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CHAPTER 57

(Bill No. 56)

An Act to Amend the Police Act

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GOVERNMENT BILL

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CHAPTER 57

An Act to Amend the Police Act

(Assented to December 3, 2008)

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. Section 1 of the *Police Act* S.P.E.I. 2006, Cap. 16 is amended

(a) by the addition of the following after clause (m):

(m.1) “Manager” means the person who is employed or hired as the Manager of the office of the Police Commissioner under subsection 17(2.2);

(b) in clause (x), by the deletion of the words “special constable” wherever they occur and the substitution of the words “security police officer”.

2. (1) Subsection 3(3) of the Act is amended

(a) in clause (a), by the deletion of the word “liase” and the substitution of the word “liaise”;

(b) in clause (c), by the deletion of the words “; and” and the substitution of a semicolon;

(c) in clause (d), by the deletion of the period and the substitution of the words “; and”; and

(d) by the addition of the following after clause (d):

(e) issue directives, standards and guidelines to any police service, the Atlantic Police Academy, or an employer of a security police officer in the province for the attainment of the purposes of subsection (2).

(2) Section 3 of the Act is amended by the addition of the following after subsection (4):

(5) A police service, the Atlantic Police Academy, or an employer of a security police officer shall comply with any directive, standard or guideline issued to it by the Minister under subsection (3).

Compliance with directives, standards and guidelines

(6) Where the Minister issues a directive, standard or guideline to a police service, the Atlantic Police Academy, or an employer of a security police officer under subsection (3), the Minister shall ensure that a copy

Notice

of the directive, standard or guideline is provided, as soon as possible, to the police service, the Atlantic Police Academy or the employer subject to the directive, standard or guideline.

3. Clause 8(8)(a) of the Act is amended by the deletion of the words “and address”.

4. Subsection 9(4) of the Act is amended by the deletion of the words “in such capacity”.

5. (1) Clause 10(6)(c) of the Act is amended by the deletion of the words “and address”.

(2) Section 10 of the Act is amended by the addition of the following after subsection (8):

In-service training
courses

(9) The chief officer of a police department shall ensure that the police officers of the police department are provided, when required by the regulations or by any directive, standard or guideline issued to the police department by the Minister under subsection 3(3), with an opportunity to take courses, areas or types of training prescribed by the regulations or set out in such a directive, standard or guideline.

6. Subsection 15(1) of the Act is amended

(a) in clause (a), by the addition of the words “, where the Provincial Police Service is established under subsection 6(1)” after the words “Provincial Police Service”; and

(b) in clause (b), by the addition of the words “, where an agreement entered into under subsection 8(1) is in force” after the words “Royal Canadian Mounted Police”.

7. Section 16 of the Act is amended by the addition of the following after subsection (1):

Corporation sole

(1.1) The Police Commissioner is a corporation sole.

8. (1) Section 17 of the Act is amended by the addition of the following after subsection (2):

Qualifications

(2.1) A person shall not be employed or hired as an investigator under subsection (2) unless the person has the qualifications, including those relating to training and experience, required by the regulations.

Manager

(2.2) The Police Commissioner shall employ or hire a person as the Manager of the office of the Police Commissioner who has the

qualifications, including those relating to training and experience, required by the regulations to be employed or hired as an investigator under subsection (2).

(2.3) The Manager is, by virtue of his or her office, deemed to be an investigator who is employed or hired by the Police Commissioner under subsection (2). Status as
investigator

(2) Subsection 17(3) of the Act is amended by the deletion of the words “subsection (2)” and the substitution of the words “subsections (2) and (2.2)”.

(3) Subsection 17(4) of the Act is amended by the addition of the words “who is” before the words “employed or hired”.

9. Subsection 18(2) of the Act is amended

- (a) in clause (a), by the deletion of the words “investigation and”;**
- (b) by the addition of the word “and” after clause (b);**
- (c) by the deletion of the words “; and” after clause (c) and the substitution of a period; and**
- (d) by the repeal of clause (d).**

10. Subsection 19(1) of the Act is amended

- (a) in clause (b), by the deletion of the words “special constable” and the substitution of the words “security police officer”; and**
- (b) by the repeal of clauses (c) to (e) and the substitution of the following:**
 - (c) the number and nature of the investigations that the Manager causes to be made under section 29 and section 40;
 - (d) a summary of
 - (i) any decision of the Police Commissioner made under subsection 32(8) or 43(8), and
 - (ii) any informal resolution of a complaint effected by an investigator under subsection 29(2) or 40(2);
 - (e) the number and nature of the decisions made
 - (i) by an investigator under subsection 29(3) or 40(3), and
 - (ii) by the Manager under subsection 39(1) or (2);

11. (1) Subsection 21(2) of the Act is amended by the addition of the words “and if the complaint is made within 6 months after the facts on which it is based occurred” after the words “affected by that conduct”.

(2) Clause 21(5)(e) of the Act is amended by the deletion of the words “special constable” and the substitution of the words “security police officer”.

