



## LEGISLATIVE SUMMARY

# 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

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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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*Legislative Summary of Bill C-98*  
(Legislative Summary)

Publication No. 42-1-C98-E

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# LEGISLATIVE SUMMARY OF 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

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## 1 BACKGROUND

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<sup>1</sup> was tabled in the House of Commons on 7 May 2019 by the then-Minister of Public Safety and Emergency Preparedness (the Minister), the Honourable Ralph Goodale.

Bill C-98 amends the *Royal Canadian Mounted Police Act*<sup>2</sup> (RCMP Act) to rename the Civilian Review and Complaints Commission (CRCC) for the Royal Canadian Mounted Police (RCMP) as the Public Complaints and Review Commission (PCRC). It also amends the *Canada Border Services Agency Act*<sup>3</sup> (CBSA Act) to grant the PCRC oversight authority over the Canada Border Services Agency (CBSA), in addition to the RCMP. Many of the CBSA Act amendments mirror existing provisions of the RCMP Act.

On 12 June 2019, the bill passed second reading in the House of Commons and was referred to the House of Commons Standing Committee on Public Safety and National Security (Committee). The Committee reported the bill with no amendments on 18 June 2019, and the bill was passed by the House of Commons on 19 June 2019. The bill received first reading in the Senate on 20 June 2019.

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

In the wake of the 11 September 2001 attacks, Canada and other Western nations implemented or strengthened anti-terrorism policies that, in the words of the Committee, “in many cases, resulted in the racial profiling of the Muslim and Arab communities as well as violations of civil liberties.”<sup>4</sup>

One high-profile case was that of Maher Arar. Maher Arar was a dual Canadian-Syrian citizen who was detained during a layover at John F. Kennedy Airport in New York City by U.S. authorities while returning to Canada from a family vacation in Tunis. American authorities detained, questioned and held him in solitary confinement for almost two weeks before deporting him to Syria, where he was imprisoned and tortured for nearly a year before being released and returned to Canada. The case garnered significant attention in Canada on the part of the media and the public, particularly over the role Canadian officials, including those in the RCMP, may have played.

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

As a result, the CRCC for the RCMP<sup>6</sup> was established by Parliament in 2013 with the coming into force of the *Enhancing Royal Canadian Mounted Police Accountability Act*.<sup>7</sup> It was conceived as an independent agency to review and resolve complaints from the public against the RCMP. The CRCC's mandate is to conduct reviews when individuals are not satisfied with the RCMP's response to their complaints. The CRCC also initiates complaints or investigations into RCMP conduct when an investigation is in the public interest. The CRCC's findings and recommendations are reported to the RCMP Commissioner and the Minister of Public Safety and Emergency Preparedness.

Justice O'Connor's report had recommended that CBSA's activities be subject to review by the same body as those of the RCMP. However, this recommendation was not implemented, and today, the CBSA is not subject to any independent review mechanism. Complaints about the conduct of CBSA officers are handled internally, with no ability to request an independent review of an internal investigation.

Bill C-98 implements Justice O'Connor's recommendation for a body to conduct investigations and review both RCMP and CBSA activities. The new PCRC's mandate is limited to the review of RCMP and CBSA activities that are unrelated to national security. A different independent body will be responsible for the review of national security-related activities. The *National Security and Intelligence Review Agency Act*<sup>8</sup> (NSIRA Act), which entered into force on 12 July 2019, creates the National Security and Intelligence Review Agency (NSIRA),<sup>9</sup> an independent review body with a mandate to review national security activities for all government agencies and departments with a national security function, including the RCMP and the CBSA. The NSIRA Act was included in Bill C-59, An Act respecting national security matters (short title: *National Security Act, 2017*).<sup>10</sup>

## 2 DESCRIPTION AND ANALYSIS

As mentioned above, Bill C-98 creates a new Public Complaints and Review Commission whose purview covers officers and employees of both the RCMP and CBSA. The following sections of this Legislative Summary describe the new and amended provisions of the RCMP Act and the CBSA Act related to the powers, duties and functions of new PCRC before discussing consequential and coordinating amendments contained in the bill and coming-into-force provisions.

2.1 AMENDMENTS TO THE ROYAL CANADIAN MOUNTED POLICE ACT  
(CLAUSES 1 TO 11)

Clause 1 of Bill C-98 renames the Civilian Complaints and Review Commission the Public Complaints and Review Commission. Clause 3 amends section 45.29(1) of the RCMP Act to establish the new PCRC, composed of a Chairperson, a Vice-Chairperson and up to three other members. Other provisions regarding the duties and powers of the PCRC's members are dealt with by amendments to the CBSA Act. The PCRC will have two separate units to review the agencies' respective activities, and complaints related to the RCMP will be handled separately from those related to the CBSA. Clause 4 amends section 45.33 of the RCMP Act to identify the "Royal Canadian Mounted Police Unit" for the review of RCMP activities (new section 45.33(2) of the RCMP Act).

