international law schools that play an active role in constitutional debates of the day. It is the only Canadian Centre in existence that attempts to bring constitutional law research, policy, advocacy and teaching together under one roof. The Centre aims to play a vital role in articulating Canada's constitutional vision to the broader world. The Centre was established through a generous gift to the law school from University of Toronto law alumnus David Asper (LLM '07).

About the Indigenous Rights Working Group

The Indigenous Rights Working Group consists of thirteen JD students at the University of Toronto, Faculty of Law. We share a common interest in examining how important issues in Canadian constitutional law affect Indigenous peoples. Our mandate in this Submission is to put forward recommendations on how Canada's federal police oversight mechanisms can be improved with a view to building trust between Indigenous communities and the police. We are grateful for the input of Executive Director Cheryl Milne, Program Coordinator Tal Schreier, and Professor Kent Roach.

PART I: Introduction and Background

Federal police oversight is a pressing issue in Canada. Presently, the Civilian Review and Complaints Commission (CRCC) oversees the Royal Canadian Mounted Police (RCMP), while the Canada Border Services Agency (CBSA) has no independent review and complaint mechanism. Given the increased securitization of borders in recent years and the CBSA's broad police-like powers, this lack of oversight raises concerns about the accountability of border agents.¹

The RCMP's civil complaint and review body, on the other hand, has its own challenges. Critics have long argued that the CRCC is ineffective at providing meaningful independent oversight due to its limited mandate and resources. The Commission can only make recommendations, which the RCMP is not bound to adopt.² Moreover, the Commission's first step in a review is to refer the complaint of police misconduct back to the RCMP for investigation, which gives the impression that the CRCC merely oversees the RCMP's internal discipline and that "police investigating police" remains the *de facto* practice.³ Other issues such as a lack of funding and long delays further prevent the CRCC from being a meaningful and robust oversight body.⁴

Indigenous⁵ communities have been particularly negatively affected by inadequate accountability for police misconduct. A growing number of research studies and commissions of inquiry have found that Indigenous peoples are not only under-protected by the police but have also been subject to outright police abuse.⁶ The systemic and personal racism suffered by Indigenous peoples both historically and today has caused them to be deeply distrustful of Canadian law enforcement authorities.⁷ Enhancing police accountability would be a crucial element in repairing the relationship between Indigenous peoples and Canada.

In January 2020, the federal government tabled [Bill C-3](#) with a view to changing the police oversight framework. The bill's aim was two-fold: (1) to amend the *Royal Canadian Mounted Police Act* ("RCMP Act") to rename the CRCC the Public Complaints and Review Commission (PCRC) and (2) to amend the *Canadian Border Services Agency Act* ("CBSA Act") to expand the PCRC's purview to cover both the CBSA and the RCMP.⁸

¹ Farrell, Latoya, Karla Lottini and Harsha Walia. "'CBSA is Not a Fair or Accountable Agency': Why We Need Canada Border Services Agency Oversight." *British Columbia Civil Liberties Association*, 2020, <https://bccla.org/2020/03/cbsa-is-not-a-fair-or-accountable-agencywhy-we-need-canada-border-services-agency-oversight/>.

² Tunney, Catharine. "RCMP watchdog's misconduct reports caught in limbo, stalling their release." *CBC News*, 2020, <https://www.cbc.ca/news/politics/rcmp-complaint-watchdog-1.5594861>.

³ Ballingall, Alex. "Who investigates complaints about the RCMP? In '99.9%' of cases, it's the RCMP." *Toronto Star*, 2020, <https://www.thestar.com/politics/federal/2020/06/17/who-investigates-complaints-about-the-rcmp-in-99-9-of-cases-its-the-rcmp.html>.

⁴ Tunney *supra*.

⁵ "Indigenous" here is a collective term for First Nations, the Inuit, and the Metis.

⁶ Wright, David H. *Report of the Commission into Matters Relating to the Death of Neil Stonechild*. 2004.