(3) Section 21 of the Act is amended by the addition of the following after subsection (5):

Other complaints
not precluded

(6) For greater certainty, nothing in this Part precludes any person from making a complaint in any manner or at any time other than as required or permitted under this Part to

(a) a police department concerning the conduct of a police officer of that police department; or

(b) the Director concerning the conduct of an instructing officer, but such a complaint shall not be considered to be a complaint that has been made under this Part.

12. (1) Subsection 25(1) of the Act is amended

(a) by the deletion of the words “is satisfied” and the substitution of the word “decides”;

(b) by the deletion of the words “12 months” and the substitution of the words “six months”; and

(c) by the deletion of the word “may” and the substitution of the word “shall”.

(2) Subsection 25(3) of the Act is repealed and the following substituted:

Notice

(3) Where the chief officer of a police department

(a) decides under subsection (1) that a complaint is made more than six months after the facts on which it is based occurred; or

(b) decides to dismiss a complaint under subsection (1) or (2), the chief officer shall, promptly after making that decision, cause a written notice to be served on the parties to the complaint that advises them of

(c) the decision and the reasons therefor; and

(d) the complainant’s right to request, within 30 days after the day the notice is received by the complainant, the Police Commissioner to review the decision under section 28.

13. Section 27 of the Act is amended

(a) by the repeal of clause (3)(b) and the substitution of the following:

(b) dismiss the complaint if, in the opinion of the chief officer, the complainant has refused to accept a fair and reasonable resolution of the complaint proposed by the chief officer; or

(b) by the repeal of subsections (6) and (7).

14. (1) Subsection 28(2) of the Act is amended by the addition of the words “and the complaint” after the words “request the Police Commissioner to review the decision”.

(2) Subsection 28(3) of the Act is amended by the addition of the words “and the complaint” after the words “request the Police Commissioner to review the decision or decisions”.

(3) Clause 28(4)(c) of the Act is amended by the deletion of the words “to the Police Commissioner” and the substitution of the words “to the Manager”.

(4) Subsection 28(5) of the Act is amended by the deletion of the words “Police Commissioner” wherever they occur in the words before clause (a) and the substitution of the word “Manager”.

(5) Subsection 28(6) of the Act is amended by the deletion of the words “provide to the Police Commissioner” and the substitution of the words “, provide to the Manager”.

(6) Subsection 28(7) of the Act is repealed and the following substituted:

(7) A party who is served with a copy of a notice of a request for a review may, within 15 days after the day the party is served with the copy of the request, serve on the Manager, at the office of the Police Commissioner, a written submission in reply, and if the party does so, the Manager shall promptly thereafter cause a copy of the submission to be served on the party requesting the review.

Submission in reply
to request for a
review

15. Section 29 of the Act is repealed and the following substituted:

29. (1) The Manager shall refer any request made under section 28 for a review of a decision and a complaint to an investigator and may, for greater certainty, refer such a request to himself or herself for review in his or her capacity as an investigator.

Referral to
investigator

(2) Where the Manager, under subsection (1), refers a request for a review of a decision and a complaint to an investigator, whether the investigator is the Manager or another investigator, the investigator shall

Duties of
investigator

(a) review

- (i) the decision, the request for the review, and the complaint,
 - (ii) the documents and records of the chief officer that are provided to the Manager in accordance with subsection 28(6), and
 - (iii) any submission in reply to the request for a review filed under subsection 28(7) by the other party to the complaint;
- (b) carry out such investigation as he or she considers appropriate to determine,
- (i) in the case of a request under subsection 28(1) or (2) for a review of a decision to dismiss a complaint, whether it was appropriate to dismiss the complaint, or
 - (ii) in the case of a request under subsection 28(3) for a review of a decision concerning the respondent's conduct, whether the respondent's conduct constituted a breach of the Code or whether the disciplinary penalty imposed in respect of that conduct was appropriate, or both, as may be relevant; and
- (c) attempt to informally resolve the complaint to the satisfaction of both parties.

Dismissal or
referral

(3) After attempting to informally resolve the complaint in respect of which

- (a) a request is made for a review of a decision made under subsection 28(1) or (2) to dismiss the complaint; or
 - (b) a request is made under subsection 28(3) for a review of a decision concerning the respondent's conduct,
- the investigator shall,
- (c) in the case of a request by the complainant,
 - (i) dismiss the request and the complaint where, in the opinion of the investigator,
 - (A) the decision was appropriate, or
 - (B) the decision was not appropriate, but the complainant has refused to accept a fair and reasonable resolution of the complaint proposed by the investigator, or
 - (ii) refer the request and complaint to the Police Commissioner for a hearing; and
 - (d) in the case of a request by the respondent,
 - (i) dismiss the request where, in the opinion of the investigator,
 - (A) the decision was appropriate, or
 - (B) the decision was not appropriate, but the respondent has refused to accept a fair and reasonable resolution of the complaint proposed by the investigator, or
 - (ii) refer the request and complaint to the Police Commissioner for a hearing.

