



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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Legislative Summary of Bill C-20
(Legislative Summary)

Publication No. 44-1-C20-E

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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). **The bill later passed second reading and was referred to the House of Commons Standing Committee on Public Safety and National Security. The committee proposed amendments to almost 30 clauses and reported the bill back to the House of Commons on 9 November 2023.**

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

Two earlier bills to establish the Commission were introduced in previous sessions of Parliament, but were not passed. 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 it died on the *Order Paper* when Parliament was dissolved in September 2019. The bill was essentially reintroduced as Bill C-3 bearing the same title as Bill C-98 in January 2020, but it did not pass second reading.³

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

In the wake of the attacks of 11 September 2001, 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. The U.S. 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 from the media and the public, particularly over the role that 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 others, creating 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 a review when an individual is not satisfied with the RCMP's response to their complaint. 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 the CBSA's activities be subject to review by the same body that reviews the activities of the RCMP. However, this recommendation was not implemented; the CBSA is not currently subject to any independent review mechanism. Complaints about the conduct of CBSA officers are handled internally, and members of the public are unable 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 Commission would "afford greater transparency and accountability" for interactions between individuals and the CBSA, and the related complaints.⁸

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

2 DESCRIPTION AND ANALYSIS

As mentioned above, Bill C-20 creates the new Public Complaints and Review Commission (the Commission) whose purview covers officers and employees of both the RCMP and the CBSA. The following sections of this legislative summary describe the powers, duties and functions of the new Commission. This paper also discusses the 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 the provisions in Bill C-20 that create the Commission mirror existing provisions in the RCMP Act related to the CRCC, which 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)

Clause 3 of Bill C-20 establishes the new Commission, 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 not current or former members of the RCMP or the CBSA. **The appointments process must seek to reflect the diversity of Canadian society, including considerations such as gender equality.**

2.1.1 Powers, Duties and Functions
(Clauses 8, 9, 11, 25 and 87)

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

The Commission 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 Commission – including experts retained to assist it – are immune from criminal, civil and administrative actions against them relating 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 used to describe these protections closely mirrors the language used to describe the existing immunities of the CRCC.¹³

2.1.2 Reporting
(Clauses 12 to 15)

The chair of the Commission, like the chair of the CRCC, the Commission must submit an annual report to the minister on the activities of the Commission and include the chair's recommendations. In turn, the minister must table the report

before Parliament within 15 sitting days of receiving it. This annual report must contain:

- information about whether the Commission met its service standards;
- the number of complaints made by individuals detained by the CBSA and summaries of the complaints, **including complaints disposed of through the reconciliation process with Indigenous peoples**;
- the number of complaints made by individuals detained by the CBSA concerning their treatment during detention, and summaries, statuses and results of the complaints;
- the number of serious incidents that have occurred (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 **demographic and** race-based data; and
- additional information required by regulation (clause 13).

The Commission must also submit an annual report to each minister responsible for policing in the contracting provinces.¹⁴ This report must indicate the number and subject of all RCMP-related complaints made in the province, describe how the complaints were disposed of and identify any emerging trends (clause 14).

The RCMP commissioner and the minister also receive a copy of these reports.

Bill C-20 provides that the Commission, on its own initiative or at the request of the minister, may submit to the minister a special report on any subject relating to its powers, duties and functions (clause 12). The Commission must also publish a summary of the report. **The minister must share a copy of the report with the RCMP and the CBSA on the same day as the minister receives the special report.**

Commission reports and summaries must not contain information that if disclosed would harm national security, national defence, international relations or 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 (Clauses 16, 17, 19 to 21, 25 and 90)

Clause 16 grants the Commission the right to access any information held by the RCMP or the CBSA that the Commission considers relevant to its work. The RCMP and the CBSA must comply with a Commission request for information, with certain exceptions. The right to access information is accompanied by limits and required

protections for the information provided to the Commission. These rights and responsibilities largely reflect 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 Commission'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;
- information that reveals the identity or the location of a protected person in 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 for 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, **including information from mental health care professionals**, 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 Commission'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 in Bill C-20.

Under clause 21, when the Commission 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. Exceptions include disclosure 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 that the Commission may not access at any time:

- information relating to a request made by a member or employee of the RCMP or the 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 privilege or the professional secrecy of advocates and notaries or by litigation privilege, where the information is provided to a member of the RCMP or of the CBSA (not the RCMP or the CBSA as an organization);
- information that is protected by solicitor–client privilege or the professional secrecy of advocates and notaries or by litigation privilege, where the information is provided to the RCMP or the CBSA regarding their dealings with the Commission;
- any report prepared for the head of the RCMP or of the CBSA concerning any meeting held between either of these agencies and the Commission which contains analysis and advice relating to the meeting;
- confidences of the Queen’s Privy Council for Canada (Cabinet confidences);¹⁹ and
- commercial information that Canada has committed to keep confidential under an international agreement.

