David Asper Centre for Constitutional Rights
UNIVERSITY OF TORONTO

Brief on Bill C-20: An Act establishing the Public Complaints and Review Commission and amending certain Acts and statutory instruments Short title: Public Complaints and Review Commission Act

Prepared by the David Asper Centre for Constitutional Rights' Police Oversight Working Group

May 31, 2023
Toronto, Canada

Working Group Leaders
Taylor Rodrigues and David McQuillan

Working Group Contributors
Sarah Farb, Joshua Schwartz, Laxsega Sivaloganathan, Aakriti Pasricha, Ethan Wilkinson, Jovana Pajovic, Jasmine Dong, Daniel Kiesman, David Lio, Matthew Benoit, and Julianna Lyon

A special thanks to Executive Director Cheryl Milne, Program Coordinator Tal Schreier, and Faculty for their guidance and constructive feedback throughout the research and writing process.

Table of Contents

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 Police Oversight Working Group

The Police Oversight Working Group consists of 15 JD students at the University of Toronto, Faculty of Law. The Working Group examines how police independence can and should be balanced with accountability in Canada's constitutional democracy. The rule of law, respect for rights and freedoms and responsible government are bedrocks of our constitutional democracy. Our mandate in this submission is to put forward recommendations on how civilian oversight of the Royal Canadian Mounted Police (RCMP) and the Canadian Border Services Agency (CBSA) could be made more effective, fair and transparent. We are grateful for the input of Executive Director Cheryl Milne, Program Coordinator Tal Schreier and members of the Faculty of Law with expertise in this area of law.

Part I: Introduction and Background

Thank you for the opportunity to make a written submission on Bill C-20. We would be happy to make an oral submission at Committee and answer any questions the Committee or its staff may have.

Federal police oversight continues to be a pressing issue. In 2021, the Asper Centre's Indigenous Rights Working Group made an open submission on Bill C-3, An Act to Amend the Royal Canadian Mounted Police and the Canada Border Services Agency Act and to make consequential amendments to other Acts,[1] after it died on the Order Paper at the end of the 43rd 1st Parliamentary session, to make recommendations for the next time it would be introduced. We were pleased to see that many (but not all) of the Indigenous Rights Working Group's recommendations to improve Bill C-3 were incorporated when it was reintroduced as Bill C-20 in November 2021. We share the Government of Canada's belief that robust accountability mechanisms can help ensure public trust in Canada's law enforcement and border services institutions.

This year's Public Order Emergency Commission is yet another reminder that 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.[2]

The RCMP's current 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.[3] 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.[4] Other issues such as a lack of funding and long delays further prevent the CRCC from being a meaningful and robust oversight body.[5]

Indigenous[6] communities have been particularly negatively affected by inadequate accountability for police misconduct. A growing number of research studies and commissions of inquiry have

---

[1] Forbes et al., "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" (20 May 2021), online: *David Asper Centre for Constitutional Rights* <https://aspercentre.ca/wp-content/uploads/2021/06/Asper-Centre-Indigenous-Rights-Working-Group-Bill-C-3-Final-Report.pdf>.

[2] 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/>.

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

[4] Alex Ballingall, "Who investigates complaints about the RCMP? In '99.9%' of cases, it's the RCMP" (2020) online: *Toronto Star* <https://www.thestar.com/politics/federal/2020/06/17/who-investigates-complaints-about-the-rcmp-in-999- of-cases-its-the-rcmp.html>.

[5] *Supra* note 4.

[6] "Indigenous" here is a collective term for First Nations, the Inuit, and the Métis.

found that Indigenous peoples are not only under-protected by the police but have also been subject to outright police abuse.[7] 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.[8] Enhancing police accountability would be a crucial element in repairing the relationship between Indigenous peoples and Canada.

We believe that police oversight bodies should be effective, fair, transparent, and independent and be seen by the public to embody these qualities. The following recommendations are intended to help improve Bill C-20 so that federal police oversight embodies these ideals and improves Canada's justice system.

[7] See e.g., David H., Wright, *Report of the Commission into Matters Relating to the Death of Neil Stonechild* (2004) online: <http://www.publications.gov.sk.ca/freelaw/Publications_Centre/Justice/Stonechild/Stonechild-FinalReport.pdf>.
[8] See The Honourable Michael H. Tulloch, *Report of the Independent Police Oversight Review* (2017) Queen's Printer for Ontario.

Part II: Summary of Recommendations

Recommendation 1: Change the name "Public Complaints and Review Commission" (PCRC) to a name that clearly identifies the PCRC's role to the public.

Recommendation 2: Bill C-20 should require the PCRC to investigate all complaints against the RCMP and CBSA within five years of Bill C-20 coming into force. During the transition, complaints about RCMP employees should not be investigated by their own RCMP detachment, where feasible, and complaints about CBSA employees should not be investigated by their own port of entry, where feasible.

Recommendation 3: The Commissioner of the PCRC should be an Independent Officer of Parliament. At a minimum, the PCRC should not report to a Minister that is responsible for the RCMP or the CBSA.

Recommendation 4:
(a) Amend clause 3 of Bill C-20 to require at a minimum that one member of the PCRC be Indigenous and one member be Black to ensure groups that are most overrepresented in contact with the RCMP and CBSA are represented in the PCRC.
(b) Amend clause 6 of Bill C-20 to require that the PCRC strive to meet representation levels in its staff based on estimated workforce availability of Indigenous peoples, persons of colour, women and persons with disabilities.

Recommendation 5: Amend clause 13(1) of Bill C-20 to mandate PCRC's annual reports to be made public. Amend clause 13(2) to require that annual reports include statistics on the percentage of complaints which were deemed founded, unfounded or undetermined.

Recommendation 6: Clause 15(1)(a) of Bill C-20 should be deleted so the PCRC would not be prevented from publishing information that would be "injurious to international relations or would compromise or seriously hinder the administration or enforcement of program legislation or the investigation or prosecution of any offence."

Recommendation 7: Clauses 28(3) and 28(4) of Bill C-20 should be deleted to empower the PCRC to be able to conduct review of specified activities on its own initiative.

Recommendation 8: Remove clause 33(3) of Bill C-20 so there is no time limit for filing a complaint.

Recommendation 9: Third parties should have unrestricted ability to file complaints.

Recommendation 10: Complainants should have a right to regular updates on any discipline process that derives from their complaint.

Recommendation 11: Amend clause 52(5) of Bill C-20 so the PCRC has the discretion to refuse to investigate or continue with a complaint where the complainant has another comparable process instead of being forced to terminate the investigation.

Recommendation 12: Amend clause 59 of Bill C-20 to give complainants a right to attend PCRC hearings remotely (e.g., virtually).

Recommendation 13: Amend clause 64 of Bill C-20 to give complainants the right to receive a copy of interim investigative reports and provide comments on them prior to a final report being issued.

Recommendation 14: Amend clause 64(3) of Bill C-20 to require that the PCRC publish its final reports containing the results of hearings and recommendations for disciplinary action.

