



Government of  
Saskatchewan

# Hearing Officer's Handbook

Saskatchewan Police  
Commission

September 2003

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## **INTRODUCTION**

This handbook has been prepared to explain the role and function of hearing officers and to assist hearing officers in fulfilling their duties. This handbook is a general guide and does not serve as a substitute for reference to *The Police Act, 1990*.

*The Police Act, 1990*, establishes the legal framework for policing in Saskatchewan. This includes the authority for the province and for municipalities to contract services from the Royal Canadian Mounted Police (RCMP) and the authority for municipalities and other designated authorities to form municipal police services. The Act also establishes the procedures for responding to complaints against municipal police services and for police disciplinary procedures.

## **LEGISLATIVE RESPONSIBILITY FOR POLICING**

### **Constitutional Division of Powers**

The *Constitution Act, 1867*, divided legislative powers between the Parliament of Canada and the Legislatures of the Provinces. Under the Constitution, parliament has exclusive legislative authority over criminal law and procedure, while the legislatures have exclusive jurisdiction over the administration of justice in the province. The administration of justice in the province encompasses both civil and criminal justice. Provincial authority over the administration of justice includes policing to enforce both provincial and federal laws, including criminal law.

### **Municipal Responsibility**

The legislature of Saskatchewan has, through *The Police Act, 1990*, delegated the responsibility for providing police services to urban municipalities that have a population of 500 or more. These urban municipalities have the choice of either contracting with the Royal Canadian Mounted Police (RCMP) to provide policing or establishing their own police service. A municipality is responsible for:

- maintenance of law and order within its boundaries;
- providing policing services to maintain a reasonable standard of law enforcement; and
- providing adequate and reasonable facilities required for the policing services.

## **THE ENFORCEMENT OF LAWS IN SASKATCHEWAN**

The Attorney General of Saskatchewan is the chief law officer of the province. He or she is the person primarily responsible for the administration of justice and the enforcement of laws in Saskatchewan. In carrying out these responsibilities, the Attorney General acts through the Department of Justice, which includes the Law Enforcement Services Branch.

The Law Enforcement Services Branch of Saskatchewan Justice is responsible for policing in Saskatchewan, including administration of *The Police Act, 1990*, and providing administrative support for the Saskatchewan Police Commission.

## **SASKATCHEWAN POLICE COMPLAINTS INVESTIGATOR**

The Saskatchewan Police Complaints Investigator is appointed by the Government of Saskatchewan to oversee the review of all public complaints involving a municipal police service. A public complaint may be initiated by a member of the public outside the police service or by the Investigator. The Complaints Investigator receives copies of all public complaints and ensures that they are handled in a manner consistent with the public interest.

A member of the public may make a complaint at the police station or board office of the affected police service, the office of the Public Complaints Investigator or the Department of Justice.

Under the Act, a public complaint must be received or made within six months of the occurrence; however, on application by the Investigator, the chairperson of the Saskatchewan Police Commission may extend the time if it is in the public interest to do so.

## **HEARING OFFICERS**

Hearing Officers are appointed by the Government of Saskatchewan. To be eligible for appointment, you must either be a lawyer with five years practice or a retired judge. Hearing Officers preside over the hearing of discipline proceedings and appeals from dismissal.

Prior to the enactment of *The Police Act, 1990*, discipline prosecutions were held before internal disciplinary boards composed of senior officers. The appointment of Hearing Officers was intended to provide for a hearing before an impartial person independent of the police service. In all decisions, the Hearing Officer must consider not only the interests of the member affected and the police service, but also the wider public interest, which is the paramount interest.

## THE HEARING OF DISCIPLINE PROCEEDINGS

Maintenance of discipline within the police service is the responsibility of the Chief of Police. Lack of discipline in a police service undermines the public trust in the police service. The legislature has established procedures to assist in maintaining good discipline in the police service.

