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Legislative Summary

BILL C-20: AN ACT ESTABLISHING THE PUBLIC COMPLAINTS AND REVIEW COMMISSION AND AMENDING CERTAIN ACTS AND STATUTORY INSTRUMENTS

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Michaela Keenan-Pelletier and Ariel Shapiro

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Michaela Keenan-Pelletier
Ariel Shapiro

Legal and Social Affairs Division
Economics, Resources
and International Affairs Division

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Legislative Summary of Bill C-20
(Preliminary version)

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LEGISLATIVE SUMMARY OF BILL C-20: AN ACT ESTABLISHING THE PUBLIC COMPLAINTS AND REVIEW COMMISSION AND AMENDING CERTAIN ACTS AND STATUTORY INSTRUMENTS

1 BACKGROUND

Bill C-20, An Act establishing the Public Complaints and Review Commission and amending certain Acts and statutory instruments¹ was introduced in the House of Commons on 19 May 2022 by the Minister of Public Safety (the Minister).

Bill C-20 establishes the independent Public Complaints and Review Commission (PCRC) to review and investigate complaints against Royal Canadian Mounted Police (RCMP) and Canada Border Services Agency (CBSA) personnel. The PCRC replaces the existing Civilian Review and Complaints Commission (CRCC), which reviews complaints against the RCMP. There is currently no oversight authority responsible for reviewing complaints against the CBSA.

Two other bills to establish the PCRC were introduced in previous sessions of Parliament, but did not pass. Bill C-98, 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, was introduced in May 2019.² Bill C-98 was passed by the House of Commons and received first reading in the Senate but died on the *Order Paper* when Parliament was dissolved in September 2019. The bill was essentially re-introduced as Bill C-3 in January 2020 but did not complete second reading.³

1.1 STRENGTHENING CIVILIAN REVIEW OF ROYAL CANADIAN MOUNTED POLICE AND CANADA BORDER SERVICES AGENCY ACTIVITIES

In the wake of the 11 September 2001 attacks, Canada and other Western nations implemented or strengthened anti-terrorism policies that, in the words of the House of Commons Standing Committee on Public Safety and National Security, “in many cases, resulted in the racial profiling of the Muslim and Arab communities as well as violations of civil liberties.”⁴

In the high-profile case of Maher Arar, the dual Syrian–Canadian citizen was detained during a layover at John F. Kennedy Airport in New York City by United States (U.S.) authorities while returning to Canada from a family vacation in Tunis. American authorities detained, questioned and held him in solitary confinement for almost

two weeks before deporting him to Syria, where he was imprisoned and tortured for nearly a year before being released and returned to Canada. The case garnered significant attention in Canada on the part of the media and the public, particularly over the role Canadian officials, including those in the RCMP, may have played.

Tasked in 2004 with chairing the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, Justice Dennis O'Connor submitted an inquiry report in which he recommended, among other findings, the creation of a new civilian agency to oversee the activities of both the RCMP and the CBSA.⁵

As a result, the CRCC for the RCMP⁶ was established by Parliament in 2013.⁷ It was conceived as an independent agency to review and resolve complaints from the public against the RCMP. The CRCC's mandate is to conduct reviews when individuals are not satisfied with the RCMP's response to their complaints. The CRCC also initiates complaints or investigations into RCMP conduct when an investigation is in the public interest. The CRCC's findings and recommendations are reported to the RCMP Commissioner and the Minister.

Justice O'Connor's report recommended that CBSA's activities be subject to review by the same body as those of the RCMP. However, this recommendation has not been implemented; the CBSA is not currently subject to any independent review mechanism. Complaints about the conduct of CBSA officers are handled internally, with no ability for members of the public to request an independent review of an internal investigation. While appearing before the Senate Standing Committee on National Security and Defence in May 2022, the Minister stated that the new PCRC would "afford greater transparency and accountability" for interactions between individuals and the CBSA, and related complaints.⁸

Bill C-20 implements Justice O'Connor's recommendation for a body to conduct investigations and review both RCMP and CBSA activities. The new PCRC's mandate is limited to the review of RCMP and CBSA activities that are unrelated to national security. A different independent body, the National Security and Intelligence Review Agency, is already responsible for the review of national security-related activities.⁹

2 DESCRIPTION AND ANALYSIS

As mentioned above, Bill C-20 creates the new PCRC whose purview covers officers and employees of both the RCMP and CBSA. The following sections of this legislative summary describe the powers, duties and functions of the new PCRC, and new and amended provisions of the *Royal Canadian Mounted Police Act*¹⁰ (RCMP Act) and the *Canada Border Services Agency Act*¹¹ (CBSA Act).