Recommendation 15: Clause 65 of Bill C-20 should be deleted as it would likely not have any legal effect and cause confusion.

Recommendation 16: The PCRC should have the authority to lay disciplinary charges. At a minimum, the PCRC should have the authority to require the CBSA or RCMP to initiate the disciplinary process (e.g., require the CBSA or RCMP to hold a disciplinary hearing).

Part III: Analysis of Bill C-20

While we appreciate the improvements made to Bill C-20 since it was previously introduced as Bill-3, research conducted by our working group this year revealed Bill C-20—in its current form—essentially proposes to expand the flawed CRCC oversight model to the CBSA. 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 include 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, Black and other visible minority 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 and visible minority communities, leading many to call for the collection of race-based data through which discrimination could be made visible.

Bill C-20 makes a crucial step by finally proposing to create a civilian oversight body for the CBSA—the only major law enforcement body in Canada currently without one. It is crucial that the CBSA and RCMP not only have an independent civilian police oversight body, but the body be fair, effective and transparent. When it comes to public institutions, they must not only serve the public interest—but also be seen to serve the public interest. We support Bill C-20 in principle but think it has considerable room for improvement.

The following recommendations are intended to address the aforementioned issues in order to help Parliament create an independent civilian oversight body for the RCMP and CBSA that Canadians and non-Canadians can trust and depend on.

Recommendation 1: Change the name "Public Complaints and Review Commission" (PCRC) to a name that clearly identifies the PCRC's role to the public.

We agree it is wise to give a new name to the body that replaces the CRCC so it is not confused for the current CRCC, but we recommend that the body be given a name that better indicates its function. The name, "Public Complaints and Review Commission" is generic. The name does not indicate the PCRC receives complaints about the RCMP and CBSA or that it is a civilian body as opposed to a law enforcement body. A clear name that reflects the central functions of the PCRC will make the complaint process more accessible to the public and ultimately more effective. In order to foster public awareness, the name of the civilian police oversight body should be simple and easy to identify.[9] For example, the name of the Ontario civilian police complaints body is going to be changed from the "Office of the Independent Police Review Director" to the "Law Enforcement Complaints Agency". Other jurisdictions have named their civilian oversight bodies with clear and effective language. The New Zealand "Independent Police Conduct Authority" and the United Kingdom's "Independent Office for Police Conduct" illustrate simple names whose

[9] *Ibid*, recommendation 7.1.

organization's functions are clearly communicated to any person who reads them. We suggest that the PCRC should follow the above examples to create a name that is more "conducive to a public understanding of what the PCRC does."[10]

Parliament should consider changing the PCRC's name to explicitly identify its relation to RCMP and CBSA related complaints and communicate to the public that it is a *civilian* oversight body. The current name accomplishes neither of these goals. The public would not know that the PCRC reviews police and CBSA complaints from the current name without more context. Emphasizing that the PCRC is a civilian review board where complaints are not reviewed by the RCMP or CBSA directly will encourage individuals to file complaints. Public awareness is the first step in achieving an oversight body that is accessible and effective. The public must be aware of the complaint process for complaints to be heard. One of the easiest ways for the PCRC to increase awareness is to be given a name that effectively identifies its role to the public and can easily be found with an internet search.

For simplicity, this submission will refer to the civilian oversight body Bill C-20 proposes to create as the "PCRC."

Recommendation 2: Bill C-20 should require the PCRC to investigate all complaints against the RCMP and CBSA within five years of Bill C-20 coming into force. During the transition, complaints about RCMP employees should not be investigated by their own RCMP detachment, where feasible, and complaints about CBSA employees should not be investigated by their own port of entry, where feasible.

Independence in investigating alleged police misconduct is necessary not only to ensure effective oversight and accountability, but to rebuild trust between the public and those charged with the mandate to protect them.[11] Police members have a clear and apparent conflict of interest when investigating fellow members of the force.[12] Accordingly, Bill C-20 wisely prohibits current and former RCMP and CBSA employees from being a member of the PCRC.[13] However, Bill C-20 currently allows for the RCMP or CBSA, respectively, to investigate allegations of misconduct[14] against their own employees. Currently, the RCMP investigates virtually all complaints made against RCMP officers because the CRCC does not have the resources to conduct robust investigations. Given the current proposed funding for the PCRC, the RCMP or CBSA would in practice investigate most complaints against their employees. At best this would appear to the public to be a serious conflict of interest and at worst it could be a serious conflict of interest.[15] Bill C-20 would require that the RCMP's and CBSA's investigations comply with the to-be

[10] *Ibid* at 148.
[11] Kevin Kunetski & Kelsi Barkway, "Independence in Civilian-Led Investigations of the Police," in Ian D. Scott ed *Issues in Civilian Oversight of Policing in Canada* (Toronto: Thomson Reuters, 2014) 164-6. Tim Prenzler, "Civilian Oversight of Police: A Test of Capture Theory" (2000) 40:4 Brit J Crim 659. Kent Roach, *Canadian Policing: Why and How It Must Change* (Toronto: Delve Books, 2022) 51-54.
[12] Lawrence Ka-Ki Ho et al, *Policing the Police* (Cham, Switzerland: Springer, 2021) 3.
[13] C-20, *An Act establishing the Public Complaints and Review Commission and amending certain Acts and statutory instruments*, 1st session, 44th Parl, 2022, 70-71 Elizabeth II, 2022 c 3(2).
[14] *Ibid*, c 37(1).
[15] Tammy Landau, "When Police Investigate Police: A View from Complainants" (1996) 38:3 Canadian J Criminology 291 at 304.

developed "rules" that will govern these investigations.[16] However, the RCMP, CBSA and PCRC will have to agree to these "rules" and the Bill does not propose any sanctions for the RCMP or CBSA for failing to follow them. Rather, it should be the PCRC itself, independent of the implicated agencies, who perform the investigations of alleged misconduct in the RCMP and CBSA.

We recognize it will take time to transfer from the CRCC's current model of functionally supervising the RCMP investigating itself to a robust, independent PCRC that has the resources and expertise to independently investigate complaints against RCMP and CBSA employees. The Tulloch Report concluded that a five-year time frame is reasonable to transition to this type of model.[17] Investigating alleged police misconduct does have a cost, but transferring investigations from the RCMP and the CBSA to the PCRC would free up resources at the RCMP and CBSA that could be used to fund PCRC investigations.

Bill C-20 should include a five-year transitionary period to give Parliament sufficient time to marshal an independent investigative body within the PCRC. In the interim, to ensure accountability is not deferred as well, the RCMP and CBSA would be allowed to investigate complaints of alleged misconduct, but there must be independence from the implicated employee's immediate unit. A culture of loyalty within the policing community has contributed to a lack of accountability; ensuring distance from the implicated unit will ensure more independence to the subject at hand.[18] To ensure there is some independence within the implicated agency, investigations of RCMP employees and CBSA employees should not be done by their immediate work unit (e.g., RCMP detachment, CBSA port of entry). Alternatively, if provinces are willing and able, a transitory measure could be to allow a provincial or municipal police force to investigate allegations of RCMP and CBSA misconduct rather than have the RCMP or CBSA investigate itself. Some provinces and territories have already entered into a similar arrangement where provincial agencies investigate serious misconduct against RCMP employees. For example, in the Yukon, the Alberta Serious Incident Response Team investigates serious incidents involving RCMP in that territory, and in New Brunswick, serious incidents involving the RCMP are investigated by Quebec's independent police watchdog.[19]

Recommendation 3: The Commissioner of the PCRC should be an Independent Officer of Parliament. At a minimum, the PCRC should not report to a Minister that is responsible for the RCMP or the CBSA.