⁷ Tulloch, The Honourable Michael H. *Report of the Independent Police Oversight Review*. Queen's Printer for Ontario, 2017.

⁸ "House Government Bill." *LEGISinfo*, Parliament of Canada, 2019, <https://www.parl.ca/LegisInfo/BillDetails.aspx?billId=10613928&Language=E>.

Bill C-3 was on its second reading when it died in August 2020 with the prorogation of Parliament.⁹ Despite this, we focus our analysis on Bill C-3 under the expectation that future legislation will contain many of the same amendments as its predecessor. This was the case with Bill C-3, which was nearly identical to Bill C-98, an earlier effort to improve the federal oversight framework.¹⁰

Through an analysis of the substantive amendments in Bill C-3 and their likelihood of effecting change, we argue that the bill would not have provided adequate independent oversight and that, as such, future legislation should not simply reintroduce the bill in the same form. Our hope is that Parliament would consider the findings and recommendations in this Submission and allow them to inform the drafting of a new oversight bill.

PART II: Recommendations

Recommendation 1: A future police oversight bill should amend both the RCMP Act and the CBSA Act to include clauses which mandate the Governor in Council to consider the need for Indigenous representation in the membership of the Commission before appointing a person as a member of the Commission. Individuals appointed to the Commission should also be screened for any identifiable racial bias, and all investigations and complaints filed by Indigenous persons against the RCMP or the CBSA should be overseen by an Indigenous observer. Such requirements were introduced in Saskatchewan's Police Amendment Act, 2020¹¹, and we argue that they should also be adopted at the federal level.

Recommendation 2: A future police oversight bill should include clear and concise timelines for the Commission, the Commissioner, the RCMP and the CBSA throughout the entirety of the investigation and review processes.

Recommendation 3: The Commission should be required to produce two special reports on its relationship with Indigenous peoples – one within the context of the RCMP and one within the context of the CBSA.

Recommendation 4: The Commission should be required to collect race-based data with regards to its activities and to include this data in its annual reports.

Recommendation 5: The Commission should be required to implement public outreach programs that are directly targeted at Indigenous communities.

⁹ *Ibid.*

¹⁰ "Research Publications." *Parliament of Canada*, 2019,

[https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/421C98E#:~:text=Bill%20C%E2%80%99198%20amends%20the,and%20Review%20Commission%20\(PCRC\).&text=The%20bill%20received%20first%20reading%20in%20the%20Senate%20on%2020%20June%202019.](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/421C98E#:~:text=Bill%20C%E2%80%99198%20amends%20the,and%20Review%20Commission%20(PCRC).&text=The%20bill%20received%20first%20reading%20in%20the%20Senate%20on%2020%20June%202019.)

¹¹ Hunter, Adam. "Sask. expands police oversight, gives Public Complaints Commission more responsibility." *CBC News*, 2020, <https://www.cbc.ca/news/canada/saskatchewan/sask-expand-police-oversight-1.5615900>.

Recommendation 6: Time limits for bringing complaints against the RCMP and the CBSA should be significantly extended or eliminated altogether, if feasible.

Recommendation 7: The Commission should be required to provide translation services in Indigenous languages for complainants where possible and Commission members should be required to undergo training in how to provide culturally-appropriate services to Indigenous complainants. Public outreach, representations, and updates should be done in Indigenous languages where possible, and assistance provided to complainants should be provided in a culturally-sensitive manner.

Recommendation 8: The identity and personal characteristics of complainants, in particular Indigenous complainants, should be kept hidden from the RCMP or CBSA officers against whom the complaint is brought, when the Commission is investigating a complaint, unless their divulgence is necessary for the investigation.

Recommendation 9: Decisions to continue investigations of complaints after withdrawal of the complaint by the complainant should be made with the best interests of the complainant in mind and should be undertaken only after consultation with the complainant.