The discipline procedure established under *The Police Act, 1990*, involves the codification of major and minor offenses in *The Municipal Police Discipline Regulations, 1991*. Where a member is believed to have committed a discipline offense, the Chief may either order remedial action (probation, counseling, treatment, training or a reprimand), with the consent of the member, or charge the member with a discipline offense.

A member who is charged with a discipline offense is entitled to a hearing before a Hearing Officer and is entitled to representation by legal counsel or an agent. All hearings shall begin within 60 days after the designation of the Hearing Officer by the Government of Saskatchewan, but may be adjourned from time to time. At least 10 days before the commencement of a hearing, the Hearing Officer shall give notice in writing of the time, place and purpose of the hearing to the person who is the subject of the hearing and where a public complaint is involved, the complainant and the Complaints Investigator, and any other person that the hearing officer considers appropriate.

The rules of evidence for all hearings are the same as in civil cases in the Court of Queen's Bench for Saskatchewan. The burden of proof lies with the person prosecuting the offense. All evidence heard before a Hearing Officer shall be taken under oath or affirmation. No evidence given by a Chief, member or civilian member during a hearing is to be used or received against him or her in any civil proceedings if it incriminates him or her, subjects him or her to punishment, or establishes his or her liability. All oral evidence received at a hearing is to be taken down in writing or recorded by electronic means. The evidence taken down in writing or recorded by electronic means and all documentary evidence and things received in evidence at the hearing forms the record of the hearing.

Hearings are open to the public, representatives of the local police association and the complainant. The Hearing Officer may exclude the public, representatives of the local police association or the complainant from any part of the hearing where the Hearing Officer is of the opinion that the evidence may prejudice an investigation or the security of the police operations. Exclusion may also occur where the evidence will unduly violate the privacy of a person other than the member whose conduct is the subject of the hearing. The Hearing Officer is permitted to make an order banning the publication of any name or address of an individual involved in the hearing.

The costs of the hearing are borne by the local Board of Police Commissioners. The Board is responsible for paying all expenses related to the conduct of the hearing. Such expenses include paying the remuneration determined by the (Regulations) Lieutenant Governor in Council to the Hearing Officer, and reimbursing the Hearing Officer for expenses at rates (set out in the Regulations) determined by the Lieutenant Governor in Council.

### **Powers of Hearing Officers**

Conviction of a major offence may result in a range of orders. A Hearing Officer may order the following:

- dismissal of the member or Chief;
- demotion of the member or Chief;
- suspension of the member or Chief with or without pay for a period up to 60 days;
- payment of a fine not exceeding \$1,000;
- probation or close supervision of the member or the Chief;
- counseling, treatment or training for the member or Chief;
- issuance of a reprimand to the member or Chief;
- any order he or she deems fit;
- any combination of the things mentioned; or
- dismissal of the matter.

Conviction of a minor offense may result in the following orders:

- probation or close supervision for the member or Chief;
- suspension of the member or Chief with or without pay for a period of up to one day;
- payment of a fine not exceeding \$350;
- counseling, treatment, or training for the member or Chief;
- issuance of a reprimand to the member or Chief;
- any order he or she deems fit;
- any combination of the things mentioned; or
- dismissal of the matter.

## **Notice of the Decision**

A Hearing Officer, after making a decision with respect to an internal discipline proceeding shall give notice in writing to the person who is the subject of the proceedings and the Board or Chief of the findings of the hearing, the order rendered, and the rights of appeal. The Chief or member may apply to the Saskatchewan Police Commission for leave to appeal within 30 days of the decision of the Hearing Officer.

A Hearing Officer, after making a decision with respect to a public complaint shall give notice in writing to the person against whom the complaint is made, the complainant, the investigator, the Chief or Board, and the Commission of the findings of the hearing, the order rendered, and the rights of appeal. Notwithstanding *The Freedom of Information and Protection of Privacy Act*, the Commission shall make the decision of a Hearing Officer available to the public, subject to any directions of the Hearing Officer respecting the withholding of names or locations mentioned in that decision.