Report on
resolution to Police
Commissioner

(4) Where the investigator, pursuant to subsection (2), informally resolves the complaint in respect of which a request has been made to the satisfaction of both parties to the complaint, the investigator shall, as

soon as possible after the resolution, submit a written report to the Police Commissioner setting out the manner of the final disposition of the complaint.

(5) Where the investigator, pursuant to subsection (3), dismisses the request and complaint of the complainant, or the request of the respondent, the investigator shall, as soon as possible after the dismissal, submit a written notice of the dismissal to the Police Commissioner.

Notice of dismissal
to Police
Commissioner

(6) Where the investigator, pursuant to subsection (3), decides to refer a request and complaint to the Police Commissioner, the investigator shall make the referral by submitting a written notice to the Police Commissioner.

Notice of referral to
Police
Commissioner

16. Section 31 of the Act is repealed and the following substituted:

31. (1) Where a complaint is informally resolved by an investigator pursuant to subsection 29(2) to the satisfaction of both parties to the complaint, the investigator shall cause a notice of the manner of the final disposition to be served on the parties and the chief officer.

Where complaint
resolved

(2) Where the investigator, pursuant to subsection 29(3), dismisses the request and complaint of the complainant, or the request of the respondent, the investigator shall promptly cause a written notice to be served on the parties to the complaint that advises them of the dismissal and the reasons therefor.

Where complaint
not resolved

(3) Where the investigator, pursuant to subsection 29(3), refers a request and complaint to the Police Commissioner for a hearing, the investigator shall promptly cause a written notice to be served on the parties to the complaint and the chief officer that advises them of the referral.

Where complaint
referred

17. (1) Subsection 32(1) of the Act is repealed and the following substituted:

32. (1) Where an investigator under subsection 29(3) refers a request and complaint to the Police Commissioner for a hearing, the Police Commissioner shall, as soon as possible after the referral, conduct a hearing in respect of the request and complaint.

Hearing

(2) **Clause 32(5)(h) of the Act is amended by the deletion of the words “provided with reasonable information concerning the matter and”.**

(3) **Section 32 of the Act is amended by the addition of the following after subsection (7):**

Responsibility for
costs assumed by
employer

(7.1) Notwithstanding subsection (7), where the conduct of a respondent that is the subject of a complaint occurred while the respondent was acting in good faith and in the execution of his or her duties, the employer of the respondent shall assume responsibility for the costs incurred by the respondent in respect of a hearing under this section.

(4) Clause 32(8)(b) of the Act is repealed and the following substituted:

(b) may order a party to the complaint to pay the costs incurred by the other party.

18. Subsection 33(3) of the Act is amended by the deletion of the words “other party” and the substitution of the words “the other party”.

19. The heading before section 34 of the Act is amended by the deletion of the words “SPECIAL CONSTABLES” and the substitution of the words “SECURITY POLICE OFFICERS”.

20. Section 34 of the Act is amended

(a) in clause (a), by the deletion of the words “special constable” and the substitution of the words “security police officer”; and

(b) in subclause (b)(iii), by the deletion of the words “special constable” wherever they occur and the substitution of the words “security police officer”.

21. (1) Subsections 35(1) and (5) of the Act are amended by the deletion of the words “special constable” wherever they occur and the substitution of the words “security police officer”.

(2) Subsection 35(2) of the Act is amended

(a) by the deletion of the words “special constable” and the substitution of the words “security police officer”; and

(b) by the addition of the words “and if the complaint is made within 6 months after the facts on which it is based occurred” after the words “affected by that conduct”.

(3) Section 35 of the Act is amended by the addition of the following after subsection (5):

(6) For greater certainty, nothing in this Part precludes any person from making a complaint in any manner or at any time other than as required or permitted under this Part to

Other complaints
not precluded

- (a) a council concerning the conduct of a chief officer;
- (b) the President of Holland College concerning the conduct of the Director; or
- (c) the employer of a security police officer concerning the conduct of the security police officer,

but such a complaint shall not be considered to be a complaint that has been made under this Part.

22. Section 36 of the Act is amended by the deletion of the words “special constable” wherever they occur and the substitution of the words “security police officer”.

23. (1) Clause 37(1)(c) of the Act is amended by the deletion of the words “delivering the complaint to the Police Commissioner” and the substitution of the words “delivering the complaint to the Manager”.

(2) Subsection 37(2) of the Act is amended by the deletion of the words “Police Commissioner” wherever they occur and the substitution of the word “Manager”.

24. (1) Subsection 38(1) of the Act is repealed and following substituted:

38. (1) Subject to subsection (3), a complainant may, at any time after making a complaint to the Manager, withdraw the complaint by delivering a written notice of withdrawal that is signed by the complainant, to the Manager at the office of the Police Commissioner.

Withdrawal of
complaint

(2) Subsections 38(2) to (4) of the Act are amended by the deletion of the words “Police Commissioner” wherever they occur and the substitution of the word “Manager”.

25. (1) Subsection 39(1) of the Act is amended

(a) by the deletion of the words “Police Commissioner” wherever they occur and the substitution of the word “Manager”;

(b) by the deletion of the words “is satisfied” and the substitution of the word “decides”;

(c) by the deletion of the words “12 months” and the substitution of the words “six months”; and

(d) by the deletion of the words “may dismiss the complaint” and the substitution of the words “shall dismiss the complaint”.