Recommendation 10: Indigenous complainants should be offered a restorative justice approach to complaint resolution.

Recommendation 11: The decisions of the Commission should be binding on the RCMP and the CBSA.

Recommendation 12: The Commission should be the primary means through which complaints against the RCMP and the CBSA are dealt with – meaning that complaints should not first be investigated internally by the RCMP and the CBSA.

Recommendation 13: Accommodations should be made for Indigenous witnesses from remote communities who are compelled to testify in hearings.

PART III: Analysis of Bill C-3

The research conducted by our working group this year revealed a consistent set of problems with the oversight framework for the RCMP, many of which will be discussed below in the context of Bill C-3's proposed changes to the RCMP Act and the CBSA Act. Overall, the CRCC was found by our group members to be underfunded, slow-moving, and "toothless", due to the non-binding nature of its recommendations. Other major problems identified included a lack of diversity in CRCC staff composition; an unduly heavy dependence on the RCMP for conducting investigations; a lack of communication between the CRCC and complainants; a lack of public knowledge on how the review process works; a lack of accessibility to the review process for people who do not speak English or French; and a lack of public faith, especially within Indigenous communities, in the review process.

With regards to Indigenous communities in particular, a misalignment between Canadian and Indigenous views of justice was found to exacerbate already negative relationships between Indigenous peoples and the police. A fear of retaliation and discriminatory treatment was found to exist within Indigenous communities, leading many to call for the collection of race-based data through which discrimination could be made visible.

The following line-by-line analysis of Bill C-3 will touch on many of the afore-mentioned issues and will seek to demonstrate how Bill C-3 could be improved upon to effectively deal with these concerns.

Clause 3

This clause requires that one of the five members of the Commission be a Vice-chairperson but does not address the lack of diversity in the Commission staff composition.¹² The RCMP Act accounts for regional representation in the Commission¹³ but fails entirely to consider the importance of racial representation.

A lack of racial diversity in leadership positions – particularly in law enforcement – may lead to serious operational deficiencies including, but not limited to, conscious or unconscious bias against “outsider” groups, such as those of another race. The government should also consider that a lack of diversity will negatively impact the lack of public faith in the Commission. Especially with regards to Indigenous communities, a lack of racial representation may further degrade already tenuous Indigenous-Crown relations.

In addition to increasing racial diversity within the Commission, the Commission could also follow Saskatchewan’s example and have investigations into complaints filed by Indigenous persons be overseen by an Indigenous observer.¹⁴ This has been described in Saskatchewan as “a start to Indigenous our justice system” and was intended to “build confidence in constituencies where these kinds of serious incidents have been visited upon them significantly.”¹⁵

Clause 6

The RCMP Act, as it currently stands, requires the Commission to “establish, and make public, service standards respecting the time limits within which it is to deal with complaints.”¹⁶ Clause 6 adds to this requirement by requiring the Commission to establish service standards, jointly with the RCMP, with respect to the entire review process. It requires time limits to be set for both the

¹² “Bill C-3: An Act to amend the Royal Canadian Mounted Police Act and the Canada Border Services Agency Act and to make consequential amendments to other Acts.” First Session, 43rd Parliament, 68 Elizabeth II, 2019-2020. <https://parl.ca/DocumentViewer/en/43-1/bill/C-3/first-reading#ID0E0WB0AA> at cl. 3.

¹³ *Royal Canadian Mounted Police Act*, R. S. C. 1985, c. R-10 at s. 45.29(3).

¹⁴ Quenneville, Guy. “‘It’s Still Police Investigating Police,’ Cree Lawyer Says of Sask. Oversight Changes.” *CBC News*, 2020, <https://www.cbc.ca/news/canada/saskatoon/public-complaints-commission-1.5618615>.

¹⁵ *Ibid.*

¹⁶ RCMP Act *supra* at s. 45.37.

