

UNIFORM LAW CONFERENCE

**Extra-Jurisdictional Authority of Provincially Appointed
Police Officers: Draft Legislation**

Criminal and Civil Section

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EXTRA-JURISDICTIONAL AUTHORITY OF
PROVINCIALY APPOINTED POLICE OFFICERS:
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Background

In recent years, police forces have increasingly been faced with investigating criminal activity that extends beyond provincial boundaries. This is especially true with respect to organized crime. These cross-boundary investigations are hindered by the fact that provincially-appointed police officers lose their status as police officers if they leave their province of appointment. The police have called for legislation that would make it easier to obtain police officer status in these situations. They want this legislation passed on an urgent basis.

To address this need, the Uniform Law Conference established a working group to develop model uniform legislation. The working group has representation from Nova Scotia, Quebec, Justice Canada, Solicitor General Canada, Ontario, Manitoba and Saskatchewan.

The working group consulted various police groups to ensure that the draft legislation is responsive to their needs: the Canadian Association of Chiefs of Police (CACP), the Canadian Police Association (CPA), the Canadian Association of Police Boards (CAPB) and the Canadian Association of Civilian Oversight of Law Enforcement (CACOLE). These groups have expressed support for the approaches taken in this draft legislation.

Overview

The draft legislation deals with three subject areas:

1. a mechanism whereby a province/territory can grant police officer status to a police officer from another Canadian jurisdiction who is required to enter the province/territory to perform police duties,
2. civilian oversight of the extra-jurisdictional police officer while he/she is performing police duties in the province/territory, and

3. indemnification between police forces if civil liability should arise while the extra-jurisdictional police officer is performing police duties outside of his/her province of appointment.

1. Mechanism to grant peace officer status

The police force that wishes to obtain police officer status for one of its officers is required to make a written application to an “appointing official” in the province/territory in which the proposed police activity is to take place. The appointing official will be a senior police officer but will be named by the minister responsible for policing. In making its application, the police force is required to describe the proposed operation and provide a justification for why police officer status is required. If the appointing official agrees that police officer status is necessary, the appointing official may grant status and must notify the provincial/territorial government that the police officer appointment has been made. The government is not involved in analyzing these requests or approving them. The minister’s control comes from his/her authority to name and replace the appointing official. Once police officer status is granted, the appointee (the visiting police officer) remains under the supervision of his employing police force but must advise the local police of his movements throughout the province. The local police force is not responsible for supervising the appointee.

The legislation also proposes a procedure for granting police officer status in situations where there is no time to make a written application to an appointing official. In these cases, a written or oral application can be made to the commander of a local police detachment.

2. Oversight

Each province, except Prince Edward Island, has established a police oversight body to consider complaints from the public regarding conduct of police officers. The draft legislation provides that an extra-jurisdictional police officer will be subject to discipline under the provincial oversight legislation in the jurisdiction in which that officer is employed. The effect of this is that an officer working outside his home province will be subject to discipline from the oversight body in his home province even though the

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incident giving rise to the complaint doesn't occur in the home province. The CPA was adamant that the legislation be structured in this way because discipline is essentially an employer-employee issue. The CPA would likely not support the draft legislation if provinces and territories proposed some different approach. This approach also involves minimal interference with existing oversight legislation.

The process described in the previous paragraph addresses issues relating to discipline of the extra-jurisdictional officer but it does not address issues of public accountability. The community in which the complaint arises may have an interest in learning the circumstances giving rise to the complaint, obtaining recommendations for changes to police procedures so that the same situation does not occur again, etc. Community concerns will not be adequately addressed if the only hearing that takes place is the disciplinary hearing mentioned in the previous paragraph: that hearing takes place in another province. To address public concerns, we are suggesting that an "inquest-type" hearing could be held in the province where the incident occurred. This hearing would not have a faultfinding role and could not impose a penalty. However, it would be open to the public, would provide a public airing of the complaint and could be used to make recommendations concerning changes to police procedures.

