



Conservation Officers: The Need for Independent Public Oversight

Submission to the Special Legislative Committee on Reforming the *Police Act*

Submitted on behalf of Raincoast Conservation Foundation

by Camille Malone, law student

Supervised by:

Calvin Sandborn QC and Erin Gray, Arbutus Law Group LLP

APRIL 2021

Copyright © 2021 The Environmental Law Centre Society. All rights reserved.

Permission is hereby granted to reproduce and distribute these materials in whole or in part for educational and public interest purposes, provided such copies are disseminated at or below cost, provided that each copy bears this notice, and provided that the Environmental Law Centre is credited as the original published source.

DISCLAIMER: This material is provided for general information as a public and educational resource. We attempt to ensure the accuracy of the material provided, however the Environmental Law Centre does not warrant the quality, accuracy or completeness of information in this document. Such information is provided "as is" without warranty or condition of any kind. The information provided in this document is not intended to be legal advice and should not be relied upon as such. Many factors unknown to us may affect the applicability of any statement that we make in this material to one's particular individual circumstances. Please seek the advice of a competent lawyer in your province, territory or jurisdiction; or contact the ELC for more complete information.

Contents

Contents 3

Introduction 4

1. The Compelling Rationale for Providing Citizens with an Independent Complaint Body Regarding Law Enforcement Actions 6

2. The Current Inadequate Complaint System Offered by the Conservation Officer Service..... 12

3. Conservation Officers are Like Police and should be Subject to the Same Complaint System..... 14

4. The Current BC Police Complaint Commissioner System Meets Many of the Criteria Advocated by Legal Commentators 17

5. Recommendations 21

Conclusion 22

Introduction

Since 2011, BC Conservation Officers have killed a large number of animals as a result of conflict with humans, or of otherwise being perceived as “problem animals.” From 2011-2017 alone, BC Conservation Officer Service (BCCOS) reported killing 3,314 black bears, 103 grizzly bears, and 590 cougars.¹ A number of British Columbians have objected to some apparently unnecessary and improper killings of orphaned bear cubs and other animals. On occasion, citizens have also complained about officer conduct in exercising their police powers against human beings – such as a recent incident where a Coquitlam resident was dragged off his own porch by an officer. Yet currently there is no independent oversight mechanism whereby the public can file a complaint about the conduct of a Conservation Officer. Instead, citizen complaints are dealt with internally by the BC Conservation Officer Service (BCCOS) itself – in a system that lacks independence, objectivity, accountability, transparency and fairness.

For the public to have full confidence that Conservation Officers will follow the law and be held accountable for any potential abuses of authority, an independent citizen complaint mechanism must be established. Indeed, that is why such an independent mechanism has long been established for BC police officers.

The overriding principle is that extraordinary powers come with extraordinary responsibility. BC Conservation Officers have extraordinary powers: they carry lethal arms, wear a uniform and carry a badge – just like police officers. They have been given the power to arrest people, serve search warrants and enter private property. They enforce innumerable offences under sixteen different provincial statutes. Yet, despite the striking similarities with BC police officers and the breadth of policing powers bestowed upon Conservation Officers, Conservation Officers are not held to the same level of civilian oversight. Unlike police departments under the *Police Act*, standard police oversight does not apply to Conservation Officers. If a police officer uses inappropriate force, citizens can lodge complaints with an independent body. In contrast, there is no independent vetting process for complaints about Conservation Officers.

This must change.

¹ Government of British Columbia, Conservation Officer Service Predator Conflicts & Statistics (data up to September 2017), online: <<https://www2.gov.bc.ca/gov/content/environment/plants-animals-ecosystems/wildlife/human-wildlife-conflict>>.

This report lays out the compelling reasons for allowing citizens to take concerns about the actions of BC Conservation Officers to a truly independent complaint body. The report discusses the current insufficient BCCOS citizen complaint regime and offers a recommendation for a new model that will improve accountability and promote legality and the rule of law.

This report has five parts:

- [Part 1](#) identifies judicial and legal expert commentary that lays out the compelling rationale for providing citizens with an independent complaint body regarding law enforcement actions
- [Part 2](#) explains the current complaint system offered by the BC Conservation Officer Service (BCCOS)
- [Part 3](#) demonstrates how Conservation Officers are like police officers, who are subject to much more independent oversight
- [Part 4](#) identifies how the Office of the Police Complaint Commissioner of BC (OPCC) would be a suitable oversight mechanism for the BCCOS
- [Part 5](#) identifies recommended methods of how to place the BCCOS under the OPCC.

The purpose of this report is to illustrate the lack of procedural fairness afforded citizens when they file a complaint under the current BCCOS complaint system. By identifying the evident similarities that Conservation Officers have to police officers, we argue that the Office of the Police Complaint Commissioner can and should extend its powers to encompass the BCCOS.