(2) Subsection 39(2) of the Act is amended by the deletion of the words “Police Commissioner” wherever they occur and the substitution of the word “Manager”.

(3) Subsection 39(3) of the Act is repealed and the following is substituted:

Notice

(3) Where the Manager
(a) decides under subsection (1) that a complaint is made more than six months after the facts on which it is based occurred; or
(b) decides to dismiss a complaint under subsection (2),
the Manager shall, promptly after making that decision, cause a written notice to be served on the parties to the complaint that advises them of the decision and the reasons therefor.

(4) Subsection 39(4) of the Act is amended by the deletion of the words “Police Commissioner” wherever they occur and the substitution of the word “Manager”.

(5) Subsection 39(5) of the Act is amended by the deletion of the words “Police Commissioner” wherever they occur and the substitution of the word “Manager”.

26. Section 40 of the Act is repealed and the following substituted:

Service of copy of complaint and appointment of an investigator

40. (1) After a complaint is made to the Manager about the conduct of a chief officer, the Manager shall, subject to subsections 39(1), (2) and (4), refer the complaint to an investigator and may, for greater certainty, refer the complaint to himself or herself for review and investigation.

Duties of investigator

(2) Where the Manager refers a complaint to an investigator under subsection (1), the investigator shall
(a) review the complaint;
(b) carry out an investigation into the complaint to determine whether the chief officer’s conduct constituted a breach of the Code; and
(c) attempt to informally resolve the complaint to the satisfaction of both parties.

Where complaint without merit

(3) If the complaint has not been informally resolved by the investigator, the investigator shall dismiss the complaint if, in the opinion of the investigator,
(a) the complaint is trivial, frivolous, vexatious, unfounded, or made in bad faith; or

(b) the complainant has refused to accept a fair and reasonable resolution of the complaint proposed by the investigator.

(4) Where the investigator

- (a) has informally resolved the complaint;
- (b) has dismissed the complaint; or
- (c) is satisfied that the complaint cannot be informally resolved or dismissed and has decided to refer the complaint to the Police Commissioner for a hearing,

Written report to Police Commissioner

the investigator shall, as soon as possible after resolving or dismissing the complaint, or deciding to refer the complaint, submit a written report to the Police Commissioner setting out

- (d) if the complaint is resolved, the manner of the final disposition;
- (e) if the complaint has been dismissed, a notice of the dismissal; or
- (f) if the investigator has decided to refer the complaint to the Police Commissioner for a hearing, a notice of that referral.

(5) Where the investigator, pursuant to subsection (2), informally resolves the complaint to the satisfaction of both parties to the complaint, the investigator shall, as soon as possible after the resolution, cause a written report to be served on the parties setting out the manner of the final disposition of the complaint.

Report on resolution to parties

(6) Where the investigator has dismissed a complaint under subsection (3), the investigator shall promptly cause a written notice to be served on the parties to the complaint that advises them of the dismissal and the reasons therefor.

Written notice to parties

(7) Where the investigator refers a complaint under subsection (4) to the Police Commissioner for a hearing, the investigator shall promptly cause a written notice to be served on the parties to the complaint that advises them of the referral.

Where complaint referred

27. Section 42 of the Act is amended by the deletion of the words “Police Commissioner” and the substitution of the word “investigator”.

28. Section 43 of the Act is amended

(a) by the repeal of subsection (1) and the substitution of the following:

43. (1) Where, pursuant to subsection 40(4), an investigator submits to the Police Commissioner a written report in which the investigator sets out a notice that he or she is referring a complaint to the Police Commissioner for a hearing, the Police Commissioner shall, as soon as

Hearing

possible after receipt of the report, conduct a hearing in respect of the complaint.

(b) by the addition of the following after subsection (7):

Responsibility for costs assumed by employer

(7.1) Notwithstanding subsection (7), where the conduct of a respondent that is the subject of a complaint occurred while the respondent was acting in good faith and in the execution of his or her duties, the employer of the respondent shall assume responsibility for the costs incurred by the respondent in respect of a hearing under this section.

(c) by the repeal of clause (8)(b) and the substitution of the following:

(b) may order a party to the complaint to pay the costs incurred by the other party.

29. Subsection 44(3) of the Act is amended by the deletion of the words “other party” and the substitution of the words “the other party”.

30. Section 45 of the Act is amended by the addition of the following after subsection (13):

Auxiliary constables not to be used to eliminate police officer positions

(14) The chief officer of a police department shall ensure that auxiliary constables and police cadets are not used to replace any members of the police department or to reduce the number of positions occupied by members of the police department.

Commission of offence

(15) An auxiliary constable who is charged with an offence under a provincial enactment shall not be convicted if it is made to appear to the judge before whom the offence is being prosecuted that the auxiliary constable

- (a) committed the offence while discharging his or her responsibilities;
- (b) was reasonably justified in committing the offence having regard to the responsibility being discharged; and
- (c) conducted himself or herself in a reasonable manner having regard to all of the circumstances.