Commission and the RCMP respectively and requires “those service standards that are related to communications with complainants” to be published on the Commission’s website.¹⁷

This clause is responsive to calls for increased transparency regarding review process timelines; however, it does not go far enough. The *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (“MMIWG Report”) specifically recommends setting standards for when reports should be dealt with by the Commission and the RCMP.¹⁸ To ensure that service standards are rigorous, time limits for dealing with complaints should be specified in any future police oversight bill, rather than left to the discretion of the Commission and the RCMP.

Furthermore, the incorporation of the RCMP into the process for establishing service standards could, in theory, be a helpful step because it may increase officer confidence in the review process – a process towards which many officers have demonstrated hostility.¹⁹ However, this change may increase distrust of the oversight process in Indigenous communities. Increasing police involvement in the establishment of oversight mechanisms is likely to increase the view that police are policing themselves. This is another reason for specifically legislating timelines rather than leaving them to the discretion of the RCMP and the Commission.

Clause 6 also allows the Governor in Council to make regulations respecting the establishment of service standards. It is possible that the Governor in Council could take advantage of this power to put stricter time limits on the Commission and the RCMP than they would put on themselves. However, this is no substitute for specifically legislated timelines.

Clause 9

The RCMP Act currently permits the Commission to provide the Minister with a “special report concerning any matter that relates to its powers, duties and functions.”²⁰ Clause 9 requires this report to be provided also to the Commissioner and requires that a summary of the full report be provided to both the Minister and the Commissioner. It also requires this summary to be made public 15 days, or more, after it is provided to the Minister and the Commissioner.²¹

Making the summaries of special reports public is a good way to increase the transparency of police oversight. It would be helpful for the Commission to produce a report specifically documenting the experience of Indigenous peoples with police oversight. To mandate the creation of such a report, a future police oversight bill could include a provision requiring the Commission to produce a special report on its relationship with Indigenous communities. The production of such special reports, however, would require increased funding. The already under-resourced

¹⁷ Bill C-3 *supra* at cl. 6.

¹⁸ *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*. 2019.

¹⁹ Wright *supra* at p. 137.

²⁰ RCMP Act *supra* at s. 45.51.

²¹ Bill C-3 *supra* at cl. 9.

CRCC with its current annual budget of less than \$13 million²² is in no position to assume additional reporting responsibilities.

Clause 10

This clause amends s. 45.52(1) of the RCMP Act to require the Commission's annual report to include information about its activities under both the RCMP Act and the CBSA Act.²³ Looking at the most recent annual report, the recommendations in cl. 10 do not add significantly to the current annual report framework, and merely formalize elements of the report that are already present.²⁴ It would be helpful here to require the Commission's annual report to include race-based data related to complaints brought against both the RCMP and the CBSA. This would paint a clearer picture of what proportion of complaints are being brought by Indigenous people and how the complaints are being dealt with. It may also allow for a statistical comparison of how complaints are dealt with when they are brought by Indigenous people as opposed to other racial groups.

Clause 15: Amendments to the CBSA Act

Given that many of the CBSA Act amendments in Bill C-3 mirror existing provisions of the RCMP Act, our following recommendations with respect to the CBSA likewise apply to the RCMP.

Section 17(2): Canada Border Services Agency Unit

The new s. 17(2) creates the "Canada Border Services Agency Unit" ("CBSA Unit") within the PCRC. The Unit will have the authority to investigate complaints against current and former employees of the CBSA and to conduct reviews into the activities of the agency. With regards to the composition of the CBSA Unit, Bill C-3 states only that it will be comprised of "officers and employees of the PCRC that support the PCRC in the exercise of its powers and the performance of its duties and functions".²⁵

As mentioned above, the lack of diversity in the staff composition within the PCRC is a problem and any new CBSA Unit would need to address this concern. To adequately address the challenges related to a lack of diversity and lack of public faith in review processes, any future bill should clearly outline how the composition of the CBSA Unit will be determined.