Many of Bill C-20's provisions creating the PCRC mirror existing provisions of the RCMP Act related to the CRCC. These are repealed and replaced under Bill C-20.

Bill C-20 contains 145 clauses. Key provisions are discussed in the following sections.

2.1 PART 1: PUBLIC COMPLAINTS AND REVIEW COMMISSION

Clause 3 of Bill C-20 establishes the new PCRC, composed of a Chairperson, a Vice-Chairperson and up to three other members. Members are appointed by the Governor in Council for renewable terms of up to five years. They must be Canadian citizens or permanent residents who are neither current nor former members of the RCMP or the CBSA.

2.1.1 Powers, Duties and Functions

The PCRC must establish and publish time limits within which it will deal with complaints, including exceptions and time extensions (clause 8). These service standards must be jointly agreed on with the RCMP and the CBSA for the respective complaints against them (clause 8). Service standards may also be established by the Governor in Council (clause 87).

The PCRC must implement education and information programs to raise public awareness about its role (clause 9).

The Chairperson, Vice-Chairperson, other members, staff and individuals acting on behalf of the PCRC – including experts retained to assist it – are immune from criminal, civil and administrative actions against them related to the performance of their duties. Subject to certain exceptions, they cannot be compelled to testify in proceedings (clauses 11 and 25(3)).¹² The language covering these protections closely mirrors the existing immunities of the CRCC.¹³

2.1.2 Reporting

Like the CRCC, the Chair of the PCRC must submit an annual report to the Minister on the activities of the PCRC, including his or her recommendations. In turn, the Minister must table the report before Parliament within 15 sitting days of receiving it (clause 13). An annual report must contain:

- information on whether the PCRC met its service standards;
- the number of complaints by individuals detained by the CBSA, and summaries of the complaints;

- the number of complaints by individuals detained by the CBSA related to their treatment during detention, and summaries, status and results of the complaints;
- the number of serious incidents (death or serious injury) involving RCMP or CBSA members, including the type of incident, location, and whether charges were laid;
- anonymized data about complainants, including race-based data; and
- additional information required by regulation.

The PCRC must also submit an annual report to each minister responsible for policing in a contracting province.¹⁴ This report must indicate the number and subject of all RCMP-related complaints arising in the province, how the complaints were disposed of and any trends that emerge (clause 14). The RCMP Commissioner and the Minister also receive a copy of these reports.

Bill C-20 provides that the PCRC, on its own initiative or at the request of the Minister, may submit a special report on any subject relating to its powers, duties and functions to the Minister (clause 12). The PCRC must also publish a summary of the report. If appropriate, the Minister may share a copy of the report with the RCMP and/or the CBSA.

PCRC reports and summaries must not contain information that, if disclosed, would harm national security, national defence, international relations, the investigation or prosecution of an offence, or information that is subject to solicitor-client or litigation privilege (clause 15).

2.1.3 Information Provisions

Clause 16 grants the PCRC the right to access any information held by the RCMP or the CBSA that the PCRC considers relevant to its work. The RCMP and the CBSA must comply with a PCRC request for information, with certain exemptions. The right to access information is accompanied by limits and required protections for the information provided to the PCRC. These rights and responsibilities largely mirror existing RCMP Act provisions regarding the CRCC's right of access to information held by the RCMP.¹⁵

Bill C-20 sets out the kinds of information to which the PCRC's access may be either limited (privileged information) or prohibited.¹⁶

Clause 17 contains a list of the types of information that may be considered privileged:

- information subject to the privilege that exists between legal counsel and their client or that is subject to informer privilege;

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- information that reveals the identity or the location of a protected person under the federal witness protection program, the means and methods by which they are protected, or the identity or role of a person who provides protection;
- “special operational information” within the meaning of the *Security of Information Act* (e.g., plans of military operations or information concerning a secret investigation being conducted by the federal government);
- “special operational information” concerning or received from any police force or Interpol; and
- medical information about an RCMP or CBSA member or employee.

The RCMP and the CBSA may refuse access to privileged information, but must give reasons for the refusal and indicate why the information is not relevant or necessary to the PCRC’s review. Under the current RCMP Act, a refusal to disclose privileged information may be referred to a former judge for independent review.¹⁷ This dispute mechanism is removed under Bill C-20.