Independent police oversight increases public trust in police. Officers of Parliament are responsible directly to Parliament rather than to a minister. This emphasizes their independence from the government of the day.[20] In New Zealand, the chairperson of the Independent Policy Conduct Authority is appointed by the Governor-General and must be a judge or former judge.[21] The

[16] Supra note 13, c 39.
[17] *Supra* note 8, recommendation 60.
[18] Michael D. White, Henry F. Fradella & Michaela Flippin; "How Can We Achieve Accountability in Policing? The (Not-So-Secret) Ingredients to Effective Police Reform" (January 2020) 25:2 L&CLR 405 at 436.
[19] See < https://www.alberta.ca/about-asirt.aspx>; <https://atlantic.ctvnews.ca/quebec-police-watchdog-completes-probe-into-rcmp-involved-killing-of-rodney-levi-1.5244516?cache=zlgprbffuv>
[20] Andre Barnes, "Appointment of Officers of Parliament" (7 December 2009), online: *Library of Parliament Research Publications* <https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/200921E>.
[21] *Independent Police Conduct Amendment Act* (NZ) 2007/38.

judiciary is the "gold standard of independence" but requiring the Commissioner of the PCRC to be a judge or former judge would drastically limit the pool of potential candidates.[22] Nevertheless, appointing an Independent Officer of Parliament as Commissioner would promote public confidence in the PCRC.

The PCRC should not report to the Minister of Public Safety. If Bill C-20 is passed in its current version, the RCMP, CBSA and PCRC would all report to the Minister of Public Safety creating an appearance of conflict of interest and the potential for actual conflicts of interest for the Minister of Public Safety. While we recognize there is a benefit to having the PCRC report to a Minister who is familiar with the RCMP and CBSA, having the PCRC report to the Minister of Public Safety gives the Minister of a Public Safety an incentive to stifle the PCRC's criticisms of the RCMP and CBSA to avoid criticism of other parts of their portfolio. If the Commissioner of the PCRC cannot be made an Independent Officer of Parliament, they should report to a Minister that is not also responsible for the RMCP or the CBSA (e.g., the Minister of Justice).

Recommendation 4:

(a) Amend clause 3 of Bill C-20 to require at a minimum that one member of the PCRC be Indigenous and one member be Black to ensure groups that are most overrepresented in contact with the RCMP and CBSA are represented in the PCRC.

(b) Amend clause 6 of Bill C-20 to require that the PCRC meet representation levels in its staff, based on estimated workforce availability of Indigenous peoples, persons of colour, women and persons with disabilities.

Some demographic groups, notably Indigenous peoples and Black Canadians disproportionally have more interaction with law enforcement and are disproportionately incarcerated. In 2018-19, 25.2% of Canada's prison population was Indigenous[23] while only about 6.2% of Canada's overall population was Indigenous.[24] About 7.2% of Canada's prison population is Black[25] but only about 3.5% of Canada's population is Black.[26] Distrust in law enforcement is more common among individuals who are Indigenous or belong to a visible minority group and they are more likely to experience discrimination when interacting with law enforcement.[27]

A lack of demographic diversity in the PCRC may lead to operational deficiencies. Non-indigenous peoples and non-visible minorities are unlikely to have experienced discrimination when interacting with law enforcement and may not have the experience necessary to determine if subtle forms of discrimination or systemic discrimination have occurred, potentially limiting their ability to effectively screen and investigate complaints. Further if the public does not see themselves reflected in the leadership and staff of the PCRC this may reduce their confidence and trust in it.

---

[22] Kent Roach, "Models of Civilian Police Review" (2014) 61 Crim LQ 29 at 38.
[23] Public Safety Canada. Corrections and Conditional Release Statistical Overview 2019 Annual Report. (2019), online (pdf): Public Safety Canada <https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/ccrso-2019/ccrso-2019-en.pdf> at 55.
[24] Statistics Canada. 2017. Canada [Country] and Canada [Country] (table). Census Profile. 2016 Census. Statistics Canada Catalogue no. 98-316-X2016001. Ottawa. November 29, 2017. <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm?Lang=E>.
[25] *Supra* note 23 at 55.
[26] See Statistics Canada, "Black History Month... by the numbers" (31 January 2023) online: <https://www.statcan.gc.ca/en/dai/smr08/2020/smr08_248-1>.
[27] Dyna Ibrahim, "Public perceptions of the police in Canada's provinces, 2019" (25 November 2020) *Statistics Canada*, online: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00014-eng.htm#n14-refa>.

Especially with regards to Indigenous communities, a lack of racial representation may further degrade already tenuous Indigenous-Crown relations.

Requiring one of the five members of the PCRC to be Indigenous and one to be Black would ensure that there would be Indigenous and Black voices in the PCRC and is consistent with similar commissions. For example, Saskatchewan's five-person municipal policy complaints commission is statutorily required to have at least one member of First Nations ancestry and one member of Métis ancestry. The Hon. Harry LaForme and Hon. Juanita Westmoreland-Traoré's report on the Creation of a Miscarriages of Justice Commission recently recommended the creation of a 9-person Commission, with at least three members being from demographics that are overrepresented in prison, including at least one Indigenous and one Black commissioner.[28]

Employment equity has been a successful federal initiative that has helped to build a federal workforce that more closely represents the population it serves, recognizing that not all demographics groups have the same workforce availability. We recommend extending the employment equity model to the PCRC's staff by amending Bill C-20 to require it to meet representation levels in its staff based on estimated workforce availability of Indigenous peoples, persons of colour, women and persons with disabilities. Alternatively, this change could be affected by amending the *Employment Equity Act* as opposed to adding a clause to the Act establishing the Public Complaints and Review Commission.

Recommendation 5: Amend clause 13(1) of Bill C-20 to require the PCRC to annually publish its annual reports and annual recommendations. Amend clause 13(2) of Bill C-20 to require that the PCRC's annual reports include statistics on the percentage of complaints which were deemed founded, unfounded or undetermined.