2.1.4 Review of Specified Activities
(Clause 28)

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 Commission may review specified activities of the RCMP or the CBSA of its own initiative or at the request of the minister, and submit a report to the minister and to the RCMP commissioner or CBSA president, if relevant. **The amended bill removes one of the two conditions of review that are currently in the RCMP Act**, namely, sufficient resources must exist for the Commission to conduct a review without compromising its complaints function. **The bill carries over the existing condition that** another federal or provincial body must not have already conducted a review on **substantially the same issue** (clause 28(3)).²⁰ Under clause 28(7), a requirement is added for the Commission to publish a summary of every 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 and the Commission.

2.2.1 Complaints
(Clauses 33 to 36 and 38)

Clause 33 of the bill allows individuals **or a third party** 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 **two** years of 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: they may file either directly with the RCMP or the CBSA, or with the Commission. 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 receiving entity must acknowledge the complaint in writing to the person who filed it, and it 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 Commission 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 situation, must notify in writing the employee whose conduct is the subject of the complaint (clause 34). The Commission must help individuals **or third parties** make a complaint if assistance is requested (clause 35).

Complainants may be represented by their guardian, tutor, curator or mandatary, as well as anyone they authorize in writing to represent them (clause 38).

Clause 36 of the bill provides that the chairperson of the Commission may also launch a complaint into the conduct of a current or former RCMP or CBSA employee if reasonable grounds exist to do so. In this case, the chairperson takes on the role of “complainant.”

2.2.2 Investigation of Complaints by the RCMP or the CBSA
(Clauses 37, 38, 40, 43, 45 to 49, 52 and 53)

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

For example, under clauses 37(3) and 37(4), the RCMP and the 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 the CBSA must refuse to deal with a complaint if another procedure established by federal or provincial statute could deal with it 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 the CBSA may also refuse to deal with a complaint if the complaint is deemed to be vexatious, trivial or made in bad faith, or if it is not from an individual at whom the conduct was directed, or their guardian or other representative, **or a third party directly concerned by the subject matter of the complaint** (clause 38(1)). Similarly, the Commission is either required or allowed to refuse to investigate a complaint in the same circumstances (clauses 52 and 53).

If the RCMP or the CBSA refuses to investigate a complaint, the relevant agency must notify the complainant **and their legal representative, if any**, and inform them of their right to refer the complaint to the Commission for review within 60 days (clause 38(3)).

The agencies cannot refuse complaints initiated by the chairperson, as described above. However, if the Commission decides to investigate a complaint, neither the RCMP nor the CBSA can investigate that same complaint (clause 37(2)).

A complainant can withdraw their complaint at any time **by sending written notice, including the reasons for the withdrawal to the Commission and the RCMP or the CBSA as applicable** (clause 40); if they do, all evidence gathered in the investigation so far is preserved. However, the investigation can continue even if a complaint is withdrawn.

Under clause 43 of the bill, the RCMP or the CBSA must consider whether a complaint can be resolved informally. Both the complainant and the employee against whom the complaint was filed must consent to an informal resolution.

The bill also specifies in clause 45 that the RCMP, CBSA and Commission must maintain records of all complaints received or for which they received notice. The CBSA and the RCMP must make their respective records available to the Commission on request, subject to the restrictions specified in clauses 20(a) and 20(b).

Once the RCMP or the CBSA begin an investigation into a complaint, there are circumstances in 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 Commission for review 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 the 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 an investigation into a complaint is completed, the RCMP or the CBSA must issue a report summarizing the complaint, the findings and the actions that have or will be taken with respect to disposing of the complaint (clause 49). This report is sent to both the complainant and the employee. The report must also inform the complainant that they can refer the complaint to the Commission for review within 60 days.

2.2.2.1 Investigations by the Public Complaints and Review Commission
(Clauses 50 to 52, 54 and 56 to 58)

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

When the Commission receives a complaint or is notified of one, it must investigate that complaint if the chairperson of the Commission decides that such an investigation is in the public interest (clause 51).

The Commission 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 Commission refuses to deal with a complaint for any reason, it must give appropriate notice to either the RCMP or the CBSA, depending on the case, as well as the complainant (clause 52).

While investigating complaints, the Commission can merge two or more similar complaints into one (clause 54). Throughout the investigation, the Commission must provide regular updates to both the complainant and the RCMP or the 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 Commission if they are not satisfied with the decision (clause 56). In that case, the RCMP or the CBSA must send all relevant documents about the complaint to the Commission, which then decides whether it is satisfied with the decision of the RCMP or the CBSA to refuse to investigate. If it is not satisfied, it can issue a report with findings and recommendations to the RCMP or the CBSA, direct the RCMP or the CBSA to investigate or initiate an investigation of its own (clause 57(3)).