In order to implement the police oversight proposal described here, jurisdictions will have to make a number of consequential amendments to other acts in addition to implementing this draft act.

3. Indemnification

The draft legislation provides what might be described as a "default position" with respect to civil liability. If the police forces involved in an operation do not have some agreement regarding indemnity for civil liability, then the extra-jurisdictional police force will be responsible for civil liability that arises as a result of the actions of its officers.

However, the expectation is that police forces will develop their own agreements to cover specific operations and these agreements will normally deal with issues of civil liability.

Conclusion

Attached is the draft legislation with commentaries. The working group recommends that the Uniform Law Conference adopt it.

BILL ??

THE CROSS-BORDER POLICING ACT

PART 1

DEFINITIONS

Definitions

1 In this Act,

"appointing official" means a person designated under section 33;

Commentary: The appointing official will be a police officer.

"[enacting jurisdiction] police force" means

(a) a municipal police force in [enacting jurisdiction], and

(b) the [specify name] provincial police force (if applicable);

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"[enacting jurisdiction] police officer"

means a member of an [enacting jurisdiction]
police force;

"extra-jurisdictional commander" means

(a) the commanding officer, director
general or commissioner of the provincial
police force of another province, or his or
her designate, and

(b) the chief of police of a municipal or
regional police force from another province
or territory, or his or her designate;

"extra-jurisdictional police officer" means a
police officer appointed or employed under the
law of another province or territory, but does
not include a member of the Royal Canadian
Mounted Police;

Commentary: This legislation is meant to apply only to police officers. It is not meant to apply to others who may have peace officer status (e.g. conservation officers, provincial welfare fraud investigations, parking ticket officials, etc.).

The draft legislation refers to the granting of status as a police officer. The policing legislation in some provinces or territories may give powers to peace officers rather than police officers. In jurisdictions where the legislation is drafted in that way, it will be necessary to make changes in this draft legislation so that it will mesh with the existing scheme.

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"local commander" means

(a) in respect of a municipal police force,
the chief of police of that force, and

(b) in respect of a local detachment, the
senior officer of that detachment;

"local detachment" means a detachment of
the [Royal Canadian Mounted Police/specify
provincial police force] that is responsible for
providing policing services to a specified area
of [enacting jurisdiction];

"minister" means the minister appointed by
the Lieutenant Governor in Council to
administer this Act;

"municipal police force" means a police
force established for a municipality or region in
[enacting jurisdiction].

PART 2

STANDARD APPOINTMENT PROCEDURE

ROLE OF APPOINTING OFFICIAL

Appointing official to make appointment

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2 An appointing official may appoint an extra-jurisdictional police officer as a police officer in [enacting jurisdiction] for a period of not more than one year in accordance with this Part.

Commentary: If police officer status is required beyond one year, a further appointment could be obtained by making another application under the procedure described below.

REQUEST

Request for appointment

3(1) An extra-jurisdictional commander may request that a police officer under his or her command be appointed as a police officer in [enacting jurisdiction] so that the officer has the powers and protections of a police officer while performing police duties in [enacting jurisdiction].

Commentary: The CACP was concerned that if the request could be made by someone other than the extra-jurisdictional commander, there would be a possibility that an individual officer could make a request without the prior approval of his superiors.

Consideration was given to limiting these applications to certain types of serious investigations. However, it was decided that it was best for the legislation to be silent on this. Sometimes a specific investigation is not involved (e.g. when extra-jurisdictional police officers are required to assist in providing security at some special event such as a G-8 meeting). Even where an investigation is involved, considerations such as travel costs and the inconvenience of making one of these applications will operate to restrict applications to important investigations.

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Request to appointing official

3(2) The request must be made in writing to an appointing official.