1. The Compelling Rationale for Providing Citizens with an Independent Complaint Body Regarding Law Enforcement Actions

In 1992, the Attorney General of British Columbia appointed Mr. Justice Wallace T. Oppal to conduct the landmark *Commission of Inquiry into Policing in British Columbia*. Establishment of the commission of inquiry was a response to broad social changes, including population growth, demographics, technology, and crime patterns.² Most important, policing at that time was facing a heightened level of public concern about how it operated – similar to what is occurring today with conservation officers.

In 1992, the public was demanding greater accountability from police – and Mr. Justice Oppal clearly acknowledged that he did not think the demands of the public were unreasonable.³ The public was dissatisfied with how police were dealing with complaints and discipline; and there was a clear perception that the system of the day did not promote objectivity and fairness.⁴ Mr. Justice Oppal made it clear that there was a strong need for the province to establish *independent civilian oversight* of the police. The major recommendation from the Inquiry was put into effect when the province established a new office of a complaint commissioner. Today, we now know it as the Office of the Police Complaint Commissioner (OPCC), which is an independent office of the Legislature.

In contrast, decades later, there is still no independent oversight of Conservation Officers' actions or the BCCOS's policies as a whole. Complaints about officer actions are dealt with by the Conservation Officer Service "in-house." Complaints must be made to the BCCOS directly, and any investigations that it deems necessary are conducted internally.

² Wallace T. Oppal, "Closing the Gap: Policing and The Community, Commission of Inquiry into Policing in British Columbia" (1994), at 4, online: <https://opcc.bc.ca/wp-content/uploads/2017/04/Closing_The_Gap-Recommendations.pdf>.

³ Wallace T. Oppal, "Closing the Gap: Policing and The Community, Commission of Inquiry into Policing in British Columbia" (1994), generally at 1-22, online: <https://opcc.bc.ca/wp-content/uploads/2017/04/Closing_The_Gap-Recommendations.pdf>.

⁴ Wallace T. Oppal, "Closing the Gap: Policing and The Community, Commission of Inquiry into Policing in British Columbia" (1994), at 17-22, online: <https://opcc.bc.ca/wp-content/uploads/2017/04/Closing_The_Gap-Recommendations.pdf>.

As a result, if a citizen perceives an officer's actions to be inappropriate, there is no opportunity for that citizen to take concerns to an independent body. This is both unusual and inappropriate for an armed law enforcement agency that frequently interacts with the public. Below we lay out the rationale for providing citizens with an independent complaint body to replace a system that some have described as an "old boys' club" process. It is past time for conservation law enforcement officers to be examined with the same level of independent scrutiny as other policing officers. It is time for reform to offer a similar level of objective and fair citizen complaint oversight.

An independent review mechanism is essential to curb abuses and ensure proper enforcement of the law. It is not sufficient to have the Conservation Officer Service merely investigate itself. As Justice Braidwood's review of the death of Robert Dziekanski at the hands of the RCMP revealed:

Justice Braidwood stressed that when the police investigate themselves, there are "legitimate concerns about conflict of interest. Many members of the public perceive that the investigators may allow loyalty to fellow officers to interfere with the impartial investigative process. This perception, even if not true in each case, can lead to public distrust and an undermining of public confidence in the police."⁵

A system that limits oversight to an "old boys' club" internal review is not adequate. Permitting the BCCOS to simply investigate and review complaints about its own officers' conduct raises serious conflict of interest issues. As Justice Oppal noted in his landmark report, *Closing the Gap: Commission of Inquiry into Policing in British Columbia*: "In any democratic society based on the rule of law and responsible government, it is fundamental that police independence be balanced with accountability"⁶

As law enforcement officers with extraordinary police powers (the powers to use lethal weapons, arrest people, trespass, etc.), Conservation Officers too must be accountable. The rule of law

⁵ Kent Roach, *Models of Civilian Police Review: The Objectives and Mechanisms of Legal and Political Regulation of the Police* (2014: Criminal Law Quarterly, Vol 61), at 42, online: <https://www.law.utoronto.ca/utfl_file/count/users/cox/clq61-1_models_of_civilian_police_review.pdf>, citing "Why? The Robert Dziekanski Tragedy, Phase 2 report," May 20, 2010, at p 411.

⁶ Wallace T. Oppal, *Closing the Gap: Policing and The Community, Commission of Inquiry into Policing in British Columbia* (1994), at 17, online: <https://opcc.bc.ca/wp-content/uploads/2017/04/Closing_The_Gap-Recommendations.pdf>.

requires a method for the public to ensure the law is equally applied to those entrusted with extraordinary powers. As the Supreme Court of Canada has stated:

“The rule of law provides that the law is supreme over the acts of both government and private persons... It provides a shield for individuals from arbitrary state action.”⁷

There must be a system of oversight to ensure officers perform their duties in a professional manner. A truly independent review mechanism would provide inherent impartiality, affording objectivity and fairness in the review of complaints.