Clause 5 of the bill adds new requirements to section 45.34 of the RCMP Act regarding the PCRC's reporting requirements. The 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. Clause 5 adds a requirement for the PCRC to make public a summary of the report. The Commissioner's comments on a report's findings and recommendations, if any, must be released at the same time as the summary. Similarly, clause 9 amends section 45.51(1) of the RCMP Act to also require a public summary for special reports. Like the CRCC before it, the PCRC may provide the Minister and the RCMP Commissioner with a special report on any matter that relates the PCRC's powers, duties, and functions, at the request of the Minister or on the PCRC's own initiative. The special report summary is to be made public 15 days after it is provided to the Minister and the RCMP Commissioner (new section 45.51(1.1) of the RCMP Act).

Under existing section 45.52 of the RCMP Act, the CRCC must produce annual reports on its activities, including the number and nature of complaints related to RCMP conduct in each province where the RCMP polices; how the complaints were handled; whether the CRCC met service standards; and any recommendations or trends identified. Clause 10 of Bill C-98 amends section 45.52(1) of the RCMP Act to require the PCRC's annual report to include information about the activities of the Commission under both the RCMP Act and the CBSA Act. Clause 10 also adds to the RCMP Act new section 45.52(1.1), which specifies that the PCRC's annual report must include the following:

- information on the PCRC's service standards under the CBSA Act;
- the number, nature and status of complaints made by people detained by the CBSA;

- the number, nature and status of complaints made by people detained on behalf of the CBSA in a provincial corrections facility regarding their treatment or conditions during detention; and
- the number of serious incidents the PCRC has been notified of, where the actions of a CBSA officer or employee resulted in the death or serious injury of a person, or where the actions may have been illegal. The report must contain information on the types of incidents, the provinces in which they occurred and whether charges were laid.

2.2 AMENDMENTS TO THE *CANADA BORDER SERVICES AGENCY ACT*  
(CLAUSES 12 TO 15)

Clause 15 of Bill C-98 creates new Part 2 of the CBSA Act, which subjects the CBSA to the PCRC and sets out the powers, duties and functions of the PCRC in relation to the CBSA. Clauses 12 to 14 amend the CBSA Act by setting out provisions dealing with arrangements or agreements with provinces with respect to detention.

2.2.1 Public Complaints and Review Commission (Clause 15)

2.2.1.1 Interpretation, Powers, Duties and Functions

As noted above, the PCRC will have separate units to review the activities of the RCMP and the CBSA. New section 17(2) of the CBSA Act provides for the creation of the “Canada Border Services Agency Unit” within the PCRC. It will have the authority to investigate complaints against current and former employees of the CBSA and to conduct reviews into the activities of the Agency (see section 2.2.1.3 of this Legislative Summary). The term “employee” is broadly defined to include not only the officers and agents of the CBSA, but anyone who assists the Agency in the performance of its duties, other than employees of provincial governments in arrangements or agreements with CBSA respecting the detention of persons on behalf of the Agency as outlined above (new section 16 of the CBSA Act).

New section 18 of the CBSA Act deals with the review powers of the PCRC. The scope of the review carried out by the PCRC can include CBSA’s compliance with the requirements of the Act, ministerial directions, policies, procedures and guidelines. The PCRC can conduct this type of review either at the request of the Minister or on its own initiative, but in the latter case, it may do so only if sufficient resources exist to conduct the review without compromising the handling of complaints and if no other similar inquiry has been undertaken by another federal or provincial entity.

New section 19 of the CBSA Act clarifies that in relation to this review function, the PCRC has many of the same powers as it does in relation to its complaint

investigation function, outlined in new section 44(1) of the Act, which is discussed in more detail in section 2.2.1.3.2.

A summary of the report following a review must be made public, and the President of the CBSA may have comments appended to the public summary report.

The PCRC and the CBSA will jointly establish service standards for time limits in which reviews are to be conducted, although such standards can also be established by the Governor in Council.

The PCRC will also implement education and information programs to raise awareness about its role among people who interact with the CBSA, including people who are detained by or on behalf of the CBSA.

#### 2.2.1.2 Information Provisions

In the course of its review or complaint investigation functions, the PCRC must have access “in a timely manner” to any relevant information in the possession of or under the control of the CBSA (new section 22(1) of the CBSA Act). For reviews, this includes information otherwise protected by any privilege under the law of evidence, solicitor–client privilege, the professional secrecy of advocates and notaries, litigation privilege or other Acts of Parliament (new section 22(2)).<sup>11</sup> In relation to complaints, while new section 23 appears to provide a right of access to CBSA information “despite any other Act of Parliament and any privilege under the law of evidence,” new section 37(2) excludes information that is subject to solicitor–client privilege or the professional secrecy of advocates and notaries or to litigation privilege with respect to information contained in records of complaints as referred to in new section 37(1).

This right of access in relation to reviews and complaints is subject to the exceptions in new section 25; namely, the PCRC cannot access information held in confidence of the Queen’s Privy Council for Canada (i.e., Cabinet confidences) and commercial information that Canada has committed to keep confidential as per an international agreement.