Contents of request

3(3) The request must include the following information:

(a) the name and rank of the officer to be appointed;

(b) the duration of the requested appointment;

(c) the name and telephone number of the immediate supervisor of the officer to be appointed;

(d) a general description of the officer's duties in [enacting jurisdiction], and in the case of an operation or investigation, the name of each person who is a target of the operation or investigation, if known;

(e) where the officer is expected to perform those duties;

(f) an assessment of the risks associated with the officer's duties, including the possibility of firearms being used;

(g) whether the duties might require a designation to be made under section 25.1 of the *Criminal Code* (Canada).

Additional information

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4 The appointing official may communicate with the extra-jurisdictional commander to obtain any additional information about the request that he or she considers necessary.

Commentary: For instance, the appointing official would want assurance that the officers who will be entering the province have adequate training and are qualified to do the work they are proposing to do. If that information were not included in the written proposal under s. 3(3), the appointing official would be expected to make inquiries and satisfy himself on these issues.

Review with affected police forces

5 Before deciding whether to make the requested appointment, the appointing official may review the request with the local commander of any municipal police force or local detachment that the appointing official believes might be affected if the appointment is made.

Commentary: An alternative approach would be to require consultation by using “shall” instead of “may” in the second line of this section and the word “will” instead of “might” in the final line of this section. This would ensure that the local police have input into the decision to grant police officer status. However, mandatory consultation might have the undesirable effects of imposing additional work on the appointing official, requiring unnecessary consultation or delaying the appointment process.

APPOINTMENT

Deadline for decision

6 Within seven days after receiving a request, the appointing official must either make the requested appointment or advise the extra-jurisdictional commander that the request has been denied.

Commentary: In some provinces, the appointment of special constables under the existing special constable process can take a very long time. The CACP indicated that delay is the most serious problem with the special constable appointment process. For this draft legislation to be effective, the granting of police officer status must occur without delay. This provision is meant to expedite the granting of police officer status in two ways: first, a time limit is imposed and, second, the decision to grant police officer status rests with one person rather than a series of boards and committees.

Decision on request

7(1) The appointing official may make the requested appointment if he or she is of the opinion that it is appropriate in the circumstances for the extra-jurisdictional police officer to be appointed as a police officer in [enacting jurisdiction].

Form of appointment

7(2) The appointment must be made in a form approved by the minister.

Conditions on appointment

7(3) The appointing official may impose conditions on the appointment, which must be set out on the appointment form.

Commentary: The enacting jurisdiction would be able to impose whatever conditions it thought were necessary to control the activities of the visiting officer. The working group

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preferred not to specify the conditions that could be imposed. However, they might include:

- (i) prohibitions against certain activities (e.g., the appointee could be prohibited from participating in police activities that went beyond those proposed in the application.),
- (ii) conditions designed to ensure that the proposed operation is carried out safely (e.g., not to execute a search warrant without the assistance of members of the local police), or
- (iii) ongoing reporting requirements to provide updates on the progress of the investigation.

Providing appointment form

8 As soon as reasonably possible, but no later than five days after making the appointment, the appointing official must provide a copy of the appointment form to the appointee and the appointee's extra-jurisdictional commander.

When appointment effective

9 The appointment is not effective until the appointee receives a copy of the appointment form from the appointing official.

Commentary: In order to ensure that everyone is clear on issues such as the conditions imposed on the appointee and when the appointment comes into effect, the appointment form must be delivered to the appointee before he/she begins to exercise police officer powers in the enacting jurisdiction.

It is also possible that questions might arise at a later date as to whether the appointee was acting within his/her authority (e.g., at a subsequent trial). A record keeping system should be established so that a copy of the appointment document can be retrieved. The

working group felt that, while each jurisdiction must set up such a system, it was not something that should be established in the legislation itself.

Notice to minister

10(1) As soon as reasonably possible, but no later than five days after making the appointment, the appointing official must provide the minister with written notice of the appointment.