To the contrary, the current BCCOS complaint review process is comprised of internal review mechanisms that are not subject to the kind of independent review systems that oversee other police agencies.⁸ This fails to provide the public with assurance that complaints will be considered without bias. As Ontario Court of Appeal Justice Michael Tulloch stated in the *Independent Police Oversight Review* that he conducted examining Ontario’s civilian police oversight bodies:

For the public to have confidence that the police will be held accountable, the investigation of such matters often requires the involvement of an outside investigative body...⁹ Independence is a key feature of civilian oversight bodies. Not only should the oversight bodies be independent of police, they also should be free from political interference.¹⁰

To be free of political interference, a system needs to minimize political interference and not set up a regime where “reviewers” are politically accountable to Ministers and others in the governmental/political chain of command.

Law enforcement officials are clothed with extraordinary powers, and this requires a higher level of public accountability. To achieve the required public accountability, there must be a trustworthy system in place to ensure citizen complaints are being managed fairly. There must be

⁷ Reference re Secession of Quebec (1998), [1998] 2 S.C.R. 217, at para 70.

⁸ In the case that a Conservation Officer were involved in serious bodily harm to or death of a human, the Independent Investigations Office would investigate: *Police Act*, RSBC 1996, c 367, at s 38.09.

⁹ Michael H. Tulloch, “Report of the Independent Police Oversight Review” (2017), at Executive Summary para 7, online: <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/police_oversight_review/#_idParaDest-59>.

¹⁰ Michael H. Tulloch, “Report of the Independent Police Oversight Review” (2017), at Recommendation 4.4 para 58, online: <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/police_oversight_review/#_idParaDest-59>.

no ambiguity with respect to the scope of authority of the oversight agency.¹¹ As stated by Justice Oppal in his *Commission of Inquiry into Policing in British Columbia*:

*In order to ensure accountability, the office of the commissioner must be vested with complete independence and the authority to conduct independent investigations if necessary...the complaint commissioner must be completely independent and assume a quasi-judicial role.*¹²

He also stated that the independent body should operate at a level to achieve complete authority to oversee investigations (similar to the Ombudsperson).¹³

A law enforcement agency such as the Conservation Officer Service must be transparent in these matters. In exchange for the high level of power given to Conservation Officers, transparency is necessary. In his review of independent oversight of police in Ontario, Justice Tulloch discussed the importance of independence to achieve transparency:

*Members of the public have legitimate concerns about the current system. They are baffled by an independent civilian agency that turns public complaints over to the police service being complained about, to be adjudicated by an individual selected by the police chief. Independent adjudication of public complaints by the [Ontario Civilian Police Commission] will eliminate these bad optics and promote a fairer, more transparent process.*¹⁴

¹¹ Josiah Wood, Q.C., “*Report on the Review of the Police Complaint Process in British Columbia*” (2007), at p 14 para 50, online: <<http://capg.ca/wp-content/uploads/2013/05/Report-on-the-Police-Complaint-Process.pdf>>.

¹² Wallace T. Oppal, “*Closing the Gap: Policing and The Community, Commission of Inquiry into Policing in British Columbia*” (1994), at 19, online: <https://opcc.bc.ca/wp-content/uploads/2017/04/Closing_The_Gap-Recommendations.pdf>.

¹³ Wallace T. Oppal, “*Closing the Gap: Policing and The Community, Commission of Inquiry into Policing in British Columbia*” (1994), at 18-19, online: <https://opcc.bc.ca/wp-content/uploads/2017/04/Closing_The_Gap-Recommendations.pdf>.

¹⁴ The Honourable Michael H. Tulloch, “*Report of the Independent Police Oversight Review*” (2017), at Recommendation 8.2 para 51, online: <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/police_oversight_review/#_idParaDest-59>.

The Ontario *Independent Police Oversight Review* went on to state that transparency should be proven by providing reasons for decisions and publishing summary statistics on complaints.¹⁵

Clearly, without the inclusion of an independent complaint mechanism, legitimate transparency cannot be achieved. Many Canadian jurisdictions recognize the wisdom of making available independent review of Conservation Officer actions. Manitoba, Alberta, and Quebec already have independent review systems in place for their Conservation Officers.¹⁶ These jurisdictions demonstrate that independent oversight of Conservation Officers is possible. While every complaint process is unique, one commonality among these provinces is that **complaints are not handled solely by the wildlife enforcement agency itself**: at minimum, an independent body receives or is forwarded complaints for screening purposes.¹⁷ The BC approach of relying on a law enforcement agency to review complaints about its officers and self-investigate is retrograde and a conflict of interest. British Columbia must address this conflict and implement independent oversight of the BCCOS.