Section 21: Service Standards Respecting Time Limits

²² Roach, Kent. "Report into RCMP's treatment of grieving Indigenous family left out key systemic problems." *Policy Options*, 2021, <https://policyoptions.irpp.org/magazines/april-2021/report-into-rcmps-treatment-of-grieving-indigenous-family-left-out-key-systemic-problems/>.

²³ *Ibid* at cl. 10.

²⁴ Civilian Review and Complaints Commission for the RCMP. *Annual Report 2019-2020*. 2020, <https://www.crcc-ccetp.gc.ca/en/annual-report-2019-2020>.

²⁵ Bill C-3 *supra* at cl. 15.

New s. 21 is like cl. 6 in that it calls for the Commission to establish service standards respecting time limits for dealing with complaints jointly with the CBSA.²⁶ This section is therefore likewise problematic because of its lack of specificity. In the legislation as written, there is no guidance on what these time limits should be. These standards should be legislated deliberately, rather than left to the discretion of the Commission and the CBSA.

Section 22: Education and Information

New s. 22 calls on the Commission to implement “education and information programs” to inform the public about its mandate.²⁷ Without specifying what these programs would entail, who they would apply to, or how detailed they are, the actual efficacy of this initiative is impossible to anticipate. The section should consider outlining the objective, the scope, or a benchmark for success for such programs and what they aim to achieve.

Furthermore, a specific effort should be made to increase public education and outreach to Indigenous communities. This section should specifically require communications with Indigenous communities, especially northern and rural ones.

Sections 23 and 24: Right of Access – Reviews & Complaints

New ss. 23 and 24 are also unduly vague. These sections state that when conducting a complaint investigation or review, the Commission must have access, in a “timely manner”, to any relevant information in the possession of the CBSA.²⁸ There is no clarity on what a “timely manner” is. This could therefore serve as another barrier to effective oversight and erode public trust in the process. Legislating a time limit would solve this issue.

Section 32: Reporting

New s. 32 is nearly identical to cl. 9 above but concerns the CBSA rather than the RCMP.²⁹ The same concerns and recommendations apply as noted above with respect to cl. 9.

Sections 33(2) and 33(3): Right and Duty to Refuse to Investigate a Complaint

Under new ss. 33(2) and 33(3), the Commission has both the right and the duty to refuse to investigate certain types of complaints, such as where a complaint has been or could have been more adequately dealt with under another federal or provincial body.³⁰ While the Commission must identify this body to the complainant, it is unclear what the procedure will be if there is disagreement about which agency is better suited to deal with the complaint.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

Discretionary decisions such as these are easily influenced by subconscious racial bias that is difficult to prove. This makes it even more important that Commission members are chosen with racial representation in mind and that those who are appointed are screened for any identifiable racial bias.

Turning to the methodology employed to investigate wrongful police conduct against Indigenous peoples and other minority groups, a future bill should require, or at least permit, the use of equality and colonial analyses. In its recent Colten Boushie report, the CRCC based its finding of discrimination on a “social, legal and historical context” that involved looking at the colonial history of Indigenous-police relations.³¹ This approach was repudiated by the National Police Federation as both “fall[ing] outside of the CRCC’s scope” and generating “broad-brush findings” that fail to “touch on the real issue”.³² Yet, it is a well-established fact that the present-day troubled relations between Indigenous peoples and the police have their roots in colonialism.³³ As such, the assessment of discrimination against Indigenous and other minority communities cannot be abstracted from their historical and social realities.

Section 33(8): Time Limit

The one-year time limit on complaints under new s. 33(8) will likely hinder the ability of many individuals to bring complaints.³⁴ Delays in making a complaint may be exacerbated by lack of information about the review process, fear, or distrust of the CBSA or the Commission. It seems unfair that no time limits are placed on the Commission, RCMP or CBSA when it comes to dealing with complaints, but time limits *are* placed on complainants who have been victimized. While extensions on time limits are available, it is unclear under what circumstances extensions would be granted. Time limits should therefore be eliminated or significantly extended to allow individuals greater opportunity to bring a complaint forward.