Under clause 21, when the PCRC accesses privileged information as part of a review, investigation, or hearing, it may not use or disclose the information for any other purpose unless authorized or required by law. Disclosure exceptions include to the Minister (other than in an annual report, which is published), or to the Attorney General if the information is required for criminal proceedings (clause 25(2)). Any breach of this obligation is a criminal offence (clause 90).

Clauses 19 and 20 list seven types of prohibited information which the PCRC may not access at any time:

- information relating to a request made by a member or employee of the RCMP or CBSA for legal assistance or indemnification from the federal government;
- confidential communications between an RCMP member and another member representing or assisting them in relation to a grievance or to proceedings under the RCMP Act concerning, among other things, the review of a disciplinary action;¹⁸
- information that is protected by solicitor-client or litigation privilege, where the information was provided to an RCMP or CBSA member (not the RCMP or the CBSA as an organization);
- information that is protected by solicitor-client or litigation privilege, where the information was provided to the RCMP or the CBSA regarding their dealings with the PCRC;

- any report prepared for the head of the RCMP or the CBSA concerning any meeting held between the RCMP or the CBSA and the PCRC containing analysis and advice relating to the meeting;
- confidences of the Queen's Privy Council for Canada (i.e., Cabinet confidences);¹⁹ and
- commercial information that Canada has committed under an international agreement to keep confidential.

2.1.4 Review of Specified Activities

The current RCMP Act states that the CRCC may review specified activities of the RCMP and provide the RCMP Commissioner with a report including findings and recommendations on any policy, procedure, or guideline relating to the RCMP. Bill C-20 largely mirrors these provisions: the PCRC, on its own initiative or at the request of the Minister, may review specified activities of the RCMP or the CBSA and submit a report to the Minister, and the RCMP Commissioner or CBSA President if relevant. The bill also carries over the conditions surrounding review that are in the RCMP Act, namely, that sufficient resources must exist for the PCRC to conduct a review without inhibiting its complaints function, and that another federal or provincial body cannot have already conducted a review on the same issue (clause 28(3)).²⁰ Clause 28(7) adds a requirement for the PCRC to publish a summary of the report. The RCMP Commissioner's or CBSA President's comments on a report's findings and recommendations, if any, must be released at the same time as the summary.

2.2 PART 2: INVESTIGATION, REVIEW AND HEARING OF COMPLAINTS

Part 2 of the bill outlines how complaints relating to the RCMP or the CBSA are to be submitted, and how complaints are to be investigated, reviewed, and heard by the two agencies as well as the PCRC.

2.2.1 Complaints

Clause 33 of the bill allows individuals to make a complaint about the conduct of RCMP employees (clause 33(1)) and CBSA employees (clause 33(2)) in the performance of their duties, including about former employees regarding their conduct while they were employed. Complaints must be made within a year following the alleged incident, although this time limit can be extended in certain circumstances.

The system established by Bill C-20 gives potential complainants two options when filing complaints: either directly to the RCMP or CBSA, or to the PCRC. Additionally, complaints regarding the RCMP can also be filed with the provincial authority responsible for reviewing complaints against police in the province where the alleged incident took place. Once a complaint is received, the entity that receives it must acknowledge the complaint in writing to the person who filed it, and must also notify the other entities to which the person could have complained. For example, if an individual files a complaint with the CBSA, that agency must inform the PCRC, and vice versa (clauses 33(9) and 33(10)). As soon as possible, the President of the CBSA or the Commissioner of the RCMP – depending on the case – must notify in writing the employee whose conduct is the subject of the complaint (clause 34). The PCRC must help individuals make a complaint if requested (clause 35).

While complaints can generally only be brought forward by individuals directly affected by the actions of an RCMP or CBSA employee, complainants may be represented by their guardian, tutor, curator or mandatary, as well as anyone they authorize in writing to represent them (clause 38).

Affected parties are not the only parties able to file complaints. Clause 36 of the bill provides that the Chairperson of the PCRC may also launch a complaint into the conduct of a current or former RCMP or CBSA employee if there are reasonable grounds to do so. In this case, the Chairperson takes on the role of “complainant.”

2.2.1.1 Investigation of Complaints by the RCMP or CBSA

The RCMP and the CBSA must investigate complaints that they receive. However, there are certain conditions in which the agencies may or must decline to investigate.