Finally, it is important to note that true accountability will be an asset to both the public and the law enforcement agency. As Justice Oppal pointed out in *Closing the Gap: Policing and the Community, Commission of Inquiry into Policing in British Columbia*: “It should also be noted that the credibility and respect of police forces is strengthened when they are publicly accountable for their actions.”¹⁸ On the same point, in a paper commissioned by the Ipperwash Inquiry, Professor Lorne Sossin (now Justice Sossin) wrote that oversight increases public confidence:

... there is a persuasive case to be made that the more perspectives (not just within the executive but through judicial, legislative and community groups as well) brought to bear

¹⁵ The Honourable Michael H. Tulloch, “*Report of the Independent Police Oversight Review*” (2017), at Recommendation 7.33 para 239, online:

<https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/police_oversight_review/#_idParaDest-59>.

¹⁶ Environmental Law Clinic, “*Reform Proposals for Managing Human-Wildlife Conflict in British Columbia*” (March 2019), online: <https://elc.uvic.ca/wordpress/wp-content/uploads/2019/09/Managing-Human-Wildlife-Conflict-in-BC_Mar2019.pdf>.

¹⁷ Environmental Law Clinic, “*Reform Proposals for Managing Human-Wildlife Conflict in British Columbia*” (March 2019), at 13-16, online: <https://elc.uvic.ca/wordpress/wp-content/uploads/2019/09/Managing-Human-Wildlife-Conflict-in-BC_Mar2019.pdf>.

¹⁸ Wallace T. Oppal, “*Closing the Gap: Policing and The Community, Commission of Inquiry into Policing in British Columbia*” (1994), at 20, online: <https://opcc.bc.ca/wp-content/uploads/2017/04/Closing_The_Gap-Recommendations.pdf>.

*on police conduct, the more likely abuses of the rule of law will be addressed or deterred and public confidence in the police will be enhanced.*¹⁹

A system of greater accountability can be beneficial for a law enforcement agency. Legendary Supreme Court of Canada Justice Dickson made this point in the case of *Attorney-General of Alberta et al v. Putnam*, where a citizen filed a complaint of harassment against RCMP officers:

*“An independent review of police actions is important because it fosters respect for and confidence in the police - a matter vital to the effective administration of justice.”*²⁰

Since extraordinary powers are entrusted to Conservation Officers in BC, it is vital to establish a system of “independent review” for citizen complaints.

¹⁹ Lorne Sossin, “The Oversight of Executive Police Relations in Canada: Constitution, the Courts, Administrative Processes and Democratic Governance” (commissioned by the Ipperwash Inquiry, 2003-2007; accessed 10 March 2021), at 3, online: https://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/meetings/pdf/Sossin.pdf.

²⁰ *Putnam v. Alberta (Attorney General)*, 1981 CarswellAlta 289, at para 39.

2. The Current Inadequate Complaint System Offered by the Conservation Officer Service

Unlike municipal BC police officers, when a complaint is filed against a BC Conservation Officer the complaint review system is entirely internal. The current BCCOS complaint process is:

- 1) the complaint can be submitted through email to the BCCOS;
- 2) the complaint will be reviewed to determine whether it is admissible under the BCCOS Complaints Policy;²¹
- 3) if accepted, the BCCOS will determine which method will be used for resolving the complaint, which may include formal or informal resolution;
- 4) if an information resolution is deemed appropriate, the BCCOS will work with the complainant to find a solution; if a formal investigation is chosen, an investigator will be assigned;
- 5) if the complaint is found to be substantiated, any disciplinary measures imposed will be in accordance with the Collective Agreement for unionized employees and applicable human resource policies;
- 6) if a valid appeal is submitted, the Chief Conservation Officer will assess if the complaint required further investigation. This decision is final.^{22 23}

During the entirety of the complaint process, at no point does the complaint leave the BCCOS for review.

Yet a just and fair complaint system must allow for an *independent* review or investigation of the complaint.

²¹ Conservation Officer Service, Policy and Procedure, “Complaints” (revised 6 October 2017), online: <https://www2.gov.bc.ca/assets/gov/environment/plants-animals-and-ecosystems/conservation-officer-service/cos_complaints_policy.pdf>.

²² Government of British Columbia, “COS Compliments & Complaints Process” online: <<https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/natural-resource-law-enforcement/conservation-officer-service/about-the-cos/compliments-complaints>>.

²³ Ministry of Environment Conservation Officer Service, “Standard of Conduct: Complaints Against Conservation Officers Acting As Special Provincial Constables” (1999), online: <https://www2.gov.bc.ca/assets/gov/environment/plants-animals-and-ecosystems/conservation-officer-service/complaints_against_conservation_officers_acting_as_spc.pdf>.