## **Review of Discipline Proceedings**

The course of discipline proceedings may be described as follows:

- Step 1 – Discipline charge laid and served on the member or Chief.
- Step 2 – The Government of Saskatchewan designates a Hearing Officer (hearing must commence within 60 days of designation).
- Step 3 – Notice of hearing served on the Chief or member and complainant, if any.
- Step 4 – The prosecutor must prove the charge on a balance of probabilities.
- Step 5 – If the member or Chief is convicted, the Hearing Officer makes the appropriate order.
- Step 6 – The Hearing Officer gives notice of the decision to the member, Chief/Board and complainant, if any.
- Step 7 – The Chief or member may apply to the Saskatchewan Police Commission for leave to appeal within 30 days of the decision of the Hearing Officer.
- Step 8 – The appeal is heard on the record after notice to all parties of the hearing.
- Step 9 – The Commission renders a decision.

## THE HEARING OF DISMISSALS

The Chief of Police may dismiss a police officer on grounds of unsuitability or incompetence. Dismissal of a police officer on these grounds is not disciplinary in nature and has only to do with the person's unsuitability or incompetence to continue as a police officer. These personal qualifications are intended to insure that the Police Service maintains an acceptable standard of conduct and ability in its members.

A member who is dismissed may appeal that decision, within 30 days, to a Hearing Officer. A member is entitled to be represented by legal counsel or an agent. In a hearing into the dismissal, the burden of proof lies with the Chief. The Chief must prove, on a balance of probabilities, that the member had conducted him or herself in a manner that, despite remedial efforts, renders the member unsuitable for police service or establishes the member incompetent for police service. The Hearing Officer must consider whether the member was made aware of his or her deficiencies and given a reasonable opportunity to bring his or her performance up to an acceptable standard, including whether any appropriate treatment, training, guidance, coaching or counseling was provided to assist the member.

It is important that the Chief recognize potential problems early and take steps both to make the member aware of any shortcoming and to provide appropriate guidance for the member to improve those areas of deficiency. If a member is still unable or unwilling to improve performance, then dismissal may be the only option to maintain the high standards of the police service as a whole.

A Hearing Officer shall receive evidence of a member's conviction, absolute discharge or conditional discharge for an offense pursuant to the *Criminal Code* or any other Act of the Parliament of Canada as proof that member committed that offense. No further evidence establishing that the member committed the offense is required.