Commentary: The minister is not involved in making the appointment – he/she is just advised that the appointment has been made. Initially, provinces may express some concern about this. The minister may want some control over the process since he/she is ultimately responsible for policing activities that take place within the province. However, the working group recommends that the minister not be involved for several reasons:

1. When a police recruit successfully completes the training program established by a police force, the province does not consider each recruit individually nor conduct any independent assessment of whether police officer status should be granted. The process for granting police officer status to an extra-jurisdictional police officer should not be more onerous than for police recruits, especially when it is considered that the extra-jurisdictional police officer already has police officer status in another jurisdiction and has more experience than a recruit just out of training.
2. It is inappropriate for the minister to become involved in approving specific police operations. If the minister (or a person delegated by the minister) were permitted to review and approve these applications on a case-by-case basis, he/she would be doing just that.
3. Requiring approval by the minister without also providing for some assessment by the province, does not provide any additional protection to the minister but does delay the appointment process. The CACP was very concerned that the appointment process should operate without delay.

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4. If the minister is unhappy with the appointments made by a particular appointing official, the appointing official's authority can be revoked under s. 33.
5. If the minister is questioned or criticized about the activities of an extra-jurisdictional police officer, the minister can point out the system that is in place to control and supervise the officer's actions:
 - a) prior to entering the enacting jurisdiction, the extra-jurisdictional police officer's proposed activities are reviewed and approved by a senior police official from within the enacting jurisdiction (the appointing official),
 - b) conditions are placed on the activities of the extra-jurisdiction police officer to ensure public safety,
 - c) the extra-jurisdiction police officer must report his whereabouts to the local police,
 - d) the appointment of the extra-jurisdictional police officer can be terminated if there is concern about inappropriate behaviour,
 - e) the officer is, at all times, under the supervision of the police force that employs him,
 - f) the extra-jurisdiction police officer is not a free agent who can do whatever he pleases.
 - g) it is inappropriate for the Minister to become involved in individual cases.Therefore, the minister cannot review each of these applications.

Content of notice

10(2) The notice must contain only the following information:

- (a) the name and rank of the appointee and the appointee's police force;
- (b) the term of the appointment; and
- (c) the reason for the appointment.

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Commentary: The full details of the proposed police operation would not be provided to the minister. Currently, if the local police are about to embark on some new operation within the province, they are not required to provide details of that proposed operation to the government. It should not be any different if the proposed police operation is being conducted by an out-of-province police force. In addition, while a police force may be prepared to share information about a proposed police operation with another police agency, it is generally reluctant to provide this information to non-police agencies.

Commentary: The procedure in Part 2 applies in a situation where an extra-jurisdictional police force is interested in entering the enacting jurisdiction to continue its investigation. However, it is also meant to apply in a situation where the enacting jurisdiction requires officers from another jurisdiction to enter the province to provide policing services (e.g., when an event such as a G-8 meeting is taking place in the enacting jurisdiction). In this second situation, the police force in the enacting jurisdiction would likely initiate discussions with the extra-jurisdictional police force about supplying police officers. However, the police force in the enacting jurisdiction will not have all the information needed to make an application under s. 3(3). For instance, the police force in the enacting jurisdiction will not know the names of the officers who will be coming into the jurisdiction, the dates they are available, etc. Only the police force providing the additional police services will know those details. Therefore, the police force supplying the police officers should make the application, even though it may be the police force in the enacting jurisdiction that initiates discussions about the provision of additional police services.

PART 3

APPOINTMENT IN

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URGENT CIRCUMSTANCES

**ROLE OF
LOCAL COMMANDER**

Local commander to make appointment

11 A local commander may appoint an extra-jurisdictional police officer as a police officer in [enacting jurisdiction] for a period of not more than 72 hours in accordance with this Part.

REQUEST

Request for appointment

12(1) An extra-jurisdictional police officer may request appointment as a police officer in [enacting jurisdiction] if he or she

(a) wishes to have the powers and protections of a police officer while participating in an operation or investigation in [enacting jurisdiction]; and

(b) believes that the operation or investigation could be compromised by the delay that would result if the officer were required to request an appointment under Part 2.

Request on behalf of other officer

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12(2) If it is impractical for the officer to make the request, the officer's immediate supervisor may request the appointment on behalf of the officer.

