

July 30, 2018

Chief Constable Neil Dubord, Delta Police Department  
President, British Columbia Association of Municipal Chiefs of Police  
4455 Clarence Taylor Crescent  
Delta, BC V4K 3E1

Dear Chief Dubord,

**Re: Letter from BC Association of Municipal Chiefs of Police Dated March 7, 2018**

On March 7, 2018, our office received a letter from you on behalf of the British Columbia Association of Municipal Chiefs of Police (BCAMCP), addressed to the Police Complaint Commissioner, Mr. Stan T. Lowe.

I have been tasked by the Commissioner to respond to BCAMCP, as I normally address concerns from the Chiefs in my role as Deputy Police Complaint Commissioner. To summarize your correspondence, it would appear that BCAMCP has concerns regarding this office's approach in cases of on duty motor vehicle incidents involving police officers, potential violations under the *Motor Vehicle Act* and corresponding allegations of misconduct pursuant to the *Police Act*. According to the BCAMCP, there is confusion surrounding these types of incidents and the subsequent application of the *Police Act*, the *Motor Vehicle Act* and/or internal collision unit investigations which has resulted in a misperception in how each of these investigative courses of action intersect.

According to the BCAMCP, it is necessary for the BCAMCP and the Office of the Police Complaint Commissioner to arrive at an "agreement" as to the appropriate approach to investigating on duty motor vehicle incidents.

The BCAMCP identified two main issues requiring clarification:

1. The basis upon which the Police Complaint Commissioner (Commissioner) can direct that a violation ticket be issued, otherwise a *Police Act* investigation will be ordered; and
2. Whether the commission of a *Motor Vehicle Act* offence automatically constitutes misconduct under the *Police Act*, regardless of the circumstances.

At the outset I should point out that the correspondence from the BCAMCP is fraught with anecdotal misinformation and erroneous conclusions. It is unfortunate that more care was not taken to verify the factual inaccuracies relied upon in the letter before it was sent to our office. The information relied upon was highly misleading, and the conclusions that flowed were equally misguided.

The Office of the Police Complaint Commissioner is an independent statutory office of the Legislature of British Columbia. As an independent statutory officer, the Police Complaint Commissioner retains a significant degree of independence in discharging important duties on behalf of the public at large. By statute, we are tasked with the role of oversight of police on behalf of the public, and our actions are significantly influenced by the public interest at large.

It is an affront to the independence of this office to suggest that “it is necessary for both the BCAMCP and the Commissioner to clarify and agree upon the appropriate approach to investigating motor vehicle incidents that are truly accidental in nature, resulting in damage or injury.” Furthermore, your request to confine our response to a “general opinion” independent of any particular complaint or fact pattern, in the manner of a reference case will not be acceded to, as our office will not be impeded in providing a detailed response to the BCAMCP.

Given the BCAMCP is a special interest group whose activities include the lobbying of government ministries, the Commissioner has determined that the entirety of the correspondence between the BCAMCP and the Commissioner will be posted on our website to bolster both accountability and transparency.

### **Statutory scheme**

This office was created by statute to provide independent civilian oversight of municipal police in British Columbia. Generally speaking, the Commissioner is responsible for overseeing and monitoring complaints, investigations and the administration of discipline and proceedings under Part 11 of the *Police Act*, and for ensuring the purposes of Part 11 are achieved. When a complaint is received, the Commissioner must review that complaint and make a determination whether the conduct would, if substantiated, constitute misconduct by the member. This determination is not discretionary; if there is an allegation of misconduct, then the complaint must be made admissible (as long as the complaint is not frivolous or vexatious and has been made within the time period allowed under the Act and no extension has been granted by the Commissioner).

Alternatively, when information comes to the attention of our office (regardless of whether a complaint has been made), the Commissioner may initiate