Section 33(12): Assistance

Complainants are entitled to assistance from the Commission in making a complaint under new s. 33(12).³⁵ However, it is unclear what level of assistance is to be provided and whether individuals must be made aware of available assistance. Assistance should be accessible and culturally competent.

Section 34: Notice to Officer or Employee

³¹ “Commission’s Final Report: Chairperson-Initiated Complaint and Public Interest Investigation into the RCMP’s Investigation of the Death of Colten Boushie and the Events that Followed.” *Civilian Review and Complaints Commission for the RCMP*, 22 Mar. 2021, <https://www.crcc-ccetp.gc.ca/en/commissions-final-report-cic-pii-ColtenBoushie-Events>.

³² “March 21, 2021 – CRCC report overlooks key facts and evidence in RCMP Investigation of Colten Boushie’s death.” *National Police Federation*, 21 Mar. 2021, <https://npf-fpn.com/march-21-2021-crcc-report-overlooks-key-facts-and-evidence-in-rcmp-investigation-of-colten-boushies-death/>.

³³ For example, see Justice Tulloch *supra*.

³⁴ *Ibid.*

³⁵ *Ibid.*

Providing notice to the person against whom a complaint is made may be problematic in small Indigenous communities where there is ongoing contact between an officer or employee and the individual who made the complaint.³⁶ This is particularly concerning if data about the complainant, such as his or her identity or distinguishing factors about the episode, would be disclosed. Fear of retaliation, stigmatization, and retribution may prevent individuals, especially Indigenous complainants, from bringing claims forward. Provisions should be added to protect the identity and safety of the complainant.

Section 35: Withdrawal

Under new ss. 35(5) and (6), a complainant may withdraw a complaint at any time. However, the Commission will keep all the evidence relating to the complaint and may choose to conduct an investigation, review or hearing related to the case.³⁷ This unilateral action has the potential to mimic colonial paternalism and further deteriorate trust between the parties. This also has the potential to cause further harm to complainants, depending on their reasons for withdrawing a complaint. Additional provisions should be added to clarify under what circumstances the Commission may further investigate a complaint after the withdrawal of a complainant and ensure that decisions are made in the best interest of the complainant and their community.

Section 36: Informal Resolution of Complaints

Informal resolution at the request of the President has the potential to silence individuals who may feel pressured to agree to an informal resolution due to the inherent power dynamic between them and the President and a lack of understanding of their rights to formal review.³⁸ Justice Tulloch's *Report of the Independent Police Oversight Review* found that many Indigenous individuals lacked knowledge of the review process altogether and did not know they were able to access the review through an oversight body.³⁹ The report also found that "Northern and rural Indigenous communities were particularly vulnerable to a lack of engagement by oversight bodies, which could result in lower levels of knowledge of the review process."⁴⁰ Indigenous individuals who do not speak English or French had the potential of being further excluded and the review process being more inaccessible to them. These factors were compounded by a lack of faith in the review process resulting in meaningful resolution. In implementing a similar review process for the CBSA, all complainants, especially Indigenous complainants who do not speak English or French, must be made fully aware of their right to formal resolution, and the differences in process and outcome that might arise between a formal and informal review.

In addition to simply "formal" and "informal" resolutions to complaints, this section should include provisions for the option of a restorative justice resolution process. Many Indigenous traditions incorporate themes of restorative justice that are not available in the current or proposed review process, which may make the process unappealing and discourage individuals from seeking review. Including the option of restorative justice resolutions, healing circles, or mediation may

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Tulloch *supra*.

⁴⁰ *Ibid.*

offer a more meaningful remedy for Indigenous peoples and encourage relationship building between the CBSA and Indigenous communities.

