



March 9, 2017

## MEDIA STATEMENT

**Victoria** - This advisory is intended to help the media understand the process under the BC *Police Act* as it relates to the ongoing matters involving Victoria Police Department Chief Constable Frank Elsner. The *Police Act* sets out a series of steps and time periods for the “next steps,” and the aim of this advisory is to describe this process so that the media and the public can understand what is happening and what information is available to the public at various stages.

This Advisory will describe the Police Complaint Commissioner’s approach to the disclosure of information related to the ongoing *Police Act* process.

### Process

By way of background, in late 2015 and in 2016, the Commissioner ordered external investigations of potential misconduct by Chief Constable Elsner, and directed that two different Retired Judges serve as Discipline Authorities. The *Police Act* process provides that the external investigator is to supply a Final Investigation Report to the Discipline Authority, who must then decide what to do.

Under the *Police Act*, the Office of the Police Complaint Commissioner (“OPCC”) has a “gatekeeping” role. At this juncture, the investigative team has submitted its Final Investigation Reports to the Retired Judges who are serving as the Discipline Authorities. During the investigation stage, the OPCC provided oversight over the police investigation into these matters, to ensure that all the relevant investigative avenues were explored and the manner in which the investigation was conducted was professional.

These matters are currently in the early stages of the adjudicative process. At present, the Final Investigation Reports are being reviewed by the Discipline Authorities (the two Retired Judges). They are tasked with the preliminary determination of whether the evidence gathered in the Reports meets the threshold to direct any of the allegations (from the Order for External Investigation) to proceed to a disciplinary proceeding for determination.

In general terms, as noted above, when a Discipline Authority is reviewing a Final Investigation Report, the Discipline Authority must decide whether the evidence meets the threshold for the allegation to proceed to a disciplinary proceeding. If the Discipline Authority concludes this threshold is not met, then, as part of his gatekeeping role, the Commissioner reviews those allegations. If the Commissioner considers there is a reasonable basis to believe the decision is

incorrect, then the Commissioner has the discretion to refer the matter to another Retired Judge to independently review the Final Investigation Report and determine if the evidence meets the threshold to send to a discipline proceeding. (If that Retired Judge determines it meets the threshold, he or she will preside over a discipline proceeding.) The Commissioner has 20 business days to complete his review. And where the Commissioner agrees with a determination that an allegation does not meet threshold to send to a discipline proceeding, the allegation is concluded.

Dealing with the situation where the Discipline Authority *has* directed that allegations will go to a discipline proceeding, those proceedings must be convened no later than 40 business days from the date the Final Investigation Report was submitted to the Discipline Authority. It is important to note that disciplinary proceedings are not open to the public. (It should also be noted that the *Police Act* allows for the officer facing the misconduct allegations to request further investigation, within 10 business days after receiving the Final Investigation Report, and if that occurs the Discipline Authority will decide whether to accept or reject that request.) The OPCC does not play any active role at a discipline proceeding, although the OPCC may attend and monitor the proceedings. At the conclusion of a discipline proceeding, the Commissioner will review the accountability of the process and the outcome proposed. It is at this juncture that the Commissioner may, or in some cases is required to, initiate a Public Hearing or a Review on the Record. Both adjudicative avenues of review are presided over by a Retired Judge and both reviews are open to the public. It is at this point in the *Police Act* process that the Commissioner becomes an active participant in the proceedings.

A Public Hearing is an entirely new adjudication of the matter, in which evidence may be introduced, including testimony from subpoenaed witnesses.

### **Disclosure of Information**

In the *Police Act* process, the Commissioner is bound by a general duty of confidentiality in respect of the existence of an investigation and information derived from it. However, the legislation specifically gives the Commissioner the discretion to disclose information when it is in the public interest to do so.

In determining whether it is in the public interest to release information to the public pursuant to the *Police Act*, the Commissioner may consider factors which include, but are not limited to:

- maintaining public confidence in the investigation of police misconduct allegations and the administration of police discipline;
- the quantity, nature and accuracy of the information that exists in the public domain, as well as the source of that information;
- the privacy interests of those directly affected by this investigation; and
- guidance provided by the Court in relation to this matter.

At the conclusion of the *Police Act* adjudicative process the Commissioner anticipates he will release a Summary Concluding Report.