Transparency is integral to building and maintaining public confidence in law enforcement oversight bodies. Further, there is a strong relationship between the public availability of information and the transparency of law enforcement oversight. The significance of public information is demonstrated by the fact that when "decision-making is perceived as fair, this tends to increase the likelihood of filing a complaint and producing positive attitudes about the investigation process even when the outcome is unfavourable or the complaint is screened out."[29] This is because the release of information related to complaints allows the public to scrutinize the police oversight body's decision-making process, identify systemic patterns, and ensure that the PCRC is working effectively and in accordance with the public interest.[30]

The reporting practices of the PCRC contrast starkly with other law enforcement oversight bodies' reporting procedures. For example, under the *Freedom of Information Act* public authorities in the United Kingdom are required to publish information unless there are exemptions under the law that

[28] Harry LaForme and Juanita Westmoreland-Traoré, "A Miscarriages of Justice Commission" (February 3, 2022) online: *Department of Justice Canada* <https://www.justice.gc.ca/eng/rp-pr/cj-jp/ccr-rc/mjc-cej/docs/a-miscarriages-of-justice-commission-published-version.pdf> at 9.
[29] Jennifer L Schulenberg et al, "An application of procedural justice to stakeholder perspectives: examining police legitimacy and public trust in police complaints systems" (2017) 27:7 Policing & Society 779 at 780.
[30] *Supra* note 8 at para 239.

require confidentiality.[31] Accordingly, the Police Ombudsman for Northern Ireland releases statistical information about the number and type of complaints, reports about the outcomes and details of investigations, annual reports and publications examining trends and patterns related to complaints on their user-friendly website.[32]

Clause 13(1) of Bill C-20 only requires the PCRC to submit its annual report and its recommendations to the Minister.[33] Bill C-20 does not require the PCRC to publish its annual report or annual recommendations. Clause 13(1) of Bill C-20 would require the Minister of Public Safety to table the PCRC's annual report (but not annual recommendations) in Parliament.[34] Although this means that annual reports may be accessed through Parliamentary records, it adds an unnecessary obstacle for the public to access annual reports. This undermines the core function of these reports which is to increase transparency and accountability of law enforcement oversight bodies.

Clause 13(2) of Bill C-20 requires that the annual reports include the number of complaints made, the number of serious incidents relating to the RCMP and the CBSA, and race-based data on complainants.[35] The annual reports should also include statistics on the percentage of complaints which were deemed founded, unfounded or undetermined. This information is integral to providing the public insight into the effectiveness of the complaints screening process and gives potential complainants information to determine if making a complaint is worth the effort.

Recommendation 6: Clause 15(1)(a) of Bill C-20 should be deleted so the PCRC would not be prevented from publishing information that would be "injurious to international relations or would compromise or seriously hinder the administration or enforcement of program legislation or the investigation or prosecution of any offence."

Clause 15(1)(a) of Bill C-20 effectively prevents the PCRC from publishing any information whose disclosure "would be injurious to national security, national defence or international relations or would compromise or seriously hinder the administration or enforcement of program legislation or the investigation or prosecution of any offence." This is an incredibly broad restriction, especially given that neither Bill C-20, nor any other Canadian statute defines "national security."

Systemic investigation reports are regularly published by law enforcement oversight bodies – indeed, publishing these reports is essential to fulfilling the oversight function of transparency and accountability. The most essential of these reports are highly critical of a range of practices, conduct and policies—and therefore may very appropriately impact investigations, enforcement activities, or even where appropriate international relations. For example, the PCRC publishing a report on the RCMP's use of illegal investigative techniques—a valuable form of reporting—would likely hinder investigations and prosecutions and therefore be prohibited by clause 15(1)(a) of Bill C-20. The restrictions in Bill C-20 are not only unnecessary, but they also fundamentally

[31] *Freedom of Information Act* (UK), 2000, s 1.
[32] "Publication Scheme" (last visited 20 February 2023), online: *Police Ombudsman for Northern Ireland* <www.policeombudsman.org/About-Us/Access-to-Information/Publication-Scheme>.
[33] *Supra* note 13, c 13(1).
[34] *Ibid*.
[35] *Ibid* c 13(2).

undermine the independence of essential law enforcement oversight functions. The PCRC should be trusted to use their discretion, in consultation with other national security and law enforcement agencies—where warranted—in disclosing this type of information rather than be subject to a blanket prohibition.

Recommendation 7: Clauses 28(3) and 28(4) of Bill C-20 should be deleted to empower the PCRC to be able to conduct reviews of specified activities on its own initiative.

In order to undertake a systemic review, clause 28(3) of Bill C-20 currently prescribes that the PCRC must be satisfied that, first, "sufficient resources exist for conducting the review and the handling of complaints under Part 2 will not be compromised" and secondly that "no other review or inquiry has been undertaken on substantially the same issue by a federal or provincial entity."[36] Clause 28(4) further requires the PCRC to provide notice in writing to the Minister of Public Safety before initiating a review, certifying that it is satisfied that the conditions in clause 28(3) have been met. Each of these clauses appears to have been adopted, with minimal variation, from s. 45.34 of the *Royal Canadian Mounted Police Act* (RCMP Act), which prescribes the conditions under which the CRCC may undertake a review of specified activities of the RCMP.[37]

To perform its mandate effectively and independently, the PCRC must be unfettered in its ability to undertake systemic investigations of the RCMP and the CBSA, including matters pertaining to the appropriateness of ministerial direction. The statutory pre-conditions in clause 28(3) of Bill C-20 limit both the PCRC's capacity to undertake reviews as well as the scope of such inquiries. The resource condition posed by clause 28(3)(a) limits the number of reviews that may be undertaken by the PCRC and has the legal effect of prioritizing individual complaints over broader inquiries into law enforcement practices and adherence to each organization's policies and ministerial directives. While potentially practicable from an organizational efficiency standpoint, the prioritization inherent in clause 28(3)(a) stands in opposition to the observation that individual police misconduct is often the manifestation of broader systemic issues relating to the police force's policies and practices.[38] Accordingly, it may be just as effective—or more effective—under some circumstances for the PCRC to review the RCMP and CBSA's organizational practices and policies through a specified review of police activity rather than addressing complaints individually. Either way, the decision should rest with PCRC, and should not be constrained by a statutory pre-condition.

Clause 28(3)(b) of Bill C-20 also unjustifiably limits the content and scope of the PCRC's review activities by prohibiting the PCRC from conducting a review or inquiry that "has been undertaken on substantially the same issue by a federal or provincial entity." While duplication can be inefficient, clause 28(3)(b) would severely limit the PCRC's ability to conduct reviews or inquiries into any investigations pertaining to the natural security and intelligence activities of various agencies and departments, repeating reviews that were flawed, or conducting a review on a previous topic years later to see if a problem persists (e.g., systemic racism).

---

[36] *Ibid*, c 28(3).
[37] See *Enhancing Royal Canadian Mounted Police Accountability Act* S.C. 2013, c 18, ss 45.34(2)-(3).
[38] See Hon. John McKay, "Systemic Racism in Policing in Canada: Report of the Standing Committee on Public Safety and National Security" (2021): <https://www.ourcommons.ca/Content/Committee/432/SECU/Reports/RP11434998/securp06/securp06-e.pdf> at 17.