Under new section 26 of the CBSA Act, the PCRC is prohibited from disclosing information except as authorized or required by law. In its public reports and summaries, PCRC must remove any information injurious to national security, national defence or international relations; information that would seriously hinder the administration or enforcement of program legislation or the investigation or prosecution of any offence; or information subject to solicitor–client privilege (new section 27). The bill contains additional restrictions on the sharing and use of information obtained by the PCRC. Under section 45.45 of the RCMP Act, all employees of the CRCC, which is becoming the PCRC, must maintain a Government of Canada security clearance and follow all the laws and guidelines



that this entails. New section 28 of the CBSA Act stipulates that all third parties acting on the PCRC's behalf must meet equivalent security requirements.

### 2.2.1.3 Complaints

The bill allows any individual to make a complaint about an incident involving the conduct, exercise of power or performance of any person who was an officer or employee of the CBSA at the time the incident occurred (new section 32(1) of the CBSA Act). The backgrounder published by Public Safety Canada on Bill C-98 explains the sequencing of the complaint process:

The PCRC would be able to receive and investigate complaints from the public concerning the level of service provided by the CBSA as well as the conduct of CBSA officials. It would also be able to refer complaints to the CBSA for initial investigation. If an individual were not satisfied with the CBSA's handling of a complaint, they could ask the PCRC to review it.<sup>12</sup>

When Bill C-98 was at second reading in the House of Commons, Karen McCrimmon, the then-Parliamentary Secretary to the then-Minister, provided further clarification on how complaints regarding the actions of a CBSA official or employee will be handled:

A Canadian who had a complaint about the actions or behaviour of a CBSA member would lodge a complaint with either the CBSA itself or with the public complaints and review commission. There would be two options to file a complaint. The system would be designed so that once a complaint was filed with one agency, it would automatically be transferred to the other agency. Both would know what was going on, and both would be responsible for addressing the particular complaint.<sup>13</sup>

While anyone could file a complaint against the CBSA, every person who is arrested or detained by an officer or employee of the CBSA has the right to be informed about their right to make a complaint (new section 64 of the CBSA Act). Complaints must normally be made within one year of the incident occurring, unless the PCRC or the President of the CBSA grants an extension (new sections 32(5) and 32(6) of the CBSA Act), and complainants are entitled to assistance from the PCRC in making their complaint (new section 32(9) of the CBSA Act). As soon as is feasible, the President of the CBSA must notify in writing the officer or employee whose conduct is the subject of the complaint (new section 33 of the CBSA Act). As well, a complainant may withdraw a complaint at any time, and when this happens, the CBSA officer or employee in question shall be similarly notified. However, when a complaint is cancelled by the complainant, the PCRC shall keep all evidence related to the complaint that it has already collected, and it may still choose to conduct a review into the case despite the withdrawal (new section 34(5) and 34(6) of the CBSA Act).

When the PCRC notifies the President of the CBSA that a complaint has been received, the President may attempt to resolve the complaint informally, with the written consent of both the complainant and the CBSA officer or employee in question (new section 35 of the CBSA Act).

While complaints can generally only be brought forward by individuals directly affected by the activity of a CBSA officer or employee, complainants may be represented by their guardian, tutor, curator or mandatary, as well as anyone they authorize in writing to represent them (new section 36 of the CBSA Act).

New section 37 of the CBSA Act stipulates that the PCRC and the President of the CBSA must maintain records of all complaints received or for which they have received notice. The President must make the CBSA's records available to the PCRC on request, subject to the restrictions specified in new section 25 of the CBSA Act.

Bill C-98 specifies that the PCRC may refuse to deal with a complaint, under similar conditions to those that currently exist for the CRCC in section 45.53(2) of the RCMP Act, for example, if the complaint is deemed to be vexatious, trivial or made in bad faith, or is not from an individual at whom the conduct was directed, except in cases involving a guardian or other representative (new section 32(2) of the CBSA Act). In addition, under new section 32(3)(a) of the CBSA Act, the PCRC has a duty to refuse to deal with a complaint if another federal or provincial body is better suited to deal with it, in which case the PCRC must identify this body to the complainant. The PCRC also has a duty to refuse to deal with a complaint if dealing with the complaint would "compromise or seriously hinder the administration or enforcement of [CBSA] program legislation or the investigation or prosecution of any offence" (new section 32(3)(c) of the CBSA Act). In the case of the PCRC refusing to deal with a complaint, the complainant must receive notice in writing explaining the reasons for the refusal (new section 32(4) of the CBSA Act).

Affected parties are not the only parties entitled to file complaints. New section 38 of the CBSA Act provides that the Chairperson of the PCRC may also launch a complaint into the conduct of a current or former CBSA officer or employee if there are reasonable grounds to do so. In this case, the Chairperson takes on the role of "complainant."

The filing of a complaint against an employee of the CBSA does not delay any other type of judicial proceedings on the part of the complainant and does not permit a complainant who is not a Canadian citizen to enter into or remain in Canada for longer than they would be otherwise entitled (new section 63 of the CBSA Act).

As outlined in section 2.4 of this Legislative Summary, because the NSIRA Act, contained within the *National Security Act, 2017*, has entered into force, the PCRC must refuse to deal with a complaint into an activity closely related to national security, and instead refer the complainant to the NSIRA (new section 18.1 of the CBSA Act).