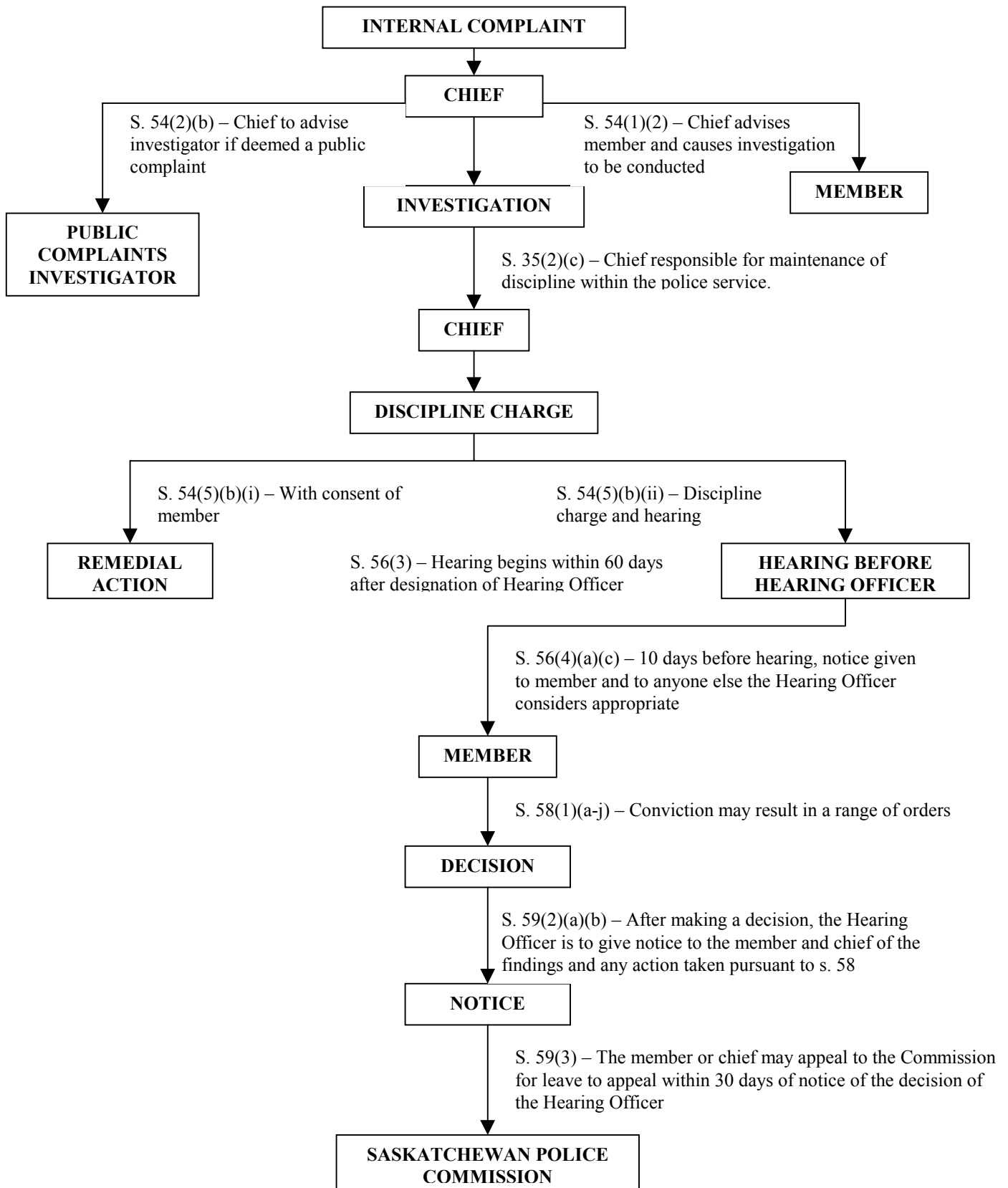
In hearing an appeal of dismissal, the Hearing Officer may, after hearing any representations made by the member and the Chief, may make the following orders:

- dismiss the appeal;
- allow the appeal;
- vary the decision or order of the Chief;
- make any other order that the Hearing Officer considers appropriate; or
- reinstate the member.

The Hearing Officer, within 15 days of making a decision, shall give written notice to the member and the Chief of that decision. Subject to any right of appeal to the Commission, every decision or order of the Hearing Officer is final, and no order, decision or proceeding of the Hearing Officer shall be questioned, reviewed, restrained or removed by prohibition, injunction or any other process or proceeding in any court.