Liability

(16) No action or other proceeding for damages lies or shall be instituted against an auxiliary officer for anything done by the auxiliary officer in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, or for any neglect or default of the auxiliary officer in the performance or exercise in good faith of any such duty or power.

31. The heading before section 46 of the Act is amended by the deletion of the words “SPECIAL CONSTABLES” and the substitution of the words “SECURITY POLICE OFFICERS”.

32. (1) Section 46 of the Act is amended

(a) in clause (1)(a), by the deletion of the words “special constables” and the substitution of the words “security police officers”; and

(b) in subsections (1), (2) and (4) to (11), (13) and (14) by the deletion of the words “special constable” wherever they occur and the substitution of the words “security police officer”.

(2) Subsection 46(3) of the Act is repealed and the following is substituted:

(3) No person shall be appointed by the Minister as a security police officer unless the Minister Qualifications

(a) is satisfied that the person

(i) has the qualifications, including training, education and experience, required by the regulations, and

(ii) is employed by an employer of a class or type prescribed by the regulations for the purposes of this subsection; or

(b) is satisfied that

(i) the person is a member of a police force of another jurisdiction, and

(ii) it is appropriate to appoint the person as such an officer.

(3) Subsection 46(7) of the Act is amended by the deletion of the words “proof that” and the substitution of the word “proof”.

(4) Subsection 46(8) of the Act is amended by the deletion of the word “member” and the substitution of the words “security police officer”.

(5) Clause 46(10)(a) of the Act is amended by the deletion of the words “special constable’s” and the substitution of the words “security police officer’s”.

(6) Subsection 46(12) of the Act is amended

(a) by the deletion of the words “A special constable who” and the substitution of the words “A security police officer appointed under clause (3)(b) who”; and

(b) by the deletion of the words “special constable” wherever they occur and the substitution of the words “security police officer”.

(7) Section 46 of the Act is amended by the addition of the following after subsection (14):

In-service training
courses

(15) The employer of a security police officer shall ensure that the security police officer is provided, when required by the regulations or by any directive, standard or guideline issued to the employer by the Minister under subsection 3(3), with an opportunity to take courses, areas or types of training prescribed by the regulations or set out in such a directive, standard or guideline.

Commission of
offence

(16) A security police officer who is charged with an offence under a provincial enactment shall not be convicted if it is made to appear to the judge before whom the offence is being prosecuted that the security police officer

- (a) committed the offence while discharging his or her responsibilities;
- (b) was reasonably justified in committing the offence having regard to the responsibility being discharged; and
- (c) conducted himself or herself in a reasonable manner having regard to all of the circumstances.

Liability

(17) No action or other proceeding for damages lies or shall be instituted against a security police officer for anything done by the security police officer in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, or for any neglect or default of the security police officer in the performance or exercise in good faith of any such duty or power.

33. Section 50 of the Act is amended by the addition of the following after subsection (13):

Commission of
offence

(14) A police cadet who is charged with an offence under a provincial enactment shall not be convicted if it is made to appear to the judge before whom the offence is being prosecuted that the police cadet

- (a) committed the offence while discharging his or her responsibilities;
- (b) was reasonably justified in committing the offence having regard to the responsibility being discharged; and
- (c) conducted himself or herself in a reasonable manner having regard to all of the circumstances.

(15) No action or other proceeding for damages lies or shall be instituted against a police cadet for anything done by the police cadet in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, or for any neglect or default of the police cadet in the performance or exercise in good faith of any such duty or power. Liability

34. Section 51 of the Act is amended by the addition of the following after subsection (13):

(14) A civilian instructor who is charged with an offence under a provincial enactment shall not be convicted if it is made to appear to the judge before whom the offence is being prosecuted that the civilian instructor Commission of offence

- (a) committed the offence while discharging his or her responsibilities;
- (b) was reasonably justified in committing the offence having regard to the responsibility being discharged; and
- (c) conducted himself or herself in a reasonable manner having regard to all of the circumstances.

(15) No action or other proceeding for damages lies or shall be instituted against a civilian instructor for anything done by the civilian instructor in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, or for any neglect or default of the civilian instructor in the performance or exercise in good faith of any such duty or power. Liability

35. (1) Clause 52(1)(a) of the Act is amended by the deletion of the words “and address”.

(2) Section 52 of the Act is amended by the addition of the following after subsection (2):

(3) The Director shall ensure that the instructing officers are provided, when required by the regulations or by any directive, standard or guideline issued to the Atlantic Police Academy by the Minister under subsection 3(3), with an opportunity to take courses, areas or types of training prescribed by the regulations or set out in such a directive, standard or guideline. In-service training courses

36. Subclause 54(1)(c)(ii) of the Act is amended by the deletion of the words “last own address” and the substitution of the words “last known address”.

37. Subclause 55(1)(c)(ii) of the Act is amended by the deletion of the words “special constable” and the substitution of the words “security police officer”.