2.2.1.3.1 Investigations by the Canada Border Services Agency

Once a valid complaint has been received by the PCRC, the CBSA must launch an investigation, unless such an investigation would compromise or seriously hinder the ability of the Agency to fulfill its mandate, or if the PCRC notifies the President of the CBSA that the PCRC will investigate that complaint (new sections 39(1) and 39(2) of the CBSA Act).

New section 40(1) of the CBSA Act provides that the CBSA may refuse or terminate an investigation for any of the reasons set out in new section 32(2) or 32(3)(b) of the CBSA Act. In addition, under new sections 40(2) and 40(3) of the CBSA Act, the President of the CBSA must direct the Agency to refuse or terminate an investigation if there is another federal or provincial body better suited to deal with the particular case; in such circumstances, notice will be provided to both the complainant and the officer or employee in question. The complainant also has the right to receive updates with respect to the status of the investigation, as long as doing so does not interfere in the investigation (new section 42 of the CBSA Act).

New section 43 of the CBSA Act stipulates that, as soon as feasible after the completion of an investigation into a complaint, the President of the CBSA must issue a report summarizing the findings and actions that have or will be taken with respect to the disposition of the complaint. This report is sent both to the complainant and the CBSA officer or employee in question.

In either case – if an investigation is refused or terminated, or a complainant receives a report from the President of the CBSA after an investigation – a complainant who is not satisfied may refer the refusal or termination decision or the report to the PCRC. This process is outlined in new sections 49 to 51 of the CBSA Act. The PCRC must review any decision or complaint it receives under section 49, and report back to the President of the CBSA, the officer or employee in question and the complainant with its final report on the complaint, along with its findings or recommendations. If the PCRC is not satisfied with the decision or report, it may direct the CBSA to investigate or further investigate the complaint or do so itself. It may also decide to institute hearings into the complaint.

2.2.1.3.2 Investigations by the Public Complaints and Review Commission

New section 45 of the CBSA Act stipulates that the PCRC shall undertake investigations upon the receipt of complaints if the Chairperson of the Commission is of the opinion that it would be in the public interest for the PCRC to do so. Investigations may include hearings. Under new section 46(1) of the CBSA Act, the PCRC may choose not to initiate an investigation or to discontinue an ongoing investigation at any time for any of the reasons set out in new section 32(2) of the CBSA Act as described in section 2.2.1.3 of this Legislative Summary. It may also

discontinue an investigation if it is deemed not necessary or practicable to continue. The PCRC also has the duty to discontinue the investigation if any of the circumstances described in new section 32(3) apply. As well, the PCRC can consolidate similar complaints into a single investigation (new section 47 of the CBSA Act). Bill C-98 also sets out the types of notice and updates the PCRC must provide to the concerned parties during and after an investigation (new sections 46(3), 46(4) and 48 of the CBSA Act).

New section 44(1) of the CBSA Act outlines the powers of the PCRC in relation to both its review and complaint investigation functions. The PCRC has the powers of a “superior court of record.” It may summon and enforce the attendance of witnesses, compel witnesses to give oral or written evidence and produce documents, examine records, and administer oaths. New sections 44(2) to 44(4) of the CBSA Act set out provisions dealing with the admissibility of evidence given before the PCRC.

Under new section 52 of the CBSA Act, rules are set out with regard to the hearings undertaken by the PCRC. For example, section 52(2) provides that one, some, or all PCRC members may conduct a hearing. Hearings may take place anywhere in Canada based on the location of the parties, and the parties are entitled to claim travel expenses as per Treasury Board directives where necessary (new sections 52(5) and 52(11) of the CBSA Act, respectively). Hearings will generally be public unless the PCRC decides, based on any of the reasons outlined in section 52(6), that a hearing or part of a hearing should be held in camera or *ex parte*. Other provisions pertaining to hearings include the parties’ right of representation (new sections 52(8) and 52(9)) of the CBSA Act, and the right for parties and certain non-parties who demonstrate a “substantial and direct” interest in the hearing to present evidence and cross-examine witnesses (new section 52(7) of the CBSA Act).

Furthermore, new section 53 of the CBSA Act obligates the PCRC to suspend an investigation, review or hearing if its continuation would seriously hinder the ability of the CBSA to carry out its border legislation, investigations or prosecutions. The PCRC also has the ability, but not the obligation, to suspend a hearing if its continuation would hinder an ongoing civil or administrative proceeding.

Following the completion of an investigation or hearing into a complaint, the PCRC must send an interim report of its findings to the President of the CBSA. The President shall then respond to these findings, and the PCRC shall in turn prepare a final report with its findings and recommendations to be sent to the parties.

The findings and recommendations contained in the PCRC’s final report are final and not subject to appeal or review by any court.

#### 2.2.1.4 Serious Incidents

New sections 57 to 60 of the CBSA Act set out that the CBSA shall commence an investigation into any “serious incident” that is alleged to have been committed by a CBSA officer or employee in the performance of their duties or functions, after first notifying the police force that has jurisdiction at location of the alleged incident. The definition of the term “employee” for the purposes of this type of investigation includes any person who assists the CBSA in the exercise of its functions, excluding officers or employees of provincial authorities working with the CBSA as per a detention agreement or arrangement, as described in section 2.2.2 of this Legislative Summary. For the purposes of this bill, a “serious incident” means an incident that may have resulted in death or serious injury – including psychological injury – or any other violation of a federal or provincial law when the Minister or President of the CBSA decides an investigation would be in the public interest.