For example, clauses 37(2) and 37(3) state that the RCMP and CBSA must not investigate a complaint if doing so would hinder the investigation or prosecution of an offence, or, in the case of the CBSA, if the investigation would hinder that agency’s ability to carry out its mandated responsibilities. In addition, under clause 38(2), the RCMP or CBSA must refuse to deal with a complaint if there is another procedure established by federal or provincial statute that could deal with the complaint more appropriately. As well, the complaint mechanisms established in Bill C-20 cannot be used to file a complaint against internal disciplinary measures taken or not taken by the RCMP or the CBSA. The RCMP or CBSA may also refuse to deal with a complaint, if the complaint is deemed to be vexatious, trivial or made in bad faith, or is not from an individual at whom the conduct was directed, or their guardian or other representative (clause 38(1)). The PCRC is similarly required or allowed to refuse to investigate a complaint under these circumstances (clauses 52 and 53).

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If the RCMP or CBSA refuse to investigate a complaint, the relevant agency must notify the complainant and inform them of their right to refer the complaint to the PCRC for review within 60 days (clause 38(3)).

The agencies cannot refuse complaints initiated by the Chairperson as described above. However, if the PCRC decides to investigate a complaint, the RCMP or CBSA cannot launch a simultaneous investigation into that same complaint (clause 37(2)).

A complainant can withdraw their complaint at any time (clause 40). In this case, all evidence that had been gathered in the investigation so far must be preserved. However, the investigation can continue even if a complaint is withdrawn.

Clause 43 of the bill states that the RCMP or CBSA must consider whether a complaint could be resolved informally. Both the complainant and the employee against whom the complaint was filed must consent to informal resolution.

The bill also specifies that the RCMP, the CBSA and the PCRC must maintain records of all complaints received or for which they received notice. The CBSA and RCMP must make their respective records available to the PCRC on request, subject to the restrictions specified in clauses 20(a) and 20(b).

Once the RCMP or CBSA begin an investigation into a complaint, there are circumstances under which they either may, or must, stop the investigation (clauses 46 and 47). These circumstances mirror the reasons for which an investigation might not be initiated, as outlined above in clauses 37 and 38. A complainant has the right to refer the complaint to the PCRC within 60 days if the investigation is refused or terminated.

Throughout the course of an investigation, and in accordance with the service standards described in clause 8 of the bill, the RCMP or CBSA must provide updates to both the complainant and the employee in question, unless these updates could compromise or hinder the investigation (clause 48).

As soon as feasible after the completion of an investigation into a complaint, the RCMP or the CBSA must issue a report summarizing the findings and actions that have or will be taken with respect to the disposition of the complaint (clause 49). This report is sent both to the complainant and the employee. The report must also inform the complainant that they can refer the complaint to the PCRC for review within 60 days.

2.2.1.2 Investigations by the Public Complaints and Review Commission

Clause 50 of the bill outlines the powers of the PCRC in relation to its complaint function. The PCRC has the powers of a “superior court of record,” and may summon and enforce the attendance of witnesses, compel witnesses to give oral or written evidence and produce documents, examine records, and administer oaths. The PCRC can also consider evidence that might not necessarily be admissible in a court of law.

When the PCRC receives or is notified of a complaint, it must investigate the complaint if the Chairperson of the PCRC decides that such an investigation would be in the public interest (clause 51).

The PCRC cannot investigate a complaint relating to a national security activity of the government of Canada, and must instead refer the complaint to the National Security and Intelligence Review Agency. If the PCRC refuses to deal with a complaint for any reason, it must give appropriate notice to either the RCMP or CBSA, depending on the case, as well as the complainant.

While investigating complaints, the PCRC can merge two or more similar complaints into one (clause 54). Throughout the investigation, the PCRC must provide regular updates to both the complainant and the RCMP or CBSA employee who is the subject of the complaint.

As explained above in clauses 38 and 47, if an individual files a complaint with either the RCMP or the CBSA, and that agency refuses to investigate the complaint, the individual can refer the complaint to the PCRC if they are not satisfied (clause 56). In such a case, the RCMP or CBSA must send all relevant documents about the complaint to the PCRC. The PCRC then decides if it is satisfied with the decision of the RCMP or the CBSA to refuse to investigate. If it is not satisfied, it can either issue a report with findings and recommendations to the RCMP or CBSA; direct the RCMP or CBSA to investigate; or initiate an investigation of its own (clause 57(3)).