Section 37: Right to Make Representations

When the complainant is Indigenous, it may be necessary for the representation⁴¹ to be made in a language other than English or French, especially when the content of the complaint may be traumatizing or difficult to recount. Accordingly, this accommodation ought to be included.

Section 43: Updates with Respect to the Investigation

Requiring the CBSA to update complainants on the status of the investigation is a necessary step to ensure that complainants are aware of how their complaints are being handled.⁴² When dealing with complainants, the CBSA should determine how to best deliver these updates, prioritizing the most meaningful means of conveyance (i.e., the language of the update, the medium of the update, and the complexity of the update). The updates should also include detailed information about when complainants are likely to receive a resolution to their complaints to account for the slow speed with which complaints are often dealt.

Sections 47: Right to Discontinue Investigation

Where the Commission believes an investigation is unnecessary,⁴³ it could offer alternative forms of mediation reflective of Indigenous legal traditions and restorative justice. Against the background of colonialism, offering alternative remedies would integrate Indigenous perspectives on what communities believe is needed to address complaints.

Sections 51(3), 52, and 55: PCRC's Final Report

A shortcoming of the current oversight framework is the Commission's ability to only give non-binding recommendations. However, new ss. 52(1) and 55(2) of the CBSA Act grant the President of the CBSA discretion to not act on the Commission's findings or recommendations.⁴⁴ Any new police oversight bill should remove this discretion and require the CBSA to comply with the Commission's recommendations. The CBSA should also be required to demonstrate the steps it is taking to comply with the Commission's recommendations and to justify any failures to comply.

The Commission itself has expressed concerns over its inability to give binding recommendations to the RCMP in the *Executive Summary on the RCMP's Response to Anti-Shale Gas Protests in Kent County, New Brunswick*.⁴⁵ When the RCMP rejected findings, its justification was often

⁴¹ Bill C-3 *supra*.

⁴² *Ibid*.

⁴³ *Ibid*.

⁴⁴ *Ibid*.

⁴⁵ Civilian Review and Complaints Commission for the RCMP. *Executive Summary: CRCC Report into the RCMP's Response to Anti-shale Gas Protests in Kent County, New Brunswick*. 2020, <https://www.crcc-cctcp.gc.ca/en/executive-summary-anti-shale-gas-protests-kent-county>.

based on its own assessment of evidence without reference to specific evidence or documents.⁴⁶ The RCMP's rejection of recommendations limiting collection and retention of open-source information only heightened these concerns.⁴⁷ The inability to issue binding recommendations therefore decreases the Commission's ability to effect real change and frustrates its purpose as an independent oversight body.⁴⁸

Section 60: Investigation

Under new s. 60, the CBSA is responsible for first investigating themselves upon learning about alleged serious incidents involving CBSA employees.⁴⁹ This perpetuates the harmful practice and image of "police investigating police." The RCMP themselves have taken issue with this practice and it has continued to serve as an inefficient, ineffective, and unpopular means of bringing justice to complainants and their families.⁵⁰

There has been public outrage over the practice of police investigating police, with many families of victims eminently disappointed with the lack of justice they received.⁵¹ For example, with regards to the investigation of her son's death while a passenger during a police chase in Saskatoon, Charmaine Dreaver stated, "I'm not comfortable with that at all ... I think it has to be a completely different body."⁵² In Nunavut, Jerry Natanine encouraged his community to film interactions with the RCMP for protection, following the death of his son, shot by an RCMP officer.⁵³ He emphasized the lack of trust he and his community feel toward the RCMP, and their resultant lack of faith in RCMP oversight. These are the exact persons who the oversight process is meant to bring justice to, so these deficiencies and the perceptions they create are detrimental to the effectiveness of the oversight mechanism.

Section 67: Attendance of Witnesses

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Human Rights Watch. *Police Abuse of Indigenous Women in Saskatchewan and Failures to Protect Indigenous Women from Violence*. Submission to the Government of Canada, 2017.

⁴⁹ Bill C-3 *supra*.