38. Section 58 of the Act is amended

(a) in clause (b),

(i) by the deletion of the words “47(3)” and the substitution of the words “47(2)”, and

(ii) by the deletion of the words “51(3)” and the substitution of the words “51(5)”;

(b) by the addition of the following after clause (f):

(f.1) prescribing courses, areas or types of training for police officers, as defined in section 15, and security police officers for the purposes of subsections 10(9), 46(15), and 52(3);

(f.2) respecting the use of force by the members of a police service in the performance of their duties, including requiring the police service to adopt and the members of a police service to comply with a specified use of force model developed by a police force or police association;

(f.3) respecting the use of force by the Director and instructing officers of the Atlantic Police Academy in the performance of their duties, including requiring the Atlantic Police Academy to adopt and the Director and instructing officers to comply with a specified use of force model developed by a police force or police association;

(f.4) respecting the use of force by security police officers in the performance of their duties, including requiring the employer of security police officers to adopt and the security police officers to comply with a specified use of force model developed by a police force or police association;

(c) by the addition of the following after clause (g):

(g.1) respecting the qualifications required for an investigator employed or hired by the Police Commissioner under section 17;

(d) in clauses (k), (l), (m) and (r) by the deletion of the words “special constables” wherever they occur and the substitution of the words “security police officers”;

(e) in clause (l), by the deletion of the words “clause 46(3)(b)” and the substitution of the words “clause 46(3)(a)”; and

(f) in clause (r), by the deletion of the words “Code of Conduct” and the substitution of the words “Code of Professional Conduct”.

39. (1) Clauses 59(8)(a) and (b) of the Act are amended by the deletion of the words “special constable” and the substitution of the words “security police officer”.

(2) Subsection 59(10) of the Act is amended by the deletion of the words “special constable” and the substitution of the words “security police officer”.

40. (1) Subsection 62(1) of the Act is amended by the deletion of the words “special constable” and the substitution of the words “security police officer”.

(2) Subsection 62(2) of the Act is repealed and the following substituted:

(2) Subsection (1) shall not be construed to preclude

(a) a person from making a complaint in respect of any conduct of a person who is a member of a police department, an instructing officer, the Director or a security police officer that occurred before the day this section comes into force; or

(b) the holding of discipline proceedings in respect of that complaint,

if the complaint is made, and the discipline proceedings are held, outside of the processes established by this Act, whether under a collective agreement or pursuant to the policies or rules of a police department or other employer of the person against whom the complaint is made.

Complaints may continue to be dealt with outside this Act

41. Subsections 63(1) and (2) of the Act are repealed and the following substituted:

63. (1) Section 3 of the *Agricultural Crop Rotation Act R.S.P.E.I. 1988, Cap. A-8.01* is amended by the addition of the following after subsection (1):

(1.1) A conservation officer appointed under the *Wildlife Conservation Act R.S.P.E.I. 1988, Cap. W-4.1* is an inspector by virtue of his or her office.

Inspector

(1.1) The *Automobile Junk Yards Act R.S.P.E.I. 1988, Cap. A-25* is amended by the addition of the following after section 8:

9. The Lieutenant Governor in Council may make regulations

(a) respecting the persons or officers, or classes of persons or officers, who have the power and authority to enforce this Act; and

(b) respecting the powers and duties of persons or officers who enforce this Act.

Regulations

(1.2) Section 22 of the *Beverage Containers Act* R.S.P.E.I. 1988, Cap. B-2.1 is amended by the addition of the following after subsection (1):

Idem

(1.1) A conservation officer appointed under the *Wildlife Conservation Act* R.S.P.E.I. 1988, Cap. W-4.1 is an inspector by virtue of his or her office.

(1.3) Subsection 2(2) of the *Court Security Act* R.S.P.E.I. 1988, Cap. C-27.1 is amended by the deletion of the words “has, for the purpose of this Act, the powers of a peace officer as set out in the *Police Act* R.S.P.E.I. 1988, Cap. P-11” and the substitution of the words “is a peace officer and has the powers, authority, privileges, rights and immunities of a police officer as set out in subsection 15(2) of the *Police Act* R.S.P.E.I. 1988, Cap. P-11.1”.

(2) The *Dog Act* R.S.P.E.I. 1988, Cap. D-13 is amended

(a) in section 13, by the deletion of the words “a police constable appointed under the *Police Act* R.S.P.E.I. 1988, Cap. P-11” and the substitution of the words “a police officer, a security police officer”; and

(b) in clause 16.2(a), by the deletion of the words “a municipal law enforcement officer” and the substitution of the words “a police officer, a security police officer”.

42. Subsection 63(4) of the Act is repealed and the following substituted:

(4) Section 33 of the *Fire Prevention Act* R.S.P.E.I. Cap. F-11 is amended by the deletion of the words “police officers, constables” and the substitution of the words “police officers, security police officers”.

(4.1) Clause 1(l) of the *Forest Management Act* R.S.P.E.I. 1988, Cap. F-14 is repealed and the following substituted:

forest service
officer

(l) “forest service officer” means
(i) a person employed as a forest technician or forester by the Department, or
(ii) a conservation officer appointed under the *Wildlife Conservation Act* R.S.P.E.I. 1988, Cap. W-4.1.