Finally, the requirement under clause 28(4) of Bill C-20 that the PCRC indicate to the Minister in writing that each of the conditions in clause 28(3) has been satisfied serves only to compromise the appearance of the PCRC's independence from the police hierarchy and from political interference.[39] First, as noted above, the PCRC's ability to undertake systemic reviews on its own initiative should not be impeded by a statutory hurdle, requiring it to certify its compliance with the Act in writing and setting out an appropriate rationale. It is unclear what benefit, if any, is afforded to the Minister by providing a statutory right to receive written notice. However, by providing written notice to the Minister, the PCRC's self-initiated review activities may make it vulnerable to political interference and budgetary scrutiny. This may be the case where the PCRC's self-initiated review activities place it in an adversarial or interrogative position *vis-à-vis* the Minister. For example, some commentators have questioned whether Ministerial directives made pursuant to the RCMP Act may be classified as "specified activities", absent any precise statutory definition, and thus become the subject or a point of interest for a PCRC review.[40] By indicating that it has met the conditions in clause 28(3), the PCRC must implicitly concede to the Minister that it possesses ample budgetary resources, an admission that could be weaponized by the government to reject the PCRC's requests for additional financing (i.e. commensurate with year-over-year increases in the number of complaints received) or to reduce overall funding levels in future budgetary cycles. It is worth highlighting that the CRCC, presently tasked with overseeing the RCMP, has consistently cited a lack of funding as a barrier to undertaking self-initiated reviews.[41] Accordingly, the notice requirement in clause 28(4) Bill C-20 exposes the PCRC's review activities to the risk of political interference and should be removed from the proposed legislation.

Recommendation 8: Remove clause 33(3) of Bill C-20 so there is no time limit for filing a complaint.

There should be no time limit on filing a complaint. The one-year time limit on complaints under clause 33(3) of Bill C-20 will likely hinder the ability of many victims to bring complaints. Clause 33(3) of Bill C-20 requires complaints to be made within a year of the conduct alleged to have occurred. Although clauses 33(4) and 33(5) provide for potential extensions to that time limit, the PCRC must deem that there are "good reasons for doing so and that it is not contrary to the public interest." There are many reasons why individuals may not be able to meet the one-year time limit including but not limited to: unfamiliarity with the complaints system, distrust of the complaints system, fear of retaliation, deportation from Canada, or trauma.

Public knowledge of civilian oversight of police continues to be limited and individuals may not realize that they can pursue complaints against the police with the PCRC until much later than the one-year time limit. Although lack of knowledge may be a more pressing issue for the new oversight of the CBSA, many individuals are simply not aware that complaints against law enforcement can be pursued independently of law enforcement.[42] Victims should not be penalized for being unaware of the complicated governance and oversight structures of Canadian law enforcement.

---

[39] See Stephen P. Savage, "Independent Minded: The Role and Status of 'Independence' in the Investigation of Police Complaints" in *Civilian Oversight of Police* (CRC Press, 2016) at 37.
[40] See Kent Roach, "Reforming Public Complaints against the RCMP" (2012) 59:Issues 2 & 3 Crim LQ 163 at 165; see also *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10, s. 5(1).
[41] Catharine Tunney, "RCMP should be updating the nation on reform efforts, head of watchdog body says", (21 December 2020), online: CBC News <https://www.cbc.ca/news/politics/rcmp-watchdog-lahaie-interview-1.5816208&gt>.
[42] *Supra* note 8 at para 18.

Distrust of the police complaints systems may cause individuals to be less likely to immediately file complaints. In the *Report of the Independent Police Oversight Review*, Chief Justice Tulloch found that many people cited the inadequacy of potential penalties, the low likelihood of complaints even reaching disciplinary hearings, and beliefs of bias as reasons for why they did not believe filing a complaint with Ontario's Office of the Independent Police Review Director (OIPRD) would be worth it.[43] There is no reason to believe that the same beliefs would not apply to the PCRC. Furthermore, marginalized communities, including Indigenous peoples, people with disabilities, and racialized communities are statistically more likely to be distrustful of police.[44] Considering the lack of awareness surrounding civilian oversight of law enforcement, distrust towards law enforcement may cloud victims' views of the PCRC and cause victims to hesitate about filing a complaint with the PCRC.

Fear of retaliation may cause victims to be unwilling to file a complaint until the employee involved has retired or is no longer likely to interact with the victim. Victims may fear that complaints will result in future calls to police to go unanswered or to be met with violence.[45] Victims should not be denied justice just because they waited until they felt that it was safe to make a complaint.

Requiring individuals to make complaints within one year after the conduct is alleged is at odds with criminal offences, which usually have no statute of limitations, civil claims which often have a statute of limitations of at least two years, and the timelines used in many other complaint systems. Limiting the time in which complaints can be made is likely to hinder public confidence in the Commission by denying many victims the ability to have their complaints heard.

Recommendation 9: Third parties should have unrestricted ability to file complaints.

Clauses 38(1)(b) and 52(1)(b) of Bill C-20 give the PCRC the discretion to direct the RCMP, or the President of the CBSA, to refuse to investigate a complaint solely on the ground that the complainant is a third party to the alleged misconduct. [46] The PCRC has the same discretion regarding complaints the PCRC might investigate directly.[47] While clause 33 allows *any* individual to make a complaint concerning the conduct of RCMP and CBSA members, the combined effect of clauses 38(1)(b) and 52(1)(b) allows the PCRC, RCMP and CBSA to screen out a complaint solely because it was not submitted by the individual at whom the conduct was directed—even if the individual at whom the conduct was directed gave consent for a third party to file a complaint on their behalf.

Witnesses to misconduct, and people suffering loss as a result of misconduct, have no guaranteed ability to complain via persons appointed to act on their behalf or to give third parties written permission to do so.

---

[43] *Ibid* at para 21.
[44] Canada. Statistics Canada. *Public perceptions of the police in Canada's provinces, 2019***.** Catalogue no. 85-002-X, (Ottawa: Min. of Industry, 2020) at 3.
[45] S*upra* note 8 at para 20.
[46] *Supra* note 8 c 38(1)(b).
[47] Supra note 8 c 52(1)(b).

The effects of such narrow provisions can be seen in the current RCMP Act, which uses a similar provision, under Part VII, to allow the CRCC to reject a substantial proportion of complaints without investigation. Over a third of public complaints to the CRCC in 2021-22 were rejected without investigation under Part VII, which by the CRCC's admission "included a large number of complaints from individuals who were not directly involved or physically present during the incident."[48]

Prospective complainants are people who have witnessed, suffered loss from, or been subjected to misconduct by agents of the government to which they are expected to appeal. When this fundamental problem is combined with the fact that complainants may also be under investigation, facing criminal charges or deportation, or incarcerated, a formal complaint will often feel like another opportunity to draw negative law enforcement attention. Moreover, language barriers, addiction, mental health issues, and the simple fact that RCMP and CBSA personnel disproportionately interact with vulnerable and disadvantaged populations may make it difficult to navigate the complaints process itself.

Organizations representing disadvantaged groups have pointed out that if they could file complaints on complainants' behalf, this would provide a solid base of support and resources to help complainants navigate the system, as well as a feeling of a shield against potential reprisal, because of the intermediary role of an organization with which the complainant is already familiar.[49] Organizations representing complainants in this way would also be ideally placed to spot potential systemic issues by noting similar complaints, helping the PCRC to recognize which complaints require a systemic response (and adding transparency to the PCRC's determination about whether this is necessary). None of this is any less true for complainants who witnessed or suffered loss from misconduct, without being its subject.