If the PCRC chooses to issue a report with findings and recommendations to either the RCMP or CBSA, that agency must respond within six months and explain whether it is implementing the recommendations. Following this response, the PCRC prepares a final report which it will send to the Minister, the head of either the RCMP or CBSA, the employee in question, and the complainant (clause 58).

2.2.1.3 Hearings

Clause 59 outlines how the PCRC conducts its hearings. The PCRC can institute hearings either because it is investigating a complaint it has received (as per clause 51) or has initiated, or because it is investigating a complaint that the RCMP or CBSA refused to investigate (as per clause 57(3)). The PCRC’s chairperson

designates one or more members to conduct a hearing on behalf of the PCRC. The three parties to the hearing are a person designated by either the RCMP or CBSA; the employee in question; and the complainant. Hearings may take place anywhere in Canada based on the location of the parties. Hearings will generally be public unless the PCRC decides, based on any of the reasons outlined in clause 59(6), that a hearing or part of a hearing should be held in camera or *ex parte*. Other provisions pertaining to hearings include the parties' right of representation (clauses 59(8) and 59(9)) and the right for parties and certain non-parties who demonstrate a "substantial and direct" interest in the hearing to present evidence and cross-examine witnesses (clause 59(7)).

The PCRC has a duty to suspend any ongoing investigation, review or hearing if continuing it would interfere with a prosecution or with the ability of the RCMP or CBSA to carry out their functions (clause 60).

Bill C-20 also allows the PCRC to conduct joint hearings where there is a complaint against either an RCMP or CBSA officer as well as a law enforcement officer from another Canadian or international jurisdiction (clauses 61 to 63).

2.2.1.4 Reporting

Clauses 64 to 66 outlines PCRC reporting requirements. Following the completion of an investigation or hearing, the PCRC completes an interim report that includes findings and recommendations. It sends this report to either the Commissioner of the RCMP or President of the CBSA, depending on the case. However, this interim report is not necessarily sent to the employee in question nor to the complainant.

Following receipt of an interim report, the RCMP or CBSA, depending on the case, must respond to the PCRC within six months. This response must explain the actions that the agency has taken or will take regarding the complaint, or alternatively, the reasons why they are refusing to act on some or all the PCRC's recommendations or findings.

The PCRC then prepares a final report that reflects the response provided by the RCMP or CBSA. This report is sent to the Minister, the head of the CBSA or RCMP, the employee in question, and the complainant. The final report is also sent to the provincial minister responsible for policing if the complaint related to the RCMP in a contract policing province.

The PCRC's report is final and not subject to appeal (clause 65). Following the conclusion of the investigation, all relevant documents and evidence must be returned to their original owners.

2.2.1.5 Disciplinary Measures

As part of its reports, the PCRC can recommend that an RCMP or CBSA employee should face disciplinary action if the PCRC is of the opinion that the employee has “engaged in conduct that warrants that initiation of such a process” (clause 67(1)). While the head of the RCMP or CBSA must inform the relevant employee that disciplinary process has been recommended, the RCMP and CBSA are not obligated to initiate disciplinary processes or measures based on that recommendation. However, they must inform the Minister whether they initiated a disciplinary process in response to the complaint, and if not, the reasons for their refusal.

In addition to disciplinary processes, the PCRC can also recommend that the RCMP or CBSA implement specific disciplinary measures against an employee. This recommendation is possible where the employee has been the subject of more than one complaint resulting in a finding that their action resulted, or may have resulted, in death or serious injury, or a federal or provincial offence (clause 68). The RCMP and CBSA are not obligated to implement disciplinary measures in response to a recommendation by the PCRC, but as is the case for disciplinary processes, they must inform the Minister whether they initiated a disciplinary measure in response to the complaint, and if not, the reasons for their refusal.

Clauses 69, 70 and 71 contain additional guidelines and safeguards related to the PCRC’s ability to recommend disciplinary processes or measures.

Clause 72 states that the RCMP and CBSA must submit an annual report to the Minister and the PCRC outlining the actions their agency undertook in response to submitted PCRC reports, including reports recommending disciplinary processes and measures.