Request to police force or local detachment

12(3) The request must be made to the local commander of the municipal police force or local detachment providing policing services in the area where the investigation or operation is expected to be conducted. The request may be made orally or in writing.

Content of request

12(4) The request must include the information required under subsection 3(3) and an explanation of how the operation or investigation could be compromised if the officer were required to request an appointment under Part 2.

Additional information

13 The local commander may communicate with the extra-jurisdictional police officer and the officer's immediate supervisor to obtain any additional information about the request that he or she considers necessary.

Commentary: For instance, before accepting the application the local commander may want some indication that the extra-jurisdictional officer has the approval of his supervisor.

APPOINTMENT

Timing of decision

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14 Upon receiving a request, or as soon after that time as reasonably possible, the local commander must either make the requested appointment or advise the requesting officer that the request has been denied.

Appointment

15(1) The local commander may make the requested appointment if he or she is of the opinion that

(a) it is appropriate in the circumstances for the appointment to be made; and

(b) the delay that would result from requiring a request to be made under Part 2 could compromise the officer's operation or investigation.

Form of appointment

15(2) The appointment must be made in a form approved by the minister.

Conditions on appointment

15(3) The local commander may impose conditions on the appointment, which must be set out on the appointment form.

Providing appointment form

16 As soon as reasonably possible after making the appointment, the local commander must provide a copy of the appointment form to the appointee.

When appointment effective

17 Subject to section 18, the appointment is not effective until the appointee receives a copy of the appointment form from the appointing official.

Appointment with immediate effect

18(1) A local commander who determines that it is impractical to provide the appointee with a copy of the appointment form before the appointee requires the powers and protection of a police officer in [enacting jurisdiction] may make the appointment effective immediately by

(a) indicating on the appointment form that the appointment is effective immediately; and

(b) giving oral confirmation of the appointment to the appointee, including the exact times when the appointment is effective and expires, and any conditions imposed on it.

Oral confirmation to immediate supervisor

18(2) If the request for appointment was made under subsection 12(2), oral confirmation of the appointment may be given to the appointee's immediate supervisor.

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Notice to appointing official

19 Within three days after making the appointment, the local commander must provide an appointing official with a copy of the appointment form and all information provided to the commander in support of the request for the appointment.

Notice to commander and minister

20 As soon as reasonably possible after the appointment is made, the appointing official who received notice under section 19 must

(a) provide a copy of the appointment form to the appointee's extra-jurisdictional commander; and

(b) provide the minister with written notice of the appointment that meets the requirements of subsection 10(2).

Commentary: As with the general procedure in Part 2, a record keeping system must be established so that a copy of the appointment document can be retrieved in case questions arise regarding whether the appointee was acting within his authority.

RENEWING APPOINTMENT

Renewing appointment

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21(1) At the request of the appointee or the appointee's immediate supervisor, the local commander may renew an appointment made under this Part for a period of not more than 72 hours if

(a) a request for an appointment under Part 2 has been made on the appointee's behalf; and

(b) a decision has not been made to approve or deny that request.

Applicable provisions

21(2) Sections 12 to 21 apply to the renewal of an appointment made under this Part, with necessary changes.

Further extensions

21(3) An appointment made under this Part may be renewed more than once, as long as the conditions in subsection (1) are satisfied.

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PART 4

**APPOINTEE'S
DUTIES AND STATUS**

NOTICE

Advance notice to local commander

22(1) Before performing any police duties in an area of [enacting jurisdiction], an appointee must give notice to the local commander of the municipal police force or local detachment that provides policing services to that area, unless the duties are of a routine nature that are unlikely to affect the policing services provided by the force or detachment.

Content of notice

22(2) The notice must include a general description of the appointee's duties and all conditions imposed on the appointment.

Exception

22(3) If it is impractical for the appointee to give notice to the local commander before performing his or her duties in that area, the appointee must do so as soon as possible after the first duties are performed.