Some have argued that the current flawed complaint system could somehow be fixed with half measures. For example, it has been suggested that the system could be rectified if the BCCOS changed its complaint process to allow a complainant to appeal internal decisions to an independent third party *appointed by the Ministry*.

However, such a change to the complaint process would not meet the criteria of a fair and just independent complaint system discussed previously. Such a change would not sufficiently shift the complaint system from the current internal structure into an independent one. It would not meet the requirement of providing independent review – it would not provide any reviewers outside of the control/influence of the BCCOS. Although an appeal function would nominally be offered, at no level of the appeal would a complaint be reviewed by a truly independent agency.

The initial review of a complaint to the BCCOS would still be entirely internal, with no independence in either the admission of the complaint or review. And the ultimate appeal would not be independent either. It would be conducted by way of nominal “external review” by an official appointed by – and answerable to – an *internal* source. In sum, the review/appeal would still be done either internally, or by an official selected by an internal source.

That is not independence.

Furthermore, the external review would not meet the requirements of being independent because the review would be conducted by a third-party appointed by an internal source.

Appointments and terms of reference would still be made by the internal agency itself – with all the pitfalls of decision-making by internal members of the same ministerial team. At no point during the appeal process would a complaint get reviewed by a truly independent entity. It is for this reason that such a suggestion would not meet the criteria for a fair and just complaint system.

Fortunately, there is a better system available, and it already covers police.

3. Conservation Officers are Like Police and should be Subject to the Same Complaint System

The Conservation Officer Service is currently composed of a hybrid legislative structure. The BCCOS receives its primary mandate from section 106 of the *Environmental Management Act*. In addition, individual Conservation Officers are appointed under section 9 of the *Police Act*.²⁴ Once appointed, a BCCOS officer holds a full and unrestricted appointment as a special provincial constable under the *Police Act*.²⁵ This empowers these officers to be armed, uniformed, and otherwise equipped the same as the police department – but unlike police departments under the *Police Act*, the BCCOS’s officer conduct is not codified *and they are not subject to normal citizen-police oversight and accountability mechanisms*.²⁶

Recently, the Court of Appeal established that normal civil service employee-dismissal procedures do not apply when the Ministry of Environment dismisses a Conservation Officer for actions taken as a Conservation Officer. The Court ruled in *Casavant v. British Columbia (Labour Relations Board)* that such internal discipline is governed by the *Special Provincial Constable Complaint Procedure Regulation*, under the *Police Act*.²⁷ This decision illustrates the congruency of roles that Conservation Officers share with other police constables. The Court ruled that internal discipline of Conservation Officers falls under the *Police Act* procedures. Yet, when the BCCOS responds to external citizen complaints, the Conservation Officer Service diverges from most BC police bodies, and continues to self-investigate internally.

Notably, some have suggested that Conservation Officers can be treated differently than police because the major area of conflict between the BCCOS and the public is the treatment of wildlife – not *people*. However, the BCCOS not only interacts with wildlife; there are also issues surrounding its treatment of people. For example, in Coquitlam recently a lawsuit was filed against the BCCOS for an alleged breach of Charter rights, assault and battery. A Conservation Officer had allegedly

²⁴ See appendix A “e-memorandum (BCCOS & potential for oversight models)” from Bryce Casavant.

²⁵ See appendix A “e-memorandum (BCCOS & potential for oversight models)” from Bryce Casavant.

²⁶ See appendix A “e-memorandum (BCCOS & potential for oversight models)” from Bryce Casavant.

²⁷ *Casavant v. British Columbia (Labour Relations Board)*, 2020 BCCA 159, at para 52, online: <<https://www.canlii.org/en/bc/bcca/doc/2020/2020bccca159/2020bccca159.html>>. See *Special Provincial Constable Complaint Procedure Regulation*, B.C. Reg. 206/98 under the *Police Act*, RSBC 1996, c 367.

dragged an elderly man from his front porch steps.²⁸ These actions undoubtedly reflect those of a police officer in the use of powers against persons.

Those who have argued that Conservation Officers should be subject to similar accountability provisions as police officers point to key factors that distinguish a bona fide police officer's powers from those of other public service personnel. These factors include:

- Powers of search, seizure, and arrest
- The use of force provisions in law
- Possession of a firearm
- Discretion

Although in narrow circumstances others might have aspects of the above powers (*e.g.*, a citizen can make a citizen's arrest, force can be used in self-defence, citizens can possess firearms in certain circumstances), the grant of plenary powers to Conservation Officers is striking. When taken all together, it is clear that Conservation Officer powers are remarkably synchronous with general police powers. Every one of the above factors is not only applicable to police officers, but also to Conservation Officers. Conservation officers have powers of arrest, power to use force, power to possess and use a firearm, etc.²⁹ This demonstrates the strong overlap between the powers, duties and functions of both police officers and Conservation Officers.