#### 2.2.1.5 General

The Chairperson of the PCRC may delegate any of their powers or duties, except for the power to delegate further, to the Vice-Chairperson or another member of the Commission if the position of Vice-Chairperson is vacant (new section 61 of the CBSA Act). The PCRC may also temporarily engage persons with technical expertise to assist with its work, with the approval of Treasury Board and in accordance with the latter’s guidelines (new section 62 of the CBSA Act).

#### 2.2.1.6 Immunity

New section 30 of the CBSA Act provides that PCRC members, officers and employees, and persons acting on behalf of the Commission for anything done, said or reported in good faith benefit from immunity for criminal, civil or administrative actions or proceedings. Subject to certain exceptions, they cannot be compelled to testify in proceedings. The language covering immunities closely mirrors the existing immunities of the CRCC found in section 45.5 of the existing RCMP Act.

#### 2.2.1.7 Reporting

In addition to a mandatory annual report, which is already provided for in section 45.52 of the RCMP Act as amended by the bill, new section 31 of the CBSA Act states that the PCRC may also provide special reports to the Minister or the President of the CBSA on any matter that relates to the PCRC’s powers, duties and functions. A summary of the special report must also be made available to the public.

2.2.1.8 Offences

New sections 66 to 69 of the CBSA Act create three new categories of offences and corresponding penalties in relation to investigations or hearings conducted by the PCRC. The offences largely mirror offences currently found in sections 50 to 52 of the RCMP Act relating to the CRCC and other RCMP boards.

The first category of offences, found in new section 66 of the CBSA Act, relates to the attendance of witnesses before the PCRC. It is an offence for an individual who is summoned as a witness by the PCRC not to attend or, once in attendance, to refuse to take an oath or affirmation; to refuse to produce required documents in their possession; to refuse to answer any question; to use insulting or threatening language, or cause a disturbance; or to unlawfully print or publish observations with intent to dissuade a witness from testifying. The penalty for offences in this category is a fine of up to \$5,000, six months' imprisonment, or both.

The second category of offences, found in new section 67 of the CBSA Act, relates to harassment, obstruction, intimidation and destruction or falsification of documents or evidence, or counselling someone to do any of the above. The penalties for offences in this category are imprisonment for up to five years on indictment, or a fine of up to \$5,000, six months' imprisonment, or both on summary conviction.

The third category of offences, found in new section 68 of the CBSA Act, relates to the obligations of members, officers and employees of the PCRC not to improperly disclose information obtained or to which they had access in the course of their functions with the PCRC except in accordance with the law. These obligations are outlined in new sections 26 and 28(3) of the CBSA Act.

Summary conviction proceedings for offences under sections 66, 67 and 68 of the CBSA Act must begin within two years of the occurrence of any alleged infraction (new section 69 of the CBSA Act).

2.2.2 Detentions

Clauses 12 to 14 amend section 13 of the CBSA Act to specify the conditions under which the CBSA can enter into agreements or arrangements with the government of a province respecting the detention of persons on behalf of the Agency (new sections 13(3) to 13(6)). The CBSA currently has the power to enter into an agreement or arrangement with the government of a province under section 13(2) of the CBSA Act, but the existing legislation does not specify any limitations or conditions on this activity and does not mention agreements related to detentions.

Bill C-98 provides that the CBSA can enter into an agreement or arrangement with a province allowing the province to detain persons on behalf of the CBSA only if the federal Minister is of the opinion that that province has an adequate independent review

mechanism to handle complaints regarding the treatment of detained persons. The bill provides an exception to the above-mentioned restriction in cases of urgent need for a province to detain an individual. As well, if an individual detained by a province under such an agreement or arrangement makes a complaint about their treatment or conditions to a provincial authority, the CBSA must provide the PCRC with all the information in its possession in relation to that complaint.

Clause 15 of the bill creates new section 65 of the CBSA Act, by which the PCRC can conduct a joint review, investigation, or review or hearing of a complaint with a relevant provincial body to investigate complaints related to the detention of persons carried out by a province under the terms of a detention agreement or arrangement, subject to regulations made by the Governor in Council.

### 2.3 CONSEQUENTIAL AMENDMENTS (CLAUSES 16 TO 33)

Bill C-98 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 *Public Sector Compensation Act*, and the *National Security and Intelligence Committee of Parliamentarians Act*. These consequential amendments generally replace references to the CRCC with the new PCRC.

### 2.4 COORDINATING AMENDMENTS (CLAUSE 34)

Bill C-98 includes amendments that coordinate with the NSIRA Act, which came into force on 12 July 2019, but which at the time Bill C-98 was tabled had not received Royal Assent. As stated in the background section of this Legislative Summary, the NSIRA Act was previously part of Bill C-59. Section 8(1)(b) of the NSIRA Act provides that the NSIRA has the mandate to “review any activity carried out by a department that relates to national security or intelligence,” among others. Thus, Bill C-98 clarifies that the NSIRA, not the PCRC, has the exclusive authority to conduct reviews and investigate complaints into the activities of the CBSA related to national security (new section 18.1 of the CBSA Act).