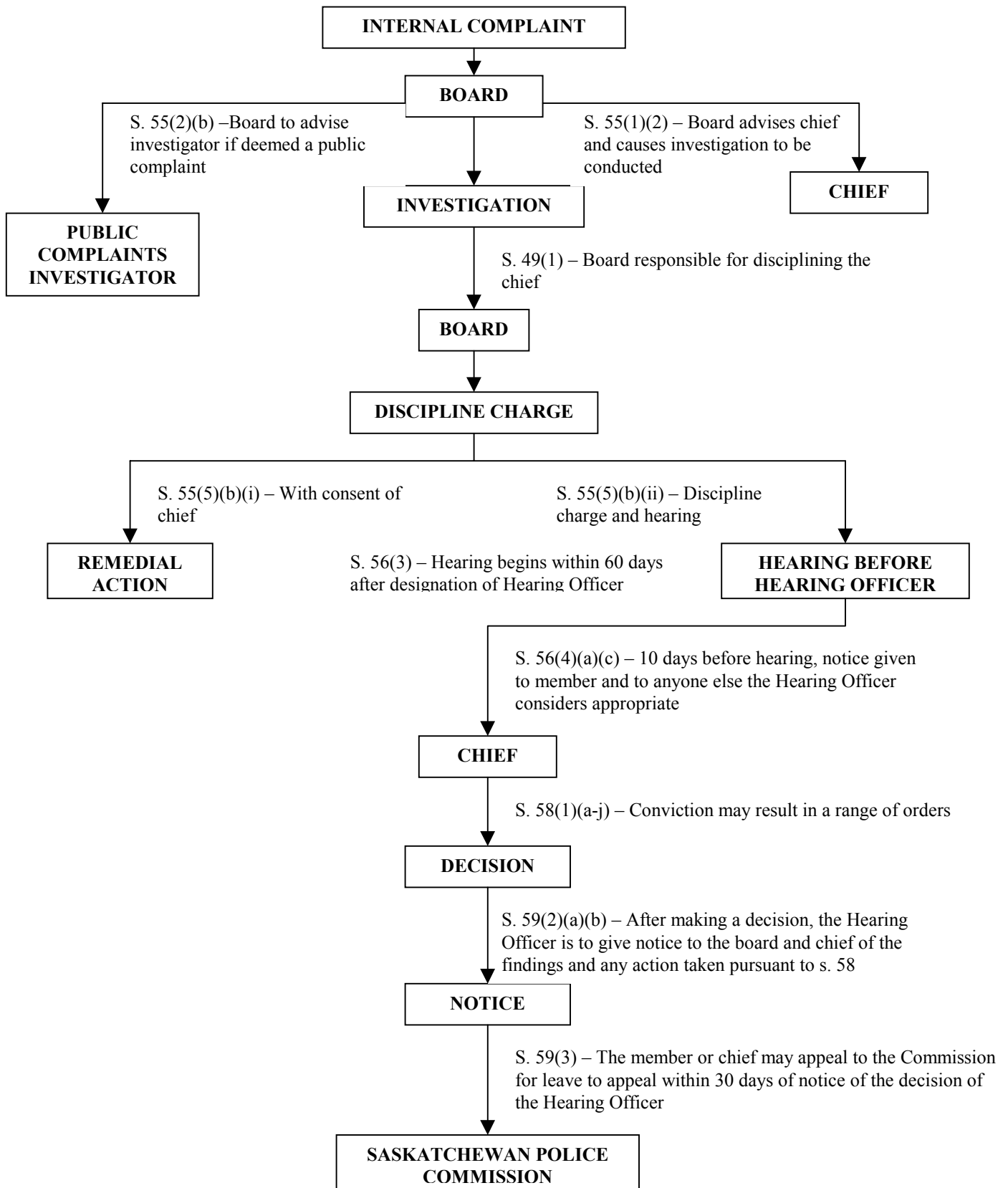


## INTERNAL COMPLAINT AS TO ACTIONS OF A MEMBER



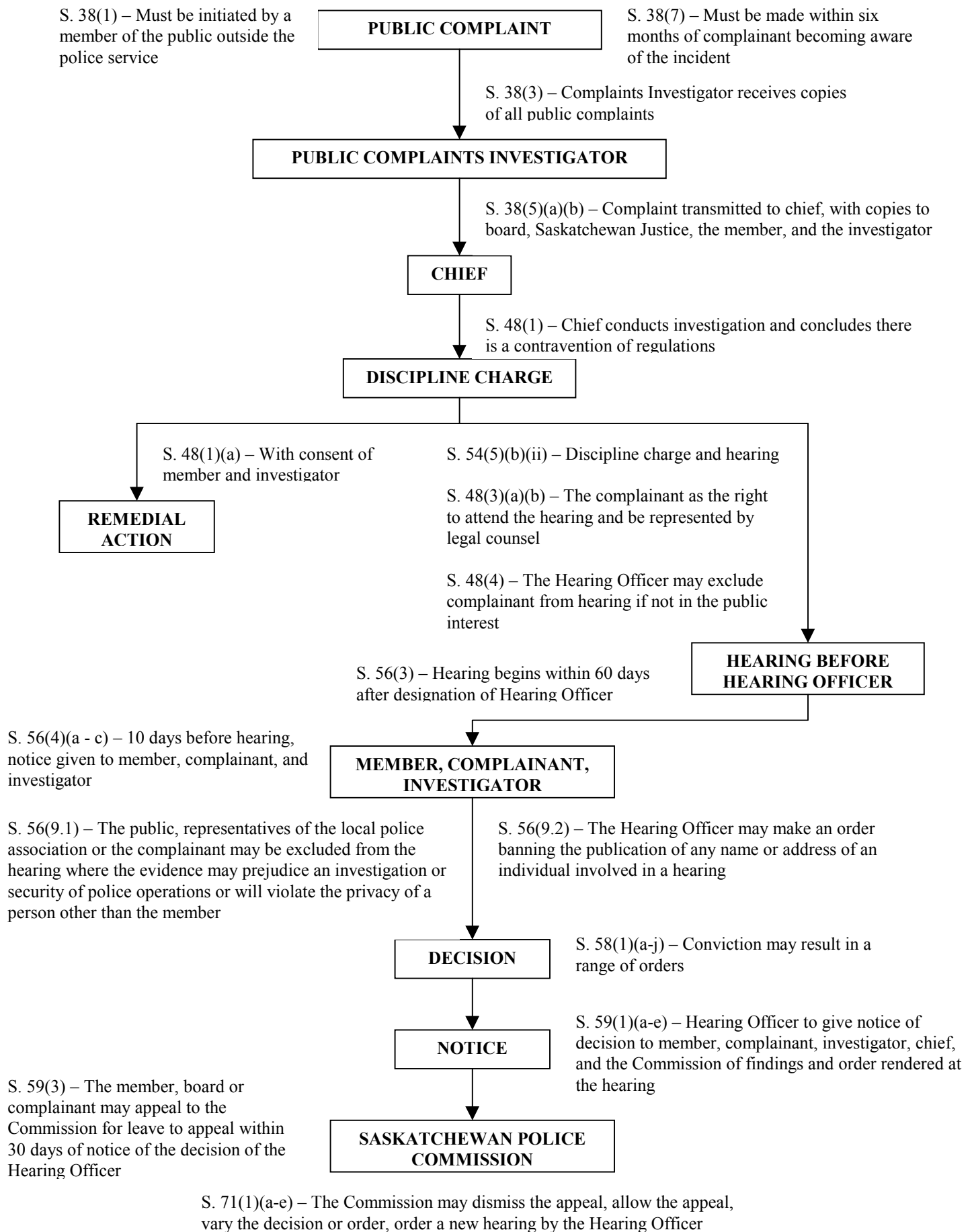
S. 71(1)(a-e) – The Commission may dismiss the appeal, allow the appeal, vary the decision or order, order a new hearing by the Hearing Officer