Indeed, under the *Environmental Management Act*, Conservation Officers are empowered to enforce a panoply of laws outside of the wildlife sector:

- *Dike Maintenance Act*;
- *Ecological Reserve Act*;
- *Environmental Management Act*;

²⁸ Bryce Casavant "Opinion: BC conservation officers are 'shadow cops' & need police reform," *Tricity News* (18 July 2020), online: <<https://www.tricitynews.com/opinion/columns/opinion-bc-conservation-officers-are-shadow-cops-need-police-reform-1.24172624>>. Stefan Labbé, "Coquitlam senior sues Conservation Service over arrest in bear incident" (8 October 2020), online: Castanet <https://www.castanet.net/news/BC/312844/Coquitlam-senior-sues-Conservation-Service-over-arrest-in-bear-incident>>.

²⁹ Power of search: see *Wildlife Act*, RSBC 1996, c 488, ss 88.1-89; power to seize: see *Wildfire Act*, SBC 2004, c 31, ss 19-21 and *Wildlife Act*, RSBC 1996, c 488, ss 74, 94, 97.7; power to arrest: *Offences Act*, RSBC 1996, c 338, s 89.7; *Wildlife Act*, RSBC 1996, c 488, s 87; *Liquor Control and Licensing Act*, SBC 2015, c 19, s 74(2); permitted to use force implicit in power to arrest; permitted to possess firearms: *Wildlife Act*, RSBC 1996, c 488, s 86; discretion: see *Motor Vehicle Act*, RSBC 1996, c 318, s 123.

- *Forest Act*;
- *Forest and Range Practices Act*;
- *Forest Practices Code of British Columbia Act*;
- *Greenhouse Gas Industrial Reporting and Control Act*;
- *Integrated Pest Management Act*;
- *Land Act*;
- Sections 44 (6), 73 (1), 74 (1) and 76 (2) of the *Liquor Control and Licensing Act*;
- Sections 65 (1) (a) and (b) and (2), 67, 73 (1) and (2), 74 (1), 78 (1), 81 (1) and 102 (4) of the *Cannabis Control and Licensing Act*;
- Sections 13 (1), 24, 33, 70, 71, 73, 84, 177 and 204 of the *Motor Vehicle Act*;
- *Off-Road Vehicle Act*;
- *Water Sustainability Act*;
- *Water Protection Act*;
- *Wildfire Act*.³⁰

Clearly, Conservation Officers need to be subject to the same citizen complaint oversight as police when they breach human civil liberties. Furthermore, illegal/improper behaviour of those with police powers should be subject to independent oversight -- whether the victims are wildlife or humans.

³⁰ *Conservation Officer Service Authority Regulation*, B.C. Reg. 318/2004, s 1(2); see also s 2, Table

4. The Current BC Police Complaint Commissioner System Meets Many of the Criteria Advocated by Legal Commentators

One agency well positioned to provide oversight of the BCCOS is the British Columbia Office of the Police Complaint Commissioner (OPCC). The OPCC is an independent civilian agency that already oversees and facilitates complaints involving municipal police.³¹ While the agency does not conduct investigations directly, its purpose is to increase transparency and accountability in the complaint process by ensuring investigations are thorough and fair. The OPCC can also recommend improvements to police boards, such as recommendations to create or amend policy, and suggestions to amend the *Police Act*.³²

The steps in the OPCC's complaints process are:

- 1) the complainant submits a complaint through the OPCC's online system, mail, email, in person, by phone or directly to the police department;
- 2) an OPCC analyst assesses the submitted complaint and determines whether it is admissible based on several criteria³³ and whether it is suitable for "complaint resolution" (alternative dispute resolution or mediation);
- 3) it proceeds in one of three ways:
 - a. **Complaint Resolution:** If deemed suitable for complaint resolution, that process is carried out, and facilitated by a senior member of the police department;

³¹ Office of the Police Complaint Commissioner, "About Us" (accessed 10 March 2021), online: <<https://opcc.bc.ca/about-us/>>.

³² Office of the Police Complaint Commissioner, "About Us" (accessed 10 March 2021), online: <<https://opcc.bc.ca/about-us/>>.

³³ Office of the Police Complaint Commissioner, "Complaint Process" (accessed 10 March 2021), online: <<https://opcc.bc.ca/complaint-process/>>. Note for a complaint to be admissible to the OPCC it must contain three criteria: 1) satisfy the s.77 definition for being an allegation police misconduct; 2) be filed within one year of the incident; 3) not be frivolous or vexatious. If a complaint contains allegations relating to a department's services or policies, it would be processed under Division 5 of the *Police Act*, RSBC 1996, c 367, and sent to the relevant department's Police Board.