2.3 PART 3: REVIEW OF INTEGRATED CROSS-BORDER LAW ENFORCEMENT OPERATIONS

The *Integrated Cross-border Law Enforcement Operations Act*²¹ enables designated United States Coast Guard and RCMP officers to jointly patrol shared waterways and to continue to pursue suspects from one country to the other. Participating American law enforcement officers have the same powers as an RCMP officer, when they are participating in a joint cross-border law enforcement operation and cross a shared maritime border into Canada.²² Designated Canadian officers have reciprocal powers when in the U.S. The RCMP Commissioner and their American counterpart are responsible for directing integrated cross-border operations.²³ Part 3 of the bill sets out the role of the PCRC in reviewing complaints related to integrated cross-border operations, including a Canadian officer operating in the U.S. and an American officer operating in Canada. The PCRC replaces the CRCC as the existing oversight

body responsible for review of complaints related to integrated cross-border law enforcement operations.²⁴

Clause 75 identifies Bill C-20 provisions that apply to complaints stemming from integrated cross-border law enforcement operations, including those related to: PCRC service standards, procedural rules, PCRC immunities and protections from legal action, access to information, annual reporting requirements, and reviews of specified activities.

The PCRC may provide a report reviewing specified activities of integrated cross-border operations to the provincial minister responsible for policing in a province where these operations were carried out, in addition to the Minister and RCMP Commissioner (clause 76). A provincial minister may also ask the Minister to request a review of specified activities of an integrated cross-border operation. If the PCRC undertakes the review, the PCRC must provide the provincial minister and the Minister with a copy of the report and may share it with any other provincial minister responsible for policing (clause 77).

Similarly to annual reports submitted to provinces with RCMP contract policing, the PCRC must submit an annual report to each minister responsible for policing in a province where there has been a complaint related to integrated cross-border operations. This report must indicate the number and subject of all integrated cross-border operations related complaints in the province in that fiscal year, how the complaints were disposed of and any trends that emerge (clause 78). The RCMP Commissioner and the Minister also receive a copy.

The PCRC may investigate, review, and hear complaints related to integrated cross-border operations, as described in Part 2 (clause 79). The PCRC may also conduct a joint investigation with another body responsible for dealing with public complaints against law enforcement in any relevant jurisdiction, including American authorities, when the complaint involves a law enforcement officer in an integrated cross-border operation (clause 80).

2.4 PART 4: GENERAL PROVISIONS

Part 4 of the bill lays out several general provisions.

While Bill C-20 gives several duties and powers to the Commissioner of the RCMP, clause 83 clarifies that the Commissioner may delegate most of these duties and powers to any other RCMP member. The two powers the Commissioner cannot delegate are the power to delegate further, and the power to conclude a memorandum of understanding with the Chairperson of the PCRC and/or the President of the CBSA, as outlined in clause 17(7) of the bill.

Clause 84 of the bill explains that making a complaint against the RCMP or CBSA using the procedures outlined in the bill, and any investigations resulting from the complaint, cannot delay other types of investigations or proceedings such as: other investigations into offences; actions under RCMP or CBSA's mandated responsibilities; or removal or extradition proceedings. As well, an individual cannot enter into Canada or remain in Canada for the purposes of making a complaint.

Clause 85 indicates that the PCRC and the National Security and Intelligence Review Agency must take "all reasonable steps" to cooperate with each other to avoid unnecessary duplication of efforts.

The bill also provides for a right to be informed: anyone who is arrested or detained by a CBSA officer must be informed of their right to make a complaint (clause 86).

2.4.1 Regulations, Attendance of Witnesses and Offences

Clause 87 outlines 16 types of regulations the Governor in Council can make pursuant to this bill. These include regulations relating to service standards, safeguarding of information, joint complaints, and defining certain key terms.

The bill also creates offences. These mirror existing offences relating to CRCC proceedings.²⁵ It is an offence for an individual who is summoned as a witness by the PCRC not to attend or, once in attendance, to refuse to take an oath or affirmation; to refuse to produce required documents or thing in their possession; to refuse to answer any question; to use insulting or threatening language, or cause a disturbance; or to unlawfully print or publish observations with intent to dissuade a witness from testifying (clause 88). This type of offence is punishable on summary conviction.

The second category of offences, found in clause 89, relates to harassment, obstruction, intimidation and destruction or falsification of documents or evidence, or counselling someone to do any of the above. The penalties for offences in this category are imprisonment for up to five years on indictment, or a fine of up to \$5,000, six months' imprisonment, or both on summary conviction.

The third category of offences, found in clause 90, relates to the obligations of members, officers and employees of the PCRC, or anyone acting on its behalf, not to improperly disclose privileged information to which they had access during their PCRC work except in accordance with the law, and not to be reckless with that information. These obligations are outlined in clause 25(1). The penalties for offences in this category are imprisonment for up to five years on indictment, or a fine of up to \$5,000, six months' imprisonment, or both on summary conviction.