⁵⁰ Civilian Review and Complaints Commission for the RCMP. *Police Investigating Police –Final Public Report*. 2009, <https://www.crcc-ccetp.gc.ca/en/police-investigating-police-final-public-report>.

⁵¹ Stelkia, Krista. "An Exploratory Study on Police Oversight in British Columbia: The Dynamics of Accountability for Royal Canadian Mounted Police and Municipal Police" *Journal of Applied Security Research*, 2020, <https://doi.org/10.1080/19361610.2020.1777807>.

⁵² White-Crummey, Arthur. "No Plan for Civilian Agency to Handle Police Oversight; Bill Proposes Reform, But Minister Says Independent Panel Too Costly." *The Star Phoenix*, 2020, <https://www.proquest.com/canadiannews/docview/2414622330/citation/F64B86A5CD594EE8PQ/1?accountid=14771>.

⁵³ Walsh, Marieke and Sean Fine. "Families of Victims to RCMP Shootings in Nunavut Want Second Review of Cases: Jerry Natanine Says He Expects Little From the Investigation of His Son's Fatal Shooting by RCMP." *The Globe and Mail*, 2020, <https://www.theglobeandmail.com/canada/article-mayor-in-nunavut-urges-residents-to-record-interactions-with-police/>.

Complaint bodies can be inaccessible to some Indigenous peoples, especially those in northern and rural communities.⁵⁴ New s. 65(1)(a) fails to accommodate potential mobility issues and costs that could make it burdensome for some Indigenous peoples to attend as witnesses. This would force Indigenous peoples to take on significant costs as they would be subject to the punishment provisions under new s. 67(3) if they failed to comply.⁵⁵ To address this, new s. 65(1)(a) should incorporate accommodations for mobility issues and associated costs to ensure that Indigenous peoples have equal and fair access to the complaint process.

New s. 67(1)(b) outlines a requirement for witnesses to engage in a complaint inquiry based on European conceptions of justice, with failure to comply resulting in punishment under new s. 67(3). This fails to acknowledge the fundamental misalignment between the complaint process and Indigenous legal traditions, which creates the potential to further alienate Indigenous peoples from the complaint process.⁵⁶

Section 70: Limitation Period (Applies to ss. 67-69)

The limitation period in new s. 70 is aligned with the standard limitation for summary convictions,⁵⁷ but it is worth noting how this provision can uniquely impact Indigenous peoples and perpetuate systemic racism in law enforcement agencies.

New s. 68 relates to many of the negative behaviours of law enforcement agencies that have been identified to impact Indigenous peoples because of systemic racism.⁵⁸ Paired with the lack of knowledge and fear or distrust of the complaint process, it may take Indigenous peoples longer to bring forward a claim. If this falls outside of the two-year period, the conduct cannot be charged under a summary conviction and would need to be pursued by indictment. This will lead to a more lengthy and complicated legal procedure that has the potential to further disengage Indigenous peoples. Furthermore, it may be more difficult to convict less serious offences under indictment, meaning that unjust conduct within will go unaddressed. The limitation period, therefore, has the potential to perpetuate the systemic racism and unjust treatment of Indigenous peoples existing in the complaint process.

PART IV: Conclusion

We hope that legislators will take the foregoing recommendations and considerations into account when drafting the next police oversight bill. The relationship between Indigenous peoples and the RCMP and CBSA is deeply strained, and only serious reform can change this reality. In addition to considering research conducted by groups such as our own, it is imperative that legislation be drafted through meaningful consultation with Indigenous peoples and communities themselves.

⁵⁴ Tulloch *supra* at s. 10 para 52.

⁵⁵ Bill C-3 *supra*.

⁵⁶ Bressan, Angela and Kyle Coady. *Guilty pleas among Indigenous peoples in Canada*. Department of Justice Canada, 2017.

⁵⁷ Bill C-3 *supra*.

⁵⁸ Tulloch *supra* at s. 10 para 48.

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