- b. **Investigation by Police Department:** If it is deemed not suitable for complaint resolution, it proceeds to an investigation by the police department, *with an Investigative Analyst from the OPCC* providing oversight of the investigation. This results in a Final Investigation Report submitted to the OPCC and the “Discipline Authority” which is usually the Chief Constable of the police department where the police officer subject to the proceedings is from; or
 - c. **Investigation by External Police Force:** The OPCC can direct the investigation of the complaint to a separate/external municipal police force (with the Chief Constable/high officer there acting as “Discipline Authority”) if they think it is “in the public interest.” This is required if the complaint is against the Chief Constable;³⁴
- 4) the Discipline Authority makes a decision as to whether there is an appearance of misconduct;
- 5) **the OPCC reviews all decisions of the Discipline Authorities:**
- a. if the decision is no misconduct, and the OPCC disagrees with this decision, the OPCC may appoint a retired judge to review the decision. Note that the complainant may also request a review if the finding is no misconduct; or
 - b. if the decision is that misconduct took place, the matter proceeds to a Pre-hearing Conference which is a meeting between the Chief Constable and the police officer to decide appropriate disciplinary or corrective measures. If an agreement cannot be reached or if the OPCC does not agree with the disciplinary measures, it will proceed to a Discipline Proceeding, where the Discipline Authority will hear evidence and make a finding as to whether the misconduct is proven and what disciplinary measures are appropriate. If the OPCC rejects the disciplinary measures imposed at the Discipline Proceeding, it can appoint a retired judge to review the matter. If the OPCC disagrees with the decision made at the Discipline Proceeding, it can appoint a retired judge to conduct a paper review (“review on the record”) or it can call a public hearing, both to be conducted by a retired judge

³⁴ Note that there is not an equivalent police force that does the same job as the BCCOS in the province. Thus, this option might have to be modified appropriately for BCCOS cases.

to review the matter.³⁵ (Complainants and the police officer respondent can also request the OPCC appoint a retired judge). The retired judge’s decision is binding.

Thus, the OPCC is an independent body that provides independent perspective during the investigation process, receives reports from the investigating officer, provides for independent review of key findings during the process, and can lead to the appointment of a retired judge – who can independently review the matter and make binding decisions.

Although the OPCC system is not without its flaws, it meets many of the criteria for an optimal complaint system. And as the Police Complaints Commissioner System is improved in the future, the ability to meet these criteria will be enhanced. Crucially, it provides independent oversight.

- Though the OPCC is not a completely independent decision maker, it determines the admissibility of all complaints filed against municipal police and the final review of a complaint is performed by an independent decision maker. Additionally, the OPCC operates with the same level of authority as the Ombudsperson and has the authority to oversee and monitor complaints, investigations and the administration of discipline. The OPCC must confirm any corrective or disciplinary measures that are decided; if the OPCC approves the disciplinary measures, then the complainant will receive a letter advising of this decision.³⁶ If the OPCC rejects the disciplinary measures decided, the issue will move to a Discipline Proceeding;
- The OPCC offers an independent review mechanism for disciplinary decisions that may be incorrect. If the OPCC has a reasonable basis on which to believe that the internal disciplinary decision was incorrect, then a retired judge can be appointed to review and decide the final disciplinary measures that will be imposed;³⁷

³⁵ Office of the Police Complaint Commissioner, “Complaint Process” (accessed 10 March 2021), online: <<https://opcc.bc.ca/complaint-process/>>.

³⁶ Office of the Police Complaint Commissioner, “Complaint Process” (accessed 10 March 2021), online: <<https://opcc.bc.ca/complaint-process/>>.

³⁷ Office of the Police Complaint Commissioner, “Complaint Process” (accessed 10 March 2021), online: <<https://opcc.bc.ca/complaint-process/>>.

- The OPCC is staffed by a team of employees that includes both civilians and people with backgrounds of police work.³⁸ This creates a stronger level of independence and impartiality;
- The OPCC can observe investigations;³⁹ and
- The OPCC can report a matter to the Crown if it considers the conduct of a police officer to be an offence under any law.⁴⁰

The OPCC system also offers complainants certain notable rights, for example, strict timelines are set for the investigative process.⁴¹ It is an offence for any person to harass anyone else in relation to a complaint regarding a police officer.⁴² A Chief Constable must take measures to obtain and preserve evidence relating to complaints.⁴³ When officer misconduct is found, the complainant has the right to make submissions to the Discipline Authority, after receiving the Final Investigation Report.⁴⁴

The overriding advantage of the OPCC is that it operates independently from the agencies for which it reviews complaints. Yet, presently, the OPCC only oversees complaints involving municipal police departments and “Special Municipal Constables” appointed under the *Police Act*; Conservation Officers are “Special Provincial Constables” appointed under the *Police Act* so do not fall into either of these categories. Adding the BCCOS to the OPCC’s jurisdiction would introduce independent oversight to the agency. Under this approach, complaints by civilians would end up with the OPCC rather than remaining with the BCCOS.