If the Commission chooses to issue a report with findings and recommendations to either the RCMP or the CBSA, the receiving agency must respond within six months and either describe how it is implementing the recommendations or explain why it is not implementing them. With this information, the Commission prepares a final report which it will send to the minister, the head of either the RCMP or the CBSA, the employee in question and the complainant (clause 58).

2.2.2.2 Hearings (Clauses 59 to 63)

Clause 59 outlines how the Commission conducts its hearings; it can institute hearings either because it is investigating a complaint it has received or initiated, or because it is investigating a complaint that the RCMP or the CBSA refuse to investigate. The Commission's chairperson designates one or more members to conduct a hearing on behalf of the Commission. The three parties to the hearing are a person designated by either the RCMP or the CBSA, the employee in question and the complainant. Hearings may take place anywhere in Canada according to the location of the parties. Hearings are generally public unless the Commission 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 hearing-related provisions address the parties' right of representation (clauses 59(8) and 59(9)) and the right for parties, **their union representatives if applicable**, 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 Commission 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 the CBSA to carry out their functions (clause 60).

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

2.2.2.3 Reporting (Clauses 64 to 66)

The bill also outlines Commission reporting requirements. After an investigation or hearing is completed, the Commission prepares 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 (clause 64(1)).

After receiving an interim report, the RCMP or the CBSA, depending on the case, must respond to the Commission **and the minister** within six months. This response

must explain the actions the agency has taken or will take regarding the complaint, or alternatively, the reasons it is refusing to act on some or all the Commission's recommendations or findings (clause 64(2)).

The Commission then prepares its final report, in which the response provided by the RCMP or the CBSA is reflected. This report is sent to the minister, the head of the RCMP or of the CBSA, the employee in question and the complainant. The final report is also sent to the provincial minister responsible for policing if the complaint relates to the RCMP in a contract policing province (clause 64(3)).

The Commission's report is final and not subject to appeal (clause 65). Once the investigation concludes, all relevant documents and evidence must be returned to their original owners (clause 66).

2.2.2.4 Disciplinary Measures (Clauses 67 to 72)

In its reports, the Commission can recommend that an RCMP or CBSA employee face disciplinary action if the Commission is of the opinion that the employee "engaged in conduct that warrants the initiation of such a process" (clause 67(1)). While the head of the RCMP or of the CBSA must inform the relevant employee that a disciplinary process has been recommended, neither the RCMP nor the CBSA is obligated to initiate disciplinary processes or measures based on that recommendation. However, they must inform the minister of whether they initiated a disciplinary process in response to the complaint, and if they did not, the reasons for not doing so.

In addition to recommending disciplinary processes, the Commission can also recommend that the RCMP or the CBSA take specific disciplinary measures against an employee. This recommendation is possible when the employee has been the subject of more than one complaint that leads to a finding that their action resulted, or may have resulted, in death or serious injury, or a federal or provincial offence (clause 68). Neither the RCMP nor the CBSA are obligated to implement disciplinary measures in response to a recommendation by the Commission, but as in the case of disciplinary processes, they must inform the minister of any disciplinary measure taken in response to the complaint, and if no measures are taken, the reasons for not taking any.

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

Under clause 72, the RCMP and the CBSA must submit an annual report to the minister and to the Commission outlining their agency's actions in response to the Commission reports submitted, including reports in which disciplinary processes and measures are recommended.

2.3 PART 3: REVIEW OF INTEGRATED CROSS-BORDER
LAW ENFORCEMENT OPERATIONS
(CLAUSES 76 TO 80)

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 U.S. law enforcement officers have the same powers as RCMP officers 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 U.S. counterpart are responsible for directing integrated cross-border operations.²³ Part 3 of the bill sets out the Commission's role in reviewing complaints related to integrated cross-border operations, including complaints about a Canadian officer who operates in the U.S. and complaints about a U.S. officer who operates in Canada. The Commission replaces the existing CRCC as the oversight body responsible for the review of complaints related to integrated cross-border law enforcement operations.²⁴

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

The Commission may provide a report that reviews 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 providing the report 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 Commission undertakes the review, the Commission 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).

As for annual reports submitted to provinces that have RCMP contract policing, the Commission must submit an annual report to each minister responsible for policing in a province in which there has been a complaint related to integrated cross-border operations. The report must indicate the number and subject of all complaints related to integrated cross-border operations in the province in that fiscal year. It must explain how the complaints were disposed of and identify any emerging trends (clause 78). The RCMP commissioner and the minister also receive a copy.

The Commission may investigate, review and hear complaints related to integrated cross-border operations as described in Part 2 (clause 79). The Commission may also conduct a joint investigation with another body responsible for dealing with public complaints against law enforcement in any relevant jurisdiction, including

U.S. authorities, when the complaint involves a law enforcement officer in an integrated cross-border operation (clause 80).