Summary conviction proceedings for offences under clauses 88, 89 and 90 of this bill must begin within two years of the occurrence of any alleged infraction (clause 92).

2.5 PART 5: AMENDMENTS TO THE RCMP ACT

Bill C-20 makes several amendments to the RCMP Act to replace the CRCC with the new PCRC. Parts VI and VII of the RCMP Act, which established the CRCC, are repealed (clause 98), and all other references to the CRCC or the Chairperson of the CRCC now refer to the PCRC or Chairperson of the PCRC reflectively. However, Parts VII.1 and VII.2 of the RCMP Act, relating to serious incidents and integrated cross-border law enforcement operations, remain in effect, with several minor amendments to Part VII.2.

2.6 PART 6: AMENDMENTS TO THE CBSA ACT

The amendments that Bill C-20 makes to the CBSA Act are more substantial than the amendments it makes to the RCMP Act. The RCMP Act already provides for a review commission (the CRCC) and Bill C-20 replaces these references with the PCRC. However, the CBSA does not currently have a review commission. Several new definitions and provisions are introduced into the CBSA Act to provide for the PCRC.

Among the changes to the CBSA Act are provisions regarding:

- Agreements with provinces: the bill allows the CBSA to enter into an agreement with a province to allow that province to detain individuals on behalf of the CBSA, but only if the province has an independent mechanism to deal with complaints relating to the treatment of detained individuals (clause 110).²⁶
- Serious incidents: the CBSA will investigate alleged serious incidents committed by its employees – including people assisting the agency. The term is defined as incident that may have resulted in death or serious injury – including psychological injury – or any other violation of a federal or provincial law in certain circumstances (clause 111).

2.7 PART 7: TERMINOLOGY

Part 7 changes the terminology used when referring to the RCMP in English versions of every federal Act, order, or regulation. References to “Force” are replaced with “RCMP.”

2.8 PART 8: TRANSITIONAL PROVISIONS, CONSEQUENTIAL AND COORDINATING AMENDMENTS AND COMING INTO FORCE

2.8.1 Transitional Provisions

When certain provisions of Bill C-20 come into force and the CRCC is replaced by the PCRC, the following are automatically transferred to the new PCRC: commission membership including the Chair and Vice-Chair, employees, fiscal appropriations, rights, property, obligations and liabilities, references to the CRCC in documents executed or signed by the CRCC, standing in legal or administrative proceedings, ministerial requests for the CRCC to review specified activities of the RCMP, and complaints submitted to the CRCC under the existing RCMP Act.

New complaints may be submitted to the PCRC regardless of whether the conduct occurred before or after Bill C-20's coming into force.

2.8.2 Consequential Amendments

Bill C-20 makes consequential amendments to the *Access to Information Act*, the *Canada Evidence Act*, the *Financial Administration Act*, the *Security of Information Act*, the *Privacy Act*, the *Customs Act*, the *Public Sector Compensation Act*, the *National Security and Intelligence Committee of Parliamentarians Act*, the *National Security and Intelligence Review Agency Act* and the *Avoiding Complicity in Mistreatment by Foreign Entities Act*. These amendments generally add references to the PCRC or replace references to the CRCC with the new PCRC.

2.8.3 Coordinating Amendments

Clause 145 makes coordinating amendments between Bill C-20 and provisions of the *Enhancing Royal Canadian Mounted Police Act*.²⁷ They ensure that certain Bill C-20 provisions do not undo amendments under the other Act if those come into effect first. The amendments are largely technical and replace the phrase “appointed or employed” with “appointed” in the RCMP Act.

2.8.4 Coming into Force

Clause 146 provides that Bill C-20 will come into force on a day or days to be fixed by Order in Council.

NOTES

1. [Bill C-20, An Act establishing the Public Complaints and Review Commission and amending certain Acts and statutory instruments](#), 44th Parliament, 1st Session.