REQUEST FROM LOCAL COMMANDER

Appointee must comply with request

23 A local commander may make a request to an appointee about how the appointee's duties are to be performed in the area in which the commander's force or detachment provides policing services. The appointee must comply with the request.

Commentary: The activities of the appointee may interfere with a local investigation or may be insensitive to local concerns. The intention of this provision is to allow the local commander to intervene to prevent the appointee from acting in such a way.

TERMINATING APPOINTMENT

Terminating appointment

24(1) An appointing official may terminate an appointment before it expires if he or she is of the opinion that

(a) the appointee has failed to

(i) comply with this Act,

(ii) comply with a condition imposed on the appointment, or

(iii) act in a professional manner at any time while in [enacting jurisdiction]; or

(b) it is no longer appropriate in the circumstances for the appointee to have the

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powers and protections of a police officer in
[enacting jurisdiction].

Notice of termination

24(2) The appointing official must provide
written notice of the termination to

- (a) the appointee;
- (b) the appointee's extra-jurisdictional
commander; and
- (c) the minister.

When termination effective

24(3) The appointment is terminated when
the appointee receives a copy of the notice of
termination.

Surrendering appointment

25(1) An appointee who no longer requires
the powers and protections of a police officer in
[enacting jurisdiction] must provide an appointing
official with written notice that he or she is
surrendering the appointment.

Notice to minister

25(2) The appointing official must provide
the minister with a copy of the notice of surrender.

APPOINTEE'S STATUS

Status

26 While an appointment is in effect, the appointee has, throughout [enacting jurisdiction], all the powers and protections that a police officer has by law, subject to any conditions imposed on the appointment.

PART 5

Part 5 deals with police oversight. Much of the framework required to establish the oversight mechanism envisaged by the working group must be achieved through consequential amendments to existing acts or through administrative directives. The draft legislation provides only a portion of the picture. It may be easier to follow the proposal if the commentary regarding the police oversight proposal is set out first followed by the draft legislation.

Police oversight involves public complaints about police conduct. It is a separate process from any criminal investigation that may occur as a result of the police officer's actions. There are two aspects to police oversight. The first has to do with discipline of the officer involved. The second has to do with community accountability (i.e. a public airing of the complaint, learning what happened, obtaining recommendations for changes to police procedures so that the same situation does not occur again, etc.).

With respect to police discipline, the working group proposes:

- Upon receipt of a complaint concerning an appointee, the jurisdiction in which the complaint arose will investigate according to the procedures it has developed. This investigation may include attempts at informal resolution or mediation. It seems more appropriate that the authority to conduct this investigation should appear in the oversight legislation of the jurisdiction in which the complaint arises rather than in

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this draft legislation. Therefore, there should be a consequential amendment in the police oversight statute in each jurisdiction to this effect.

- In investigations of complaints by citizens about police, the investigators are usually given access to (and a copy of) the police file concerning the incident. This will include the notes and other documentation prepared by the officer complained about (i.e. the appointee). In other words, the person complained about is required to provide information to investigators.

The difficulty that the draft legislation must address is how to obtain disclosure in a case where the complaint arises in one jurisdiction but the officer complained about is in another jurisdiction. Section 28 of the draft legislation addresses this problem by requiring a police force to provide disclosure if a complaint concerning an officer employed by the police force arises from another jurisdiction. Section 27 requires an individual officer to “cooperate”. Cooperation could include things such as providing disclosure or providing a statement to investigators.

- The investigation file would then be sent to the jurisdiction where the appointee is employed. The hearing, sanction and any appeals would be conducted in that jurisdiction. Section 29(1) gives a province authority over a complaint even though the complaint arose in another jurisdiction.
- The oversight body in the jurisdiction where the complaint arose has an interest in learning the eventual result of the disciplinary process, even if the result is that no charge was laid or the matter was resolved through mediation. However, since the discipline hearing will occur in the province or territory where the appointee is employed, the oversight body in the province where the incident occurred may never learn the result. In order to ensure that this information is provided, a consequential amendment is required to the oversight legislation in each enacting jurisdiction to require its oversight body to provide a report on the disciplinary proceedings to the oversight body in the jurisdiction where the complaint arose.
- If the police or government in the jurisdiction where the complaint arose decided to ban the appointee who was the subject of the complaint from working in their province, it would be free to do so. This is an issue that would be best dealt with

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outside of this legislation, perhaps through a memo to the appointing officials in the jurisdiction where the complaint arose indicating that: “Officer X is not to be appointed again.”