2.4 PART 4: GENERAL PROVISIONS
(CLAUSES 83 TO 86)

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 described in clause 17(7) of the bill with the chairperson of the Commission and/or the president of the CBSA.

Clause 84 of the bill explains that making a complaint against the RCMP or the 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 the RCMP's or the CBSA's mandated responsibilities, or removal or extradition proceedings. As well, an individual cannot enter Canada or remain in Canada for the purpose of making a complaint.

Under clause 85, the Commission and the National Security and Intelligence Review Agency must take "all reasonable steps" to cooperate with each other to prevent the 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
(Clauses 87 to 90 and 92)

Clause 87 outlines the **19 types of regulations** the Governor in Council can make pursuant to this bill. These include regulations on service standards, safeguarding of information and joint complaints, and regulations that define certain key terms.

The bill also creates three categories of offences. These mirror existing offences that relate to CRCC proceedings.²⁵ An individual who is summoned as a witness by the Commission commits an offence by failing to attend or, once in attendance, refusing to take an oath or affirmation, refusing to produce a required document or thing in their possession, refusing to answer any question, using insulting or threatening language or causing a disturbance, or unlawfully printing or publishing observations with the intent of dissuading a witness from testifying. This type of offence is punishable on summary conviction (clause 88).

The second category of offences, found in clause 89, relates to harassment, obstruction, intimidation and destruction or falsification of documents or evidence, and to 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 of 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 Commission, or anyone acting on its behalf, not to improperly disclose privileged information to which they had access during their Commission 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 of 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 *ROYAL CANADIAN MOUNTED POLICE ACT* (CLAUSE 98)

Bill C-20 makes several amendments to the RCMP Act, replacing the CRCC with the new Commission. 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 Commission or chairperson of the Commission. 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 *CANADA BORDER SERVICES AGENCY ACT* (CLAUSES 110 AND 111)

The amendments that Bill C-20 makes to the CBSA Act are more substantial than those 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 references to the Commission. 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 Commission.

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, allowing that province to detain individuals on its behalf, 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 “serious incident” is defined as an 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
(CLAUSE 112)

Part 7 changes the terminology used when referring to the RCMP in the English versions of every federal Act, order or regulation. References to “Force” are replaced with references to “RCMP” (clause 112).

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

2.8.1 Transitional Provisions
(Clause 113)

When certain provisions of Bill C-20 come into force and the CRCC is replaced by the Commission, the following will be transferred to the new Commission automatically: 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 Commission regardless of whether the conduct occurred before or after the coming into force of Bill C-20.

2.8.2 Consequential Amendments
(Clauses 114 to 144)

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 Commission or replace references to the CRCC with references to the new Commission.

2.8.3 Coordinating Amendments (Clause 145)

Clause 145 makes coordinating amendments between Bill C-20 and provisions of the *Enhancing Royal Canadian Mounted Police Act*.²⁷ They ensure that certain provisions of Bill C-20 do not undo amendments made 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)

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.
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 indicate that Bill C-59, An Act respecting national security matters, had come into force. See [Bill C-59, An Act respecting national security matters](#), 42nd Parliament, 1st Session (S.C. 2019, c. 13).
Any other differences between bills C-3 and C-98 are 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, p. 1.
5. The Honourable Dennis O’Connor, Commissioner, 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, Standing Committee on National Security and Defence, [Evidence](#), 30 May 2022 (Hon. Marco Mendocino, Minister of Public Safety, Public Safety Canada).
9. [National Security and Intelligence Review Agency Act](#), S.C. 2019, c. 13, s. 2. This Act came into force on 12 July 2019, creating 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 that have 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) or under the *Security of Information Act*, and 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 Commission may conclude a memorandum of understanding with the RCMP commissioner and/or the CBSA president respecting procedures to access and protect privileged information. The Commission and the Governor in Council may make regulations respecting the protection of information in general that is under the Commission'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. *Ibid.*, s. 47.1.
19. The *Canada Evidence Act* defines the kinds of documents that may be subject to the privilege of confidences of the Queen's Privy Council for Canada. See [Canada Evidence Act](#), R.S.C. 1985, c. C-5, s. 39.

In *Babcock v. Canada (Attorney General)*, the Supreme Court of Canada explained the reasons 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.

See [Babcock v. Canada \(Attorney General\)](#), 2002 SCC 57, para. 18.
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 counterpart from the United States.
24. [Royal Canadian Mounted Police Act](#), R.S.C. 1985, c. R-10, Part VII.2.
25. *Ibid.*, ss. 50(1)–52.
26. According to Public Safety Canada, only Prince Edward Island and Nunavut are 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.