43. Subsection 63(5) of the Act is repealed and the following substituted:

(5) The *Highway Traffic Act* R.S.P.E.I. 1988, Cap.H-5 is amended

(a) by the repeal of clause 1(b.1) and the substitution of the following:

(b.1) “chief officer” means, in respect of a police service, the chief officer, or the commanding officer, of the police service; chief officer of a police service

(b) by the repeal of clause 1(h.3) and the substitution of the following:

(h.3) “inspector” means inspector
 (i) a traffic officer,
 (ii) a person appointed by the Minister to inspect or examine vehicles,
 (iii) a police officer, or
 (iv) a security police officer;

(c) by the repeal of clause 1(m.3) and the substitution of the following:

(m.3) “peace officer” includes peace officer
 (i) a police officer or a security police officer,
 (ii) any officer of the division designated as a peace officer by the Minister under this Act, and
 (iii) a conservation officer appointed under the *Wildlife Conservation Act* R.S.P.E.I. 1988, Cap. W-4.1.

(d) by the addition of the following after clause 1(n.2):

(n.03) “police service” means a police service as defined in the *Police Act* R.S.P.E.I. 1988, Cap. P-11.1; police service

(e) in subsection 232(7), by the deletion of the words “a chief of police or to the Royal Canadian Mounted Police” and the substitution of the words “a chief officer of a police service”;

(f) in clause 236(1)(f), by the deletion of the words “constable or”;

(g) in section 247, by the deletion of the words “every police officer or police constable appointed by and for a municipality” and the substitution of the words “every member of a police department”; and

(h) in clause 312(d) by the deletion of the words “or constable” and the substitution of the words “or a security police officer”.

44. Subsection 63(6) of the Act is repealed and the following substituted:

(6) Section 26 of the *Interpretation Act* R.S.P.E.I. 1988, Cap. I-8 is amended

(a) by the addition of the following after clause (f.1):

(f.01) “member of a police department” means a member of a police department as defined in section 1 of the *Police Act* R.S.P.E.I. 1988, Cap. P-11.1;

(f.02) “member of the Royal Canadian Mounted Police” means a member of the Royal Canadian Mounted Police as defined in section 1 of the *Police Act*;

(b) in subclause (n.1)(iii), by the deletion of the words “police constable, constable” and the substitution of the words “a security police officer”;

(c) by the addition of the following after clause (p.1):

(p.01) “police department” means a police department as defined in section 1 of the *Police Act*;

(p.02) “police officer” means a police officer as defined in subsection 15(1) of the *Police Act*;

(p.03) “police service” means a police service as defined in section 1 the *Police Act*;

(p.04) “security police officer” means a security police officer as defined in section 1 of the *Police Act*;

45. Subsection 63(7) of the Act is repealed and the following substituted:

(7) The *Labour Act* R.S.P.E.I. 1988, Cap. L-1 is amended

(a) in clause 7(1)(h) by the deletion of the words “and includes police constables appointed under the *Police Act* R.S.P.E.I. 1988, Cap. P-11, employed by or for any city, town, community, or other person, or employed by a board, commission or agency of, or corporation, controlled by a city, town, community or other person and also includes persons employed as security police” and the substitution of the words “and includes a member of a police department, a person employed as a security police officer by the University of Prince Edward Island and an instructing officer employed by the Atlantic Police Academy”;

(b) by the repeal of clause 8(d) and the substitution of the following:

(d) members of a police department, persons employed as security police officers by the University of Prince Edward Island and instructing officers employed by the Atlantic Police Academy.

(c) **in subsection 41(5), by the deletion of the words “no member of the police force, employed in any city, town or incorporated community,” and the substitution of the words “no member of a police department”; and**

(d) **in subsection 41(6), by the deletion of the words “any member of the police force employed in any city, town or incorporated community,” and the substitution of the words “any member of a police department,”.**

46. The Act is amended by the addition of the following after subsection 63(9):

(9.1) Section 7 of the *Natural Areas Protection Act* R.S.P.E.I. 1988, Cap. N-2 is amended

(a) **in clause (f), by the deletion of the period and the substitution of the words “; and”; and**

(b) **by the addition of the following after clause (f):**

(g) respecting the persons or officers, or classes of persons or officers, who have the power and authority to enforce the regulations; and

(h) respecting the powers and duties of persons or officers who enforce the regulations.

(9.2) Section 13 of the *Pesticides Control Act* R.S.P.E.I. 1988, Cap. P-4 is amended by

(a) **renumbering it as subsection 13(1); and**

(b) **the addition of the following after subsection (1):**

(2) A conservation officer appointed under the *Wildlife Conservation Act* R.S.P.E.I. 1988, Cap. W-4.1 is an inspector by virtue of his or her office. *Idem*

(9.3) Clause 8(1)(q) of the *Planning Act* R.S.P.E.I. 1988, Cap. P-8 is amended

(a) **in subclause (ii), by the deletion of the period and the substitution of a comma; and**

(b) **by the addition of the following after subclause (ii):**

(iii) respecting the persons or officers, or classes of persons or officers, who have the power and authority to enforce this Act and the regulations or any specified provisions of this Act and the regulations, and

(iv) respecting the powers and duties of persons or officers who enforce this Act and the regulations or specified provisions of this Act and the regulations.