- Under the draft legislation, the appointee will be subject to discipline in the jurisdiction where he/she is employed. However, the police oversight legislation in some jurisdictions (e.g. Quebec) gives the province in which the complaint arose authority to impose discipline as well. This would leave the appointee subject to disciplinary hearings in two jurisdictions and would be strenuously opposed by the CPA. Section 30 of the draft legislation addresses this.

The disciplinary process described above does not address issues relating to community accountability. Since the discipline hearing will take place in the appointee’s home jurisdiction, the public in the jurisdiction where the incident arose may have unanswered questions about the incident that gave rise to the complaint. Therefore, it is proposed that the jurisdiction in which the complaint arose could hold its own hearing into the complaint. This hearing would be similar to an inquest. It would be open to the public; it could result in recommendations for changes to police procedures; but it would not have authority to find fault or to impose discipline. There would be authority to investigate the incident and subpoena witnesses. Each jurisdiction would be free to determine who would be able to call for such a hearing (e.g. the chief of police, the Minister responsible for policing).

The provinces and territories already have the authority to call a public inquiry into any matter of public interest and often do order such inquiries. In fact, some jurisdictions have already established such a procedure in relation to inquiries into police conduct. In Quebec, for instance, the public accountability aspect of the complaint is dealt with in a separate hearing from the disciplinary aspect of the complaint. A separate hearing would also be possible in Ontario under Part V of *The Police Services Act*. Other jurisdictions may want to develop their own approaches. Drafting legislation to set up a system for public inquiries is a major undertaking and is beyond the scope of this project. Therefore, the draft legislation does not include provisions that establish this hearing process.

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However, there is an aspect of this public accountability hearing that should be addressed in this draft legislation. The inquiry that considers the community accountability aspect of an appointee's conduct requires a means to compel disclosure of information from both the appointee and his/her police force. Section 28 of the draft legislation requires the police force to provide information to the inquiry. Section 27 of the draft legislation requires the appointee to cooperate in supplying information.

There was concern that if the public accountability hearing took place before the disciplinary hearing, information provided by the appointee for the purposes of the accountability hearing could be used against the appointee in the disciplinary hearing. Section 29(2) prevents this from occurring.

One final point should be made with respect to the police oversight proposal. It is anticipated that the oversight procedures described here will be rarely used. Several factors lead to this conclusion:

- a) Only a small percentage of police work occurs outside the officer's home province.
- b) Citizen complaints most often arise when an accused person is in direct contact with police officers during activities such as conducting a search or making an arrest. The appointee is unlikely to be personally involved in these activities. Usually, police officers from the local police force will agree to perform these activities for the appointee.
- c) Where a citizen complaint is made, experience has shown that very few of the complaints actually proceed to hearing (less than 10%).

Given the remote chance of the oversight procedure described here ever being used, it would be unfortunate if any perceived difficulties with the procedure described were to stand in the way of this legislation being adopted.

POLICE OVERSIGHT

INVESTIGATIONS, HEARINGS AND INQUESTS

[Enacting jurisdiction] police officer to co-operate

27 If an investigation, hearing or inquest is held under authority of a statute in another province or territory to examine

(a) the conduct of an [enacting jurisdiction] police officer who has been appointed as a police officer in the other jurisdiction; or

(b) the operation or investigation that led the officer to be appointed as a police officer in the other jurisdiction;

the officer must co-operate with an investigator and appear before any inquest or hearing, subject to the rights and privileges that a police officer from the other jurisdiction would have in the same situation.