## INTERNAL COMPLAINT AS TO ACTIONS OF A CHIEF

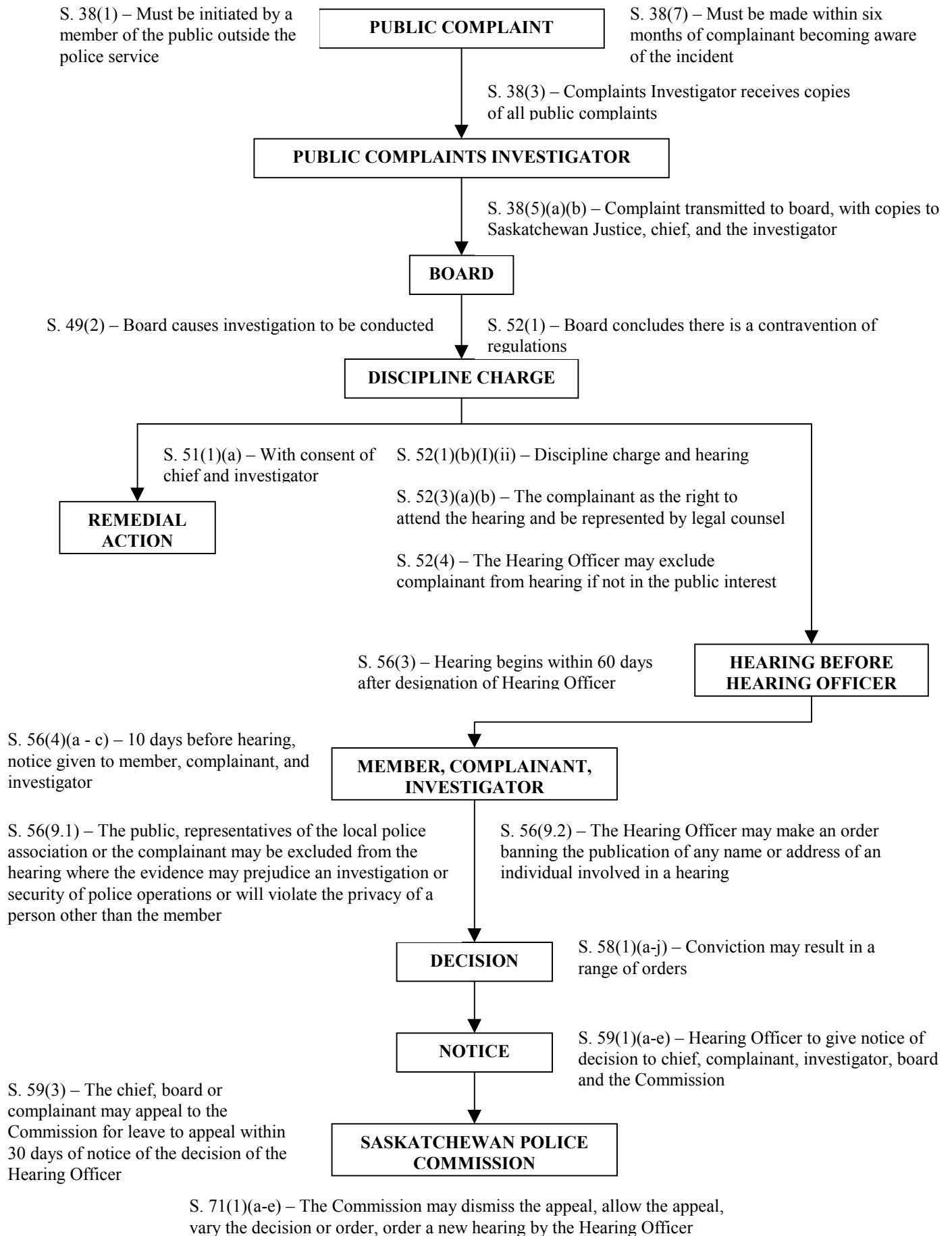


S. 71(1)(a-e) – The Commission may dismiss the appeal, allow the appeal, vary the decision or order, order a new hearing by the Hearing Officer

## PUBLIC COMPLAINT AS TO ACTIONS OF A MEMBER



## PUBLIC COMPLAINT AS TO ACTIONS OF A CHIEF



## DISMISSAL OF A MEMBER UNDER S. 60 OF *THE POLICE ACT, 1990*