(9.4) Section 15 of the *Recreation Development Act* R.S.P.E.I. 1988, Cap. R-8 is amended

(a) in clause (o), by the deletion of the words “; and” and the substitution of a semicolon;

(b) in clause (p), by the deletion of the period and the substitution of a semicolon; and

(c) by the addition of the following after clause (p):

(q) respecting the persons or officers, or classes of persons or officers, who have the power and authority to enforce this Act and the regulations; and

(r) respecting the powers and duties of persons or officers who enforce this Act and the regulations.

47. Subsection 63(11) of the Act is repealed and the following substituted:

(11) Section 5.1 of the *Trails Act* R.S.P.E.I. 1988, Cap. T-4.1 is amended by the repeal of subsection (4) and the substitution of the following:

Trails officers

- (4) The following persons are trails officers by virtue of their office:
- (a) an auxiliary peace officer designated under the *Off-Highway Vehicle Act* R.S.P.E.I. 1988, Cap. O-3;
 - (b) a conservation officer appointed under the *Wildlife Conservation Act* R.S.P.E.I. 1988, Cap. W-4.1.

48. Subsection 63(12) of the Act is repealed and the following substituted:

(12) Clause 1(c) of the *Trespass to Property Act* R.S.P.E.I. 1988, Cap. T- 6 is repealed and the following substituted:

police officer

- (c) “police officer” includes
- (i) a member of a police service, and
 - (ii) a conservation officer appointed under the *Wildlife Conservation Act* R.S.P.E.I. 1988, Cap. W-4.1;

49. The Act is amended by the addition of the following after subsection 63(12):

(13) Section 2 of the *Unsightly Property Act* R.S.P.E.I. 1988, Cap. U-5 is amended by the addition of the following after subsection (1):

(1.1) A conservation officer appointed under the *Wildlife Conservation Act* R.S.P.E.I. 1988, Cap. W-4.1 is an inspector by virtue of his or her office. *Idem*

(14) The *Wildlife Conservation Act* R.S.P.E.I. 1988, Cap. W-4.1 is amended

(a) by the repeal of subsection 4(3) and the substitution of the following:

- (3) A conservation officer Powers and duties
- (a) may exercise the powers and shall perform the duties of a conservation officer under this Act and the regulations, in accordance with the general policy directions issued by the Minister; and
- (b) may exercise the powers and shall perform the duties held by a conservation officer under any other enactment by virtue of his or her office under this Act, in accordance with the general policy directions issued by
- (i) the Minister, if the Minister is responsible for the administration of the other enactment, or
 - (ii) the Minister in consultation with the Minister responsible for the administration of the other enactment.

(b) by the repeal of subsection 5(1) and the substitution of the following:

- 5. (1)** A conservation officer is a peace officer, and has all the powers, authority, privileges, rights and immunities of a peace officer under the common law, the *Criminal Code* (Canada) and any other federal or provincial enactment, for the purposes of Peace officer
- (a) exercising the powers and performing the duties of a conservation officer under this Act or the regulations; and
 - (b) exercising the powers and performing the duties held by a conservation officer under any other enactment by virtue of his or her office under this Act.

(c) by the repeal of section 5.1 and the substitution of the following:

Liability of
Minister, person
appointed or
designated

5.1 (1) No action or other proceeding for damages lies or shall be instituted against

- (a) the Minister;
- (b) any cadet conservation officer;
- (c) any person designated by the Minister to act on his or her behalf under clause 3(2)(a);
- (d) any person delegated any function of the Minister under clause 3(2)(b); or
- (e) any other person, other than a conservation officer or a natural resource inspector,

for anything done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, or for any neglect or default in the performance or exercise in good faith of any such duty or power.

Liability of
conservation officer

(2) No action or other proceeding for damages lies or shall be instituted against a conservation officer or natural resource inspector for anything done in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power

- (a) under this Act or the regulations; or
- (b) under any other enactment under which a conservation officer has powers and duties by virtue of his or her office under this Act,

or for any neglect or default in the performance or exercise of any such duty or power.

Conservation
officer may not be
convicted

(3) A conservation officer who is charged with an offence under a provincial enactment shall not be convicted if it is made to appear to the justice before whom the offence is being prosecuted that the conservation officer

- (a) committed the offence while discharging his or her responsibilities;
- (b) was reasonably justified in committing the offence having regard to the responsibility being discharged; and
- (c) conducted himself or herself in a reasonable manner having regard to all of the circumstances.

CHAPTER 57

(Bill No. 56)

An Act to Amend the Police Act

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	November 12, 2008
<i>2nd Reading:</i>	November 18, 2008
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<i>Assent:</i>	December 3, 2008

Honourable L. Gerard Greenan
Attorney General

GOVERNMENT BILL