As for complaint investigations, the bill amends section 32 of the CBSA Act to indicate that the PCRC must refuse to deal with a complaint that is closely related to national security, and instead refer the complaint to the NSIRA (new section 32(3.1) of the CBSA Act). The PCRC must also discontinue an investigation into a complaint and refer it to the NSIRA if the case is closely related to national security (new section 46(2.1) of the CBSA Act). If the PCRC refuses or discontinues such an investigation, notice of the refusal or discontinuance and of the referral to the NSIRA shall be given to the President of the CBSA and the complainant (new sections 32(4.1) and 46(3.1) of the CBSA Act). The President, in turn, will notify the officer or employee

in question of the refusal or discontinuance and of the referral to the NSIRA (new sections 32(4.2) and 46(4) of the CBSA Act).

The coordinating amendments state that the “review body” for the purposes of NSIRA reviews and investigations is now the PCRC (amended section 2 of the NSIRA Act). This means that, pursuant to section 13 of the NSIRA Act, the PCRC and the NSIRA must “take all reasonable steps to cooperate with each other to avoid any unnecessary duplication of work,” and are authorized to share information with each other under the conditions outlined in the CBSA Act, the RCMP Act and the NSIRA Act.

Bill C-98 also amends various sections of the NSIRA Act as follows:

- replaces references to the CRCC with the new PCRC regarding the interaction between the NSIRA and the National Security and Intelligence Committee of Parliamentarians;
- revises the definition of “deputy head” to include, for the CBSA, the President of the CBSA, which has the effect of subjecting the CBSA to the NSIRA’s investigative powers;
- expands the mandate of the NSIRA to include complaints referred to it by the PCRC (amended section 8(1)(d) of the NSIRA Act);
- amends section 10(d) of the NSIRA Act (“Right of access – complaints”) to provide that the NSIRA has access to any information relating to a complaint that is held by the PCRC or the CBSA, in addition to the other government agencies already listed;
- amends section 15 of the NSIRA Act (“Civilian Review and Complaints Commission”) to specify that the NSIRA may share information that it has obtained from the RCMP or the CBSA, or that it has created using information obtained from the RCMP or the CBSA, with the PCRC, if the NSIRA is of the opinion that the information would be relevant to the PCRC’s mandate; and
- clarifies that when the NSIRA completes an investigation into a report referred to it by the PCRC because it relates to national security, the NSIRA must provide a report to the Minister and the President of the CBSA with the findings and recommendations (new section 29(1)(d) of the NSIRA Act).

The bill also amends section 2 of the *Avoiding Complicity in Mistreatment by Foreign Entities Act*, which also came into force with the enactment of Bill C-59, to add the PCRC to the group of review bodies that can receive directions from the Governor in Council concerning the disclosure and making of requests that could lead to the mistreatment of an individual by a foreign entity, and the use of information likely to have been obtained as the result of the mistreatment of an individual by a foreign entity.



## 2.5 COMING INTO FORCE (CLAUSE 35)

Clause 35 provides that Bill C-98 will come into force on a day or days to be fixed by Order in Council.

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NOTES

1. [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](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.
2. [Royal Canadian Mounted Police Act](#), R.S.C. 1985, c. R-10.
3. [Canada Border Services Agency Act](#) [CBSA Act], S.C. 2005, c. 38.
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, 2<sup>nd</sup> Session, 40<sup>th</sup> Parliament, June 2009.
5. The Honourable Dennis O'Connor, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, [A New Review Mechanism for the RCMP's National Security Activities](#), December 2006, pp. 576–577. For more information, see also Government of Canada, [Report of the events relating to Maher Arar / Dennis R. O'Connor. Commissioner, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar](#).
6. The Civilian Review and Complaints Commission for the Royal Canadian Mounted Police replaced the Commission for Public Complaints Against the Royal Canadian Mounted Police, established in 1988.
7. [Enhancing Royal Canadian Mounted Police Accountability Act](#), S.C. 2013, c. 18.
8. [National Security and Intelligence Review Agency Act](#), S.C. 2019, c. 13, s. 2.
9. National Security and Intelligence Review Agency, "[All Government of Canada national security and intelligence activities now subject to independent expert review](#)," News release, 17 July 2019.
10. See [Bill C-59, An Act respecting national security matters](#) (S.C. 2019, c. 13) [*National Security Act, 2017*]. Part I of this Act enacts the *National Security and Intelligence Review Agency Act*.
11. The disclosure to the Public Complaints and Review Commission under section 22 of the CBSA Act of information that is subject to solicitor–client privilege or the professional secrecy of advocates and notaries or to litigation privilege does not constitute a waiver of privilege or secrecy (new section 22(3) of the CBSA Act).
12. Public Safety Canada, "[Bill C-98 – Independent review of the Canada Border Services Agency](#)," Background.
13. House of Commons, [Debates](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 17 May 2019, 1020.