³⁸ Office of the Police Complaint Commissioner, “About Us” (accessed 10 March 2021), online: <<https://opcc.bc.ca/about-us/>>.

³⁹ *Police Act*, RSBC 1996, c 367, at s. 96.

⁴⁰ *Police Act*, RSBC 1996, c 367, at s. 111.

⁴¹ Including the investigating officer providing reports to the OPCC *Police Act*, RSBC 1996, c 367, at s. 98.

⁴² *Police Act*, RSBC 1996, c 367, at s. 86.

⁴³ *Police Act*, RSBC 1996, c 367, at s. 88.

⁴⁴ *Police Act*, RSBC 1996, c 367, at s. 113.

5. Recommendations

We recommend that the jurisdiction of the Office of the Police Complaints Commissioner be extended by giving the Commissioner jurisdiction over Conservation Officer Service constables.

It appears the Lieutenant Governor in Council has the power to do so by order. In 2016 the Ministry of Justice asked the OPCC to assume oversight responsibilities for Special Municipal Constables appointed under the *Police Act*.⁴⁵ The Lieutenant Governor in Council ordered the expansion of the OPCC's jurisdiction in February 2016, and it came into effect August 1 of that year.⁴⁶ Special Municipal Constables include jail guards, community safety members, traffic authority members, and auxiliary/reserve constables. The government's decision to extend the OPCC's jurisdiction to these enforcement agencies recognizes that independent oversight of police-like agencies is important.

There is no reasonable rationale for the OPCC's jurisdiction to exclude the BCCOS. Extending the OPCC's jurisdiction to the BCCOS is unlikely to overburden the organization. We do not know the actual number of complaints made regarding the BCCOS yearly, as the BCCOS does not publicly release this information. However, as a comparator, in Ontario there is an average of 22 complaints made against Conservation Officers annually. Ontario employs 190 Conservation Officers, whereas British Columbia employs 150. Clearly, overseeing complaints about the BCCOS is unlikely to require significant resources and is justified by the enhanced public confidence that would come with this independent oversight. We believe this approach is the most straightforward and efficient way to introduce immediate independent oversight of the BCCOS.

⁴⁵ British Columbia, Legislative Assembly, Annual Review of the Budgets of the Statutory Offices, 40th Parl, 4th Sess, Second Report (20 January 2016), "Office of the Police Complaint Commissioner"

⁴⁶ Office of the Police Complaint Commissioner, 2015/2016 Annual Report (August 2016), at 14 (PDF p 18), online: <https://opcc.bc.ca/wp-content/uploads/2017/03/2015-2016_OPCC_Annual_Report.pdf>.

Conclusion

As discussed, the overriding principle is that extraordinary powers come with extraordinary responsibility. An armed, police-like agency such as the BCCOS should have a system in place to provide both oversight and accountability to the public. Without these mechanisms in place, there may be consequences not only to wildlife, but also to the democratic rights of citizens. In October 2020, the topic of an independent oversight body for the BCCOS was raised after a Coquitlam man filed a lawsuit for assault and battery against the BCCOS and RCMP.⁴⁷ In response to this, Premier John Horgan stated: “Transparency and oversight is fundamental to a civil society and if it’s demonstrated that we need to do more there, then we will.”⁴⁸

The system needs to be changed, to assure public accountability for Conservation Officers. The current closed internal process for dealing with citizen complaints simply does not meet the minimum threshold of a fair and just system. As discussed in this report, extending the jurisdiction of the OPCC to include the BCCOS is a straightforward and cost-effective way to resolve the lack of transparency and accountability within the BCCOS complaint system. Other Canadian jurisdictions provide for independent review of conservation officer actions, and BC should as well.

⁴⁷ Stefan Labbé “Horgan pushes back against ‘irresponsible’ snap election during COVID-19 second wave,” *Tricity News* (Oct 20, 2020) online: <<https://www.tricitynews.com/news/horgan-pushes-back-against-irresponsible-snap-election-during-covid-19-second-wave-1.24224043>>.

⁴⁸ Stefan Labbé “Horgan pushes back against ‘irresponsible’ snap election during COVID-19 second wave,” *Tricity News* (Oct 20, 2020) online: <<https://www.tricitynews.com/news/horgan-pushes-back-against-irresponsible-snap-election-during-covid-19-second-wave-1.24224043>>.