Disclosure of documents

28 If an [enacting jurisdiction] police officer is involved in an investigation, hearing or inquest referred to in section 27, the [enacting jurisdiction] police force of which the officer is a member must disclose and provide any relevant documents in its possession, subject to any rights

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and privileges that a police force from that other jurisdiction would have in the same situation.

DISCIPLINE

Discipline and review in [enacting jurisdiction]

29(1) An [enacting jurisdiction] police officer who has been appointed as a police officer in another province or territory is subject to professional review and discipline in [enacting jurisdiction] in accordance with [specify applicable legislation] with respect to his or her conduct in the other jurisdiction], as if the conduct took place in [enacting jurisdiction].

Inadmissible statements and evidence

29(2) No statement or evidence given by an [enacting jurisdiction] police officer in an investigation, hearing or inquest referred to in section 27 is admissible in professional review or discipline proceedings held in [enacting jurisdiction].

No discipline on extra-jurisdictional officer

30 An extra-jurisdictional police officer who is appointed as a police officer in [enacting jurisdiction] is not subject to professional discipline in [enacting jurisdiction] with respect to his or her conduct in [enacting jurisdiction].

PART 6

INDEMNIFICATION

Indemnification

31 Subject to an agreement under clause 32(a), an [enacting jurisdiction] police force must indemnify a police force from another province or territory against all costs, charges and expenses — including an amount paid to settle an action or satisfy a judgement — reasonably incurred in respect of a civil, criminal or administrative action or proceeding in which the police force from that other jurisdiction is a party, if the action or proceeding arises out of the actions of a member of the [enacting jurisdiction] police force while the member was appointed as a police officer in that other jurisdiction.

Commentary: Indemnity between police forces may come into play when two or more police forces are working together on some operation or investigation. Police forces will often develop Memorandums of Understanding to cover specific operations and these agreements will normally deal with issues of civil liability. This section only applies if the police forces do not have an indemnity agreement in place.

Indemnity agreement

32 An [enacting jurisdiction] police force may enter into an agreement regarding indemnification for costs arising out of

(a) the appointment of an [enacting jurisdiction] police officer as a police officer in another province or territory; and

(b) the appointment of an extra-jurisdictional police officer as a police officer in [enacting jurisdiction].

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Commentary: The legislation is only concerned with indemnity between police forces. Collective agreements between police forces and their police officers already set out the situations in which the police force will indemnify its officers. Nothing in the legislation should alter those arrangements. Therefore, the legislation is silent on this. Police officers will continue to be indemnified by their employers as per their collective agreements.

Similarly, many municipal police forces are indemnified by their municipalities if civil liability arises. Nothing in this legislation is meant to interfere with those pre-existing arrangements so the draft legislation is silent on this.

PART 7

GENERAL PROVISIONS

Appointing officials

33 The minister may designate one or more of the following persons to act as an appointing official in [enacting jurisdiction] for the purposes of this Act:

- (a) an [enacting jurisdiction] police officer;
- (b) a member of the Royal Canadian Mounted Police who is a resident of [enacting jurisdiction].

Commentary: The legislation allows for more than one appointing official for the province. In some provinces, different areas within the province could each have their own appointing official – and perhaps alternates in case the primary person is

unavailable. It is anticipated that the appointing official would be a senior person in the police force – the chief of police or his/her delegate.

Local commander may delegate powers

34 A local commander may delegate his or her powers under this Act to a police officer under his or her command.

Law of hot pursuit not affected

35 Nothing in this Act affects the common law regarding hot pursuit by a peace officer.

Commentary: At common law, a police officer in hot pursuit retains his/her peace officer status after crossing into another jurisdiction. The concept of hot pursuit is preserved in the legislation. Rather than “freezing” the common law as of the date the legislation is passed, our intention is to allow the common law to continue to develop.

Power of appointment reserved

36 Nothing in this Act limits or affects the power to appoint peace officers or special constables under another Act.

Coming into force

37 This Act comes into force on the day it receives royal assent.

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THE CROSS-BORDER POLICING ACT

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