## APPENDIX – COMPARISON OF REVIEW BODIES

**Table 1 – Comparison of Review Bodies**

	Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (CRCC) ( <a href="#">Enhancing Royal Canadian Mounted Police Accountability Act</a> , S.C. 2013, c. 18)	Public Complaints and Review Commission (PCRC) (Bill C-98)	National Security and Intelligence Review Agency (NSIRA) ( <a href="#">National Security and Intelligence Review Agency Act<sup>a</sup></a> , S.C. 2019, c. 13)	National Security and Intelligence Committee of Parliamentarians ( <a href="#">National Security and Intelligence Committee of Parliamentarians Act</a> , S.C. 2017, c. 15)
Composition	<ul style="list-style-type: none"> <li>▪ Five members (full-time chairperson and up to four other members; other members are full- or part-time, one of whom may be a vice-chairperson).</li> <li>▪ Five-year renewable terms.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Five members (full- or part-time chairperson, vice-chairperson and up to three other members).</li> <li>▪ Five-year renewable terms.</li> </ul>	<ul style="list-style-type: none"> <li>▪ No fewer than four and no more than seven members (full- or part-time chairperson and vice-chairperson; all other members part-time).</li> <li>▪ Five-year terms, renewable once.</li> </ul>	<ul style="list-style-type: none"> <li>▪ 11 members (eight MPs and three senators).</li> <li>▪ Terms valid during a Parliament.</li> </ul>
Mandate	<ul style="list-style-type: none"> <li>▪ Review specified activities of the Royal Canadian Mounted Police (RCMP).</li> <li>▪ Investigate public complaints (or complaints made by the Chairperson of the CRCC) in relation to the conduct of a member of the RCMP.</li> </ul> <p>(Reviews and complaints regarding activities of the RCMP that are related to national security must be referred to the National Security and Intelligence Review Agency [NSIRA].)</p> <p>Limits:</p> <ul style="list-style-type: none"> <li>▪ No review if a federal or provincial entity is investigating substantially the same issue.</li> <li>▪ No review if resources are insufficient.</li> <li>▪ No investigation if it would compromise an ongoing criminal proceeding.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Review specified activities of the RCMP and the Canada Border Services Agency (CBSA).</li> <li>▪ Investigate public complaints (or complaints made by the Chairperson of the PCRC) in relation to the conduct of an officer or employee of the RCMP or the CBSA.</li> </ul> <p>(Reviews and complaints regarding activities of the CBSA that are related to national security must be referred to the NSIRA.)</p> <p>Limits:</p> <ul style="list-style-type: none"> <li>▪ No review if a federal or provincial entity is investigating substantially the same issue.</li> <li>▪ No review if resources are insufficient.</li> <li>▪ No investigation if it would compromise or seriously hinder the administration of program legislation or the investigation or prosecution of any offence.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Review all activities of the Canadian Security Intelligence Service (CSIS) and the Communications Security Establishment (CSE), as well as all activities carried out by departments that relate to national security or intelligence.</li> <li>▪ Investigate public complaints involving CSIS, the CSE and activities of the RCMP that are related to national security.</li> </ul> <p>(Under Bill C-98, reviews and complaints regarding activities of the CBSA that are related to national security are to be referred to the NSIRA.)</p> <p>Limits:</p> <ul style="list-style-type: none"> <li>▪ No investigation if it would compromise or seriously hinder an ongoing criminal proceeding.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Review of all activities carried out by departments that relate to national security or intelligence.</li> </ul> <p>Limit:</p> <ul style="list-style-type: none"> <li>▪ No review of an ongoing operation or if the review would be injurious to national security.</li> </ul>

	<p>Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (CRCC) (<a href="#">Enhancing Royal Canadian Mounted Police Accountability Act</a>, S.C. 2013, c. 18)</p>	<p>Public Complaints and Review Commission (PCRC) (Bill C-98)</p>	<p>National Security and Intelligence Review Agency (NSIRA) (<a href="#">National Security and Intelligence Review Agency Act</a><sup>a</sup> <a href="#">National Security Act, 2017</a>, S.C. 2019, c. 13)</p>	<p>National Security and Intelligence Committee of Parliamentarians (<a href="#">National Security and Intelligence Committee of Parliamentarians Act</a>, S.C. 2017, c. 15)</p>
<p>Reporting</p>	<ul style="list-style-type: none"> <li>▪ Following a review of the activities of the RCMP, a report is sent to the Minister of Public Safety and Emergency Preparedness (Minister) and the RCMP Commissioner (and provincial ministers where relevant).</li> <li>▪ Following an investigation or hearing into a complaint that was referred to the CRCC, an interim report is sent to the Minister and the RCMP Commissioner. A final report is sent to the Minister, the Commissioner, the complainant and the RCMP member whose conduct is in question (and provincial ministers where relevant).</li> <li>▪ Special reports are submitted to the Minister only.</li> <li>▪ The CRCC submits an annual report of its activities to the Minister, which is tabled in Parliament.</li> <li>▪ The CRCC also submits an annual report to those provinces that have entered into an arrangement with the Minister. Copies of the report are submitted to the Minister and the RCMP Commissioner.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Following a review of the activities of the RCMP or CBSA, a report is sent to the Minister of Public Safety and Emergency Preparedness (Minister) and the RCMP Commissioner or President of the CBSA (and provincial ministers where relevant).</li> <li>▪ Following an investigation or hearing into a complaint that was referred to the PCRC, an interim report is sent to the President of the CBSA. A final report is sent to the President of the CBSA, the complainant and the CBSA officer or employee whose conduct is in question.</li> <li>▪ Special reports are submitted to both the Minister and the RCMP Commissioner or President of the CBSA, with summaries made public.</li> <li>▪ The PCRC submits an annual report of its activities to the Minister, which is tabled in Parliament.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Following an investigation of a complaint against CSIS, CSE or the RCMP on a matter related to national security, the NSIRA will report to the relevant minister.<sup>b</sup></li> <li>▪ Special reports may be sent to the appropriate minister on an ad hoc basis.</li> <li>▪ The NSIRA submits an annual report to the prime minister, which is tabled in Parliament.</li> <li>▪ Annual reports on the activities of CSIS and the CSE are submitted to the relevant minister.</li> <li>▪ Any NSIRA report to the minister that finds that a national security activity may have violated the law must be sent to the Attorney General of Canada.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Annual reports are submitted to the prime minister. Special reports are submitted to the prime minister and relevant minister on an ad hoc basis.</li> <li>▪ The prime minister may direct the committee to submit a revised version of an annual or special report if the prime minister is of the opinion that information contained in the report should not be disclosed on national security grounds, among others.</li> <li>▪ Reports or revised reports submitted to the prime minister must be tabled in Parliament, following which they are automatically referred to the Standing Senate Committee on National Security and Defence and the House of Commons Standing Committee on Public Safety and National Security.</li> </ul>

	Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (CRCC) ( <a href="#">Enhancing Royal Canadian Mounted Police Accountability Act</a> , S.C. 2013, c. 18)	Public Complaints and Review Commission (PCRC) (Bill C-98)	National Security and Intelligence Review Agency (NSIRA) ( <a href="#">National Security and Intelligence Review Agency Act</a> <sup>a</sup> , <a href="#">National Security Act, 2017</a> , S.C. 2019, c. 13)	National Security and Intelligence Committee of Parliamentarians ( <a href="#">National Security and Intelligence Committee of Parliamentarians Act</a> , S.C. 2017, c. 15)
Powers and limitations	<ul style="list-style-type: none"> <li>▪ Summon witnesses and administer oaths.</li> <li>▪ Receive and accept evidence and investigate complaints.</li> <li>▪ Hold hearings in public.</li> <li>▪ Issue non-binding recommendations.</li> <li>▪ Investigation reports are not subject to appeal to or review by any court.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Summon witnesses and administer oaths.</li> <li>▪ Receive and accept evidence and investigate complaints.</li> <li>▪ Hold hearings in public.</li> <li>▪ Issue non-binding recommendations.</li> <li>▪ Investigation reports are not subject to appeal to or review by any court.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Summon witnesses and administer oaths.</li> <li>▪ Receive and accept evidence.</li> <li>▪ Issue non-binding recommendations.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Issue non-binding recommendations.</li> <li>▪ No parliamentary privileges conferred.</li> </ul>
Right of access to information	<ul style="list-style-type: none"> <li>▪ Any information in the possession or under the control of the RCMP, except:                             <ul style="list-style-type: none"> <li>– information subject to solicitor–client privilege; and</li> <li>– Cabinet confidences.</li> </ul> <p>Note: there is a conciliation mechanism involving a former judge in the event that the RCMP Commissioner denies access to “privileged information.”</p> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Any information, in a timely manner, in the possession or under the control of the CBSA, except:                             <ul style="list-style-type: none"> <li>– information subject to solicitor–client privilege (in relation to a complaint investigation);</li> <li>– Cabinet confidences; and</li> <li>– confidential commercial information.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Any information in the possession or under the control of a department, except:                             <ul style="list-style-type: none"> <li>– Cabinet confidences.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Any information under the control of a department, except:                             <ul style="list-style-type: none"> <li>– Cabinet confidences;</li> <li>– information on the identity of a confidential source;</li> <li>– information relating to an ongoing investigation carried out by a law enforcement agency; and</li> <li>– “special operational information” whose provision would be injurious to national security.</li> </ul> </li> </ul>
Cooperation	<ul style="list-style-type: none"> <li>▪ Joint investigation possible with another body that reviews complaints involving law enforcement officers.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Joint reviews or investigations possible with a provincial authority concerning the detention of individuals.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Joint review with other review bodies to avoid duplication.</li> <li>▪ Coordination with the Privacy Commissioner.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Joint review with other review bodies to avoid duplication.</li> </ul>
Annual budget of review body/ annual budget of agency	<ul style="list-style-type: none"> <li>▪ \$11 million/\$3.5 billion</li> </ul>	n/a	n/a	<ul style="list-style-type: none"> <li>▪ \$6.7 million/n/a</li> </ul>

Notes:

a. At the time of preparing the table, the Act had not yet come into force.

b. For CSIS and the RCMP, the Minister of Public Safety and Emergency Preparedness; for CSE, the Minister of National Defence and the deputy head of the agency. As well, for the CSE, the NSIRA will submit a copy of the report to the Intelligence Commissioner where relevant.

Source: Table prepared by the authors using information obtained from the relevant legislation.