Independent reviews of police oversight support broad third-party complaints provisions, which have already been implemented in regimes like British Columbia's *Police Act* and Manitoba's *Law Enforcement Review Act*.[50]

Chief Justice Tulloch's report on Ontario's police oversight system clearly sets out the value of these provisions:

> 126. There may be times when third parties have valid conduct, policy, or service complaints. For example, a legal clinic or community group may hear from multiple clients about a particularly troubling police practice. It should be encouraged to file a complaint about that practice, even though it is not directly affected by the impugned policy or service.
> 127. These complaints promote effective and accountable policing. They should not be screened out simply because the complainant is not directly affected.

---

[48] Canada, Civilian Review and Complaints Commission for the RCMP, *Annual Report 2012-2022*, (Ottawa: Minister of Public Works and Government Services, 2022).
[49] See "Why CBSA Oversight is Urgent for Survivors and What New Legislation gets Wrong on Oversight" (last modified 5 Oct 2022), online: *Battered Women's Support Services* <https://www.bwss.org/why-cbsa-oversight-is-urgent-for-survivors-and-what-new-legislation-gets-wrong-on-oversight/>; see also Laura Track and Josh Paterson, "Oversight at the Border: A Model for Independent Accountability at the Canada Border Services Agency", *BC Civil Liberties Association* (June 2017), online: <https://bccla.org/wp-content/uploads/2017/06/FINAL-for-web-BCCLA-CBSA-Oversight.pdf> at 46.
[50] *Police Act*, RSBC 1996, c 367, s 78(1); *The Law Enforcement Review Act*, CCSM 2012, c L75, s 6(2).

> 128. Misconduct is misconduct, no matter who reports it. And a policy or service concern should not be minimized simply because the person reporting it was not directly affected by it.[51]

Individuals mistreated by CBSA can face an even greater barrier to the PCRC complaints process: they may be unable to enter Canada, having been deported or refused entry at the border. The fact that this may have happened to a prospective complainant is not proof that they have not been mistreated or that they do not have reliable information about an allegation of misconduct, and the complaints framework must therefore facilitate their participation. The simplest and cheapest way to do this is to allow third parties in Canada to file complaints on their behalf.

Bill C-20 should explicitly allow parties to file complaints regardless of whether they were affected by the misconduct complained of. At the very least, where third parties have the written consent of a party who witnessed, was the subject of, or suffered loss resulting from misconduct, the other clause 38(1)(b) and 52(1)(b) factors must not be available as grounds not to investigate a complaint.

Recommendation 10: Complainants should have a right to regular updates on any discipline process that derives from their complaint.

As it stands, Bill C-20 provides complainants with almost no rights to information about or participation in the disciplinary process of CBSA or RCMP employees. While clause 44(1) of Bill C-20 gives complainants the chance to provide something akin to a victim impact statement, which may be considered during an RCMP disciplinary hearing, there is no similar requirement in the CBSA disciplinary context.[52] Bill C-20 also proposes to modify the *RCMP Act* to require that complainants be notified, as soon as feasible, of the RCMP's final disciplinary decision and of the conduct measures that have been imposed, if any.[53] However, Bill C-20 does not propose a similar amendment to the CBSA Act. Neither law enforcement agency is required to notify a complainant about a proposed disciplinary response for their comments, nor do they need to provide complainants updates on the disciplinary process, arguments put forward, notify them of hearings dates, or afford them party status in hearings or otherwise request their input or ensure their participation.

This is problematic because regular updates on the disciplinary process and inclusion of the complainant is necessary to ensure transparency and accountability of civilian oversight of federal law enforcement agencies. In Canada, minorities often already harbour distrust of the police and this is particularly high among Black Canadians.[54] Canadian immigrants also have a complex perception of the police depending on the length of their residence.[55] Thus, it is important to be as transparent as possible with them to ensure that civilian oversight of federal law enforcement agencies is viewed as legitimate.

Further, it is important for minority, immigrant and Indigenous complainants to feel included and have their voices heard. Without this they may experience a lack of agency in the disciplinary

---

[51] *Supra* note 8 at paras 126-8.
[52] *Supra* note 13 c 44(1).
[53] *Ibid* cs 45.171, 45.172.
[54] Scot Wortley & Akwasi Owusu-Bempah, "Unequal before the Law: Immigrant and Racial Minority Perceptions of the Canadian Criminal Justice System" (2009) 10 Int Migration & Integration 447 at 465.
[55] Specifically, immigrants who have resided in Canada for less than five years or more than twenty years evaluate the police better than those who have lived in the country between five to twenty years.

process which will undercut any attempts at procedural fairness and decrease the legitimacy of oversight mechanisms.[56] When decision-making is viewed as fair, it increases the probability that complainants will file complaints to begin with and have positive attitudes about the investigation even if their complaint is screened out or they receive an unfavourable outcome.[57] Further, informational justice is also required, which means presenting adequate, high-quality information to justify and describe a decision.[58] Thus, not only is it important to include the complainant in the disciplinary process to ensure they have agency, but communication must also be transparent and adequately justify why a particular disciplinary outcome, or lack thereof, was decided upon.

Updates to complainants should be clear, culturally appropriate and timely. Notably, Chief Justice Tulloch stated the importance of avoiding unfortunate and confusing wording when articulating updates in the disciplinary process in Ontario's civilian complaints system.[59] Similarly, when communicating with complainants regarding RCMP or CBSA disciplinary outcomes, it is important to be sensitive to the language that is used so that they are not misled or made to feel that their complaint was trivialized due to the language utilized.

Additionally, Chief Justice Tulloch emphasized the importance of oversight bodies delivering culturally appropriate services to Indigenous peoples.[60] Since respectful relationships with Indigenous peoples cannot be built at a time of crisis, sustained efforts and relationship building are a key component of cultural competency.[61] The PCRC should aim for culturally competent service delivery by regularly engaging with Indigenous, Black and immigrant communities, learning about those cultures and the challenges they face, and offering interpretive services in Indigenous languages and minority languages, at no extra cost or delay, during communication with complainants.[62]

Ultimately, providing regular updates to complainants regarding the disciplinary process will serve to combat the police culture of secrecy and the idea that police maintain solidarity with each other.[63] Such perceptions of racial bias, police solidarity, secrecy, and unfairness need to be reversed to create a complaints mechanism that is not only fair but perceived as fair and legitimate by the public.

Recommendation 11: Amend clause 52(5) of Bill C-20 so that the PCRC has the discretion to refuse to investigate or continue with a complaint where the complainant has another comparable process instead of being forced to terminate the investigation.