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2. [Bill C-98, 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](#), 42nd Parliament, 1st Session.
3. [Bill C-3, An Act to amend the Royal Canadian Mounted Police Act and the Canada Border Services Agency Act and to make consequential amendments to other Acts](#), 43rd Parliament, 1st Session.
Unlike Bill C-98, Bill C-3 had no coordinating amendments, and references to national security cases were changed to reflect that Bill C-59, An Act respecting national security matters, has come into force. Any other differences between bills C-3 and C-98 were essentially amendments to section numbers and minor changes in language that did not alter the substance of the provisions.
4. House of Commons, Standing Committee on Public Safety and National Security, "[Introduction](#)," *Review of the Findings and Recommendations Arising from the Iacobucci and O'Connor Inquiries*, Third report, June 2009.
5. The Honourable Dennis O'Connor, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, [A New Review Mechanism for the RCMP's National Security Activities](#), December 2006, pp. 576–577. For more information, see also Government of Canada, [Report of the events relating to Maher Arar / Dennis R. O'Connor, Commissioner, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar](#).
6. The Civilian Review and Complaints Commission for the Royal Canadian Mounted Police replaced the Commission for Public Complaints Against the Royal Canadian Mounted Police, established in 1988.
7. [Enhancing Royal Canadian Mounted Police Accountability Act](#), S.C. 2013, c. 18.
8. Senate of Canada, Standing Committee on National Security and Defence, [Evidence](#), 44th Parliament, 1st Session, 30 May 2022, Hon. Marco Mendocino (Eglinton–Lawrence).
9. [National Security and Intelligence Review Agency Act](#), S.C. 2019, c. 13, s. 2. The *National Security and Intelligence Review Agency Act*, which entered into force on 12 July 2019, created the National Security and Intelligence Review Agency, an independent review body with a mandate to review national security activities for all government agencies and departments with a national security function, including the Royal Canadian Mounted Police (RCMP) and the Canada Border Services Agency (CBSA).
10. [Royal Canadian Mounted Police Act](#), R.S.C. 1985, c. R-10.
11. [Canada Border Services Agency Act](#), S.C. 2005, c. 38.
12. Exceptions include prosecutions for an offence under the Act Establishing the Public Complaints and Review Commission (once in force), the *Security of Information Act*, or perjury under the *Criminal Code*.
13. [Royal Canadian Mounted Police Act](#), R.S.C. 1985, c. R-10, s. 45.5.
14. The RCMP currently provides contract policing services in every province except Ontario and Quebec.
15. [Royal Canadian Mounted Police Act](#), R.S.C. 1985, c. R-10, ss. 45.39–45.47.
16. The Chair of the PCRC may conclude a memorandum of understanding with the RCMP Commissioner and/or the CBSA President respecting procedures to access and protect privileged information. The PCRC and the Governor in Council may make regulations respecting the protection of information in general that is under the PCRC's control (clauses 17(1) and 22(1)). These regulations may be made when the bill becomes law.
17. [Royal Canadian Mounted Police Act](#), R.S.C. 1985, c. R-10, s. 45.41.
18. [Royal Canadian Mounted Police Act](#), R.S.C. 1985, c. R-10, s. 47.1.
19. Section 39 of the *Canada Evidence Act* (R.S. 1985, c. C-5) defines the kinds of documents that may be subject to the privilege of confidences of the Queen's Privy Council for Canada. In *Babcock v. Canada (Attorney General)*, [2002] 3 S.C.R. 3, para. 18, the Supreme Court of Canada explained the reasons why this information is protected:

Those charged with the heavy responsibility of making government decisions must be free to discuss all aspects of the problems that come before them and to express all manner of views, without fear that what they read, say or act on will later be subject to public scrutiny: ... If Cabinet members' statements were subject to disclosure, Cabinet members might censor their words, consciously or unconsciously. They might shy away from stating unpopular positions, or from making comments that might be considered politically incorrect.

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20. [Royal Canadian Mounted Police Act](#), R.S.C. 1985, c. R-10, s. 45.34(2).
21. [Integrated Cross-border Law Enforcement Operations Act](#), S.C. 2012, c. 19, s. 368.
22. Ibid, s. 12.
23. The *Integrated Cross-border Law Enforcement Operations Act* designates the RCMP Commissioner or their delegate as the Central Authority for Canada responsible for directing integrated cross-border operations in cooperation with their American counterpart.
24. [Royal Canadian Mounted Police Act](#), R.S.C. 1985, c. R-10, Part VII.2.
25. [Royal Canadian Mounted Police Act](#), R.S.C. 1985, c. R-10, ss. 50(1)–52.
26. According to Public Safety Canada, Prince Edward Island is the only province without such a mechanism. See Public Safety Canada, [Bill C-20 – An Act establishing the Public Complaints and Review Commission and amending certain Acts and statutory instruments](#), Backgrounder.
27. [Enhancing Royal Canadian Mounted Police Accountability Act](#), S.C. 2013, c. 18.