Under clause 52(5) of Bill C-20, the PCRC must refuse to deal with a complaint if the complaint has been or could have been "adequately" or "more appropriately" dealt with through an alternative

[56] Supra note 29 at 787 and 791.
[57] *Ibid* at 780.
[58] Karl Roberts & Victoria Herrington, "Organisational and procedural justice: a review of the literature and its implications for policing" (2013) 8:2 Journal of Policing, Intelligence and Counter Terrorism 115 at 116.
[59] *Supra* note 8 at paras 180-187.
[60] *Ibid* at 238.
[61] *Ibid* at 236.
[62] *Ibid* at 239.
[63] *Supra* note 18 at 436.

federal or provincial statutory framework.[64] The RCMP and CBSA are under the same obligation to refuse or terminate investigations of complaints submitted to them under such circumstances.[65]

The PCRC's effectiveness as an oversight body depends in part on its capacity to deliver fair and thorough investigations, ensure accessible complaints processes and improve public trust in law enforcement.[66] However, the duty to refuse investigations creates the risk that the PCRC will neglect legitimate complaints as it surrenders them to other processes with different mandates, which may not provide an effective remedy. An instance of misconduct by an RCMP or CBSA employee may violate multiple statutes and it may be warranted for multiple statutory bodies to investigate it. For example, a CBSA officer discriminating against an individual could give rise to a human rights complaint and a complaint submitted to the PCRC.

Clause 52(5) of Bill C-20 appears to emulate s. 45.53(4) of the RCMP Act which requires the CRCC to refuse to deal with a complaint if it "has been or could have been adequately dealt with, or could more appropriately be dealt with, according to a procedure provided for under this Act or any other Act of Parliament." In 2021, the CRCC refused investigation into 1353 out of 3938 complaints because they did not meet the criteria in Part VII of the RCMP Act.[67] These statistics demonstrate the risk that overly broad restrictions on an oversight body's investigative powers may overlook genuine public concerns.

The standards of "adequately" or "more appropriately" are unduly vague, generating uncertainty and inconsistency. Given the range and diversity of possible alternate procedures, the PCRC complaints process may become less accessible and responsive to the public's needs. We recommend that the PCRC should have the discretion to refuse to investigate or continue with a complaint where the complainant has another comparable procedure instead of being forced to terminate the investigation.

Recommendation 12: Amend clause 59 of Bill C-20 to give complainants a right to attend PCRC hearings remotely (e.g, virtually).

For the PCRC to be a more effective oversight body than its predecessor, complainants must be meaningfully informed of and involved in the investigative and adjudicative process. This is particularly essential at the hearing stage, which Bill C-20 permits the Commission to hold anywhere in Canada,[68] and at which complainants would have the right to present evidence, cross-examine witnesses and make representations.[69]

Bill C-20 contains a significant barrier to hearing access in that it makes no allowance for complainants to attend and participate in their hearings virtually, i.e. via a secure audio-visual platform. This is a major failing, because it is often those living in rural and remote communities who are most vulnerable to RCMP misconduct (particularly, Indigenous communities), and yet it is

[64] Supra note 13 c 52(5).
[65] *Ibid* cs 38(2) and 47(2).
[66] Kempe Ronald Hope Sr., "Civilian Oversight for Democratic Policing and its Challenges: Overcoming Obstacles for Improved Police Accountability" (2021) 16:4 J Applied Security Research 423 at 433.
[67] Canada, Civilian Review and Complaints Commission for the RCMP, *Annual Report 2012-2022*, (Ottawa: Minister of Public Works and Government Services, 2022) at 10.
[68] *Supra* note 13 c 59(5).
[69] *Ibid* c 59(7).

these Canadians who may be practically prevented from accessing a robust complaints process designed to hold those federal forces accountable.[70]

Clause 59(11) of Bill C-20 attempts to remove this geographic access barrier by giving the PCRC the discretion to reimburse the complainant (or their counsel) for travel and living expenses associated with attending their hearing, but this solution overlooks key socioeconomic factors that would still impede access for some remote and/or rural complainants. Namely, for low-income complainants, the opportunity costs associated with meeting attendance could still prove prohibitive. The days of traveling required would likely mean multiple successive days without work, which for some, could mean a serious loss of income or a lost job altogether. These sacrifices would likely deter complainants' attendance.

Accordingly, we propose a revision to clause 59 that would effectively give complainants a choice between traveling to attend their hearing in person and attending it remotely, i.e., via the internet. This revision is consistent with the practice of Canada's Federal Court to permit "E-hearings" in the wake of the COVID-19 pandemic.[71] It also accords with Chief Justice Tulloch's recommendations regarding accessibility, in that the availability of the technology required for virtual hearing attendance would depend upon the PCRC establishing a presence in remote areas, either by partnering with local organizations or by erecting satellite offices.[72]

Recommendation 13: Amend clause 64 of Bill C-20 to give complainants the right to receive a copy of interim investigative reports and provide comments on them prior to a final report being issued.

Clause 64 should be amended to require interim reports to be sent to complainants and allow for the complainants to provide a response to the PCRC. At present, Bill C-20 requires the Commission to produce an interim report and send it to the Commissioner of the RCMP or the President of the CBSA once a hearing or investigation has completed.[73] The Commissioner or President must then, within six months, provide a written response outlining what action, if any, will be taken as a result of the complaint.[74] The RCMP and the CBSA have the opportunity to comment on and respond to the complaints and the preliminary findings of the Commission before the completion of the PCRC's conclusive final report.

Bill C-20 gives the RCMP and CBSA greater access to information and the ability to influence the final report while denying complainants the opportunity to do the same. This undermines the perception of fairness in the oversight process. Only the final report is required to be shared with complainants.[75] Ensuring complainants have access to interim reports will allow them to remain informed throughout the entirety of the process and help foster complainant confidence in the oversight system.[76]

---

[70] Supra note 8 at para 49.
[71] Canada, Federal Court, *General Policy re: E-Hearings* (Ottawa: Federal Court, 2021) <https://www.fct-cf.gc.ca/en/pages/online-access/e-hearings#cont> accessed 25 February 2023.
[72] *Supra* note 8 *Tulloch Report.*
[73] *Supra* note 13 c 64.
[74] *Ibid* c 64(2).
[75] *Ibid* c 64(3).
[76] Ian Waters and Katie Brown, "Police Complaints and Complainants' Experience" (2000) 40:4 Brit J Crim 617 at 627, 633.

Recommendation 14: Amend clause 64(3) of Bill C-20 to require that the PCRC publish its final reports containing the results of hearings and recommendations for disciplinary action.

Similar to the annual reports, the PCRC's final report after an investigation or hearing and response from the RCMP or CBSA should be made public. The secrecy surrounding the RCMP and CBSA disciplinary processes contrasts starkly with other law enforcement disciplinary proceedings. For example, in Ontario, the *Special Investigations Unit Act* requires the Special Investigations Unit (SIU) to release the results of a criminal investigation of an officer, regardless of whether or not charges are laid.[77] More specifically, if charges are laid then the SIU Director must publish the official's name, charges laid, when charges were laid, information about the official's first court appearance, and any other relevant information, subject to privacy concerns.[78] Furthermore, if charges are not laid then the SIU Director is still required to publish a report on the SIU website containing reasons explaining why charges were not laid, a detailed summary of the events leading to the investigation, a timeline of the investigative process, and any relevant evidence, subject to privacy concerns and restrictions under subsection 34(2).[79]

Recommendation 15: Clause 65 of Bill C-20 should be deleted as it would likely not have any legal effect and cause confusion.

Clause 65 is a strong privative clause that should be deleted because it would likely not have any legal effect. Clause 65 says "All of the findings and recommendations that are contained in the Commission's final report under subsections 58(2) or 64(3) are final and are not subject to appeal to or review by any court." This clause appears to be based on s. 45.77 of the RCMP Act: "All of the findings and recommendations that are contained in the [Civilian Review and Complaints] Commission's final report under subsections 45.72(2) or 45.76(3) are final and are not subject to appeal to or review by any court." While there is no reported case of s. 45.77 of the RCMP Act being judicially considered, courts have found that other similar privative clauses in the RCMP Act (i.e. ss. 32(1) and 45.16(9)) do not preclude judicial review.[80]

Courts will likely follow *Canada (Minister of Citizenship and Immigration) v Vavilov*[81] and find that clause 65 neither precludes judicial review nor changes the standard of review. Nevertheless, in practice, clause 65 of Bill C-20 may discourage complainants, impugned RCMP or CBSA employees and other individuals from filing applications for judicial review of the Public Complaints and Review Commission's final reports because they may interpret clause 65 of Bill C-20 literally. It is good legislative housekeeping not to include clauses in bill that would not have any legal effect and repeal sections of acts that have been found by the courts to have no force and effect to avoid confusions to the public and the legal community.

Recommendation 16: The PCRC should have the authority to lay disciplinary charges. At a minimum, the PCRC should have the authority to

[77] *Special Investigations Unit Act 2019*, SO 2019, Schedule 5, c 1, ss 33, 34.
[78] *Ibid* s 33(1).
[79] *Ibid* ss 34 (1)-(3).
[80] See e.g., *Poiron v. Canada (Attorney General)*, 2021 FC 1175; see also *Canada (Attorney General) v. Zalys*, 2020 FCA 81; see also *Corus Entertainment Inc. v. Canada (Attorney General)*, 2020 FC 1064.
[81] *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

require the CBSA or RCMP to initiate the disciplinary process (e.g., require the CBSA or RCMP to hold a disciplinary hearing).

The independence of a police oversight body from the police unit(s) it supervises is critical to its effectiveness.[82] Indeed, the purpose of Bill C-20, in its own words, is to replace the CRCC with "an independent body."[83] A police oversight body is independent if, among other powers, it has the power to lay disciplinary charges.[84] In his *Report of the Independent Police Oversight Review*, Chief Justice Tulloch recommended that the OIPRD should have the authority to lay disciplinary charges in order to maintain its independence and enhance public confidence in the system. The same applies to the PCRC.[85]

Under Bill C-20, the PCRC may provide a notice recommending that the RCMP or CBSA initiate the disciplinary process or impose a disciplinary measure.[86] For the RCMP, this may take the form of a private conduct meeting or a more formal, public conduct hearing, which in either case would be adjudicated by an RCMP member or an RCMP appointee. Discipline within the CBSA is controlled by CBSA Professional Standards and CBSA Labour Relations.[87]

Bill C-20 does not empower the PCRC to discipline RCMP and CBSA employees. First, the PCRC's recommendations are non-binding. Second, whereas the PCRC is allowed greater discretion to decide the kind of conduct giving rise to a recommendation initiating the disciplinary *process*, its ability to recommend the actual imposition of disciplinary *measures* is highly qualified.[88] The PCRC Commissioner may only recommend disciplinary measures if the individual under review is subject to more than one complaint under Bill C-20 and their misconduct resulted in serious injury, death, or an offence under federal or provincial law.[89] Third, in order to exercise its authority to reject the PCRC's recommendation, the RCMP or CBSA must merely provide a justification to the Minister of Public Safety and Emergency Preparedness, for which the Bill sets out no requirements and which may consequently be vague or trivial.[90]

The disciplinary framework under Bill C-20 is subject to considerably less independent control and oversight than other comparable Canadian law enforcement oversight regimes. In Ontario, for example, the OIPRD has the power to provide direction to a Chief of Police regarding how to deal with a complaint, including directing the Chief to hold a disciplinary hearing.[91] Even absent such specific direction, a finding that a complaint is substantiated legally triggers the police disciplinary process, and a formal disciplinary hearing must be called if the OIPRD determines that "serious

---

[82] *Supra* note 8 at para 55; National Association for Civilian Oversight of Law Enforcement, *Civilian Oversight of Law Enforcement: Assessing the Evidence*, by Joseph De Angelis, Richard Rosenthal, and Brian Buchner (Washington: Office of Justice Programs, 2016) at 36; United Nations Office on Drug and Crime, *Handbook on Police Accountability, Oversight and Integrity* (New York: United Nations, 2011) at 49–51. Tim Prenzler & Carol Ronken, "Models of Police Oversight: A Critique" (2001) 11:2 Policing and Society 151.
[83] *Supra* note 13, summary at para (a).
[84] *Supra* note 8 at paras 168–79; see also Patrick J LeSage, *Report on the Police Complaints System in Ontario* (Toronto: Ministry of the Attorney General, 2005) at 80.
[85] *Supra* note 8 at para 173.
[86] *Supra* note 13 cs 67(1) and 68(1).
[87] Canada, Canada Border Services Agency, *Misconduct Investigations and Disciplinary Measures Statistics* (Ottawa: CBSA, 2021).
[88] *Supra* note 13 67(1) and 68(1).
[89] *Ibid* c 68(1).
[90] *Ibid* cs 67(2) and 68(2).
[91] *Police Services Act*, RSO 1990, c 1, s 71(3).

misconduct" took place.[92] In British Columbia, if the civilian oversight Commissioner disagrees with certain disciplinary findings, he or she can appoint a retired judge to review the matter and, if appropriate, convene and oversee a disciplinary hearing.[93]

In order to simplify the disciplinary framework and preserve the independence and hence the effectiveness of the PCRC, Bill C-20 should vest the PCRC with the authority to lay disciplinary charges, or at least make the PCRC's recommendations to initiate the disciplinary process binding on the RCMP and CBSA.

Part IV: Conclusion

Thank you for considering our recommendations to improve Bill C-20. We appreciate the opportunity to participate in the Parliamentary process and work with Parliamentarians and their staff to create a PCRC that is fair and effective to RCMP and CBSA employees and the public. Please feel free to contact us if you or your staff have any questions about our recommendations.

The relationship between federal law enforcement and the public is deeply strained and serious reform is needed to improve things. In addition to considering the research conducted by groups such as our own, we encourage you to meaningfully consult with groups who are disproportionately affected by the RCMP and CBSA, such as Indigenous peoples, immigrants and refugees and communities of colour in reviewing Bill C-20.

[92] *Ibid* ss 68(5), 68(6) and 68(10).
[93] *Police Act*, RSBC 1996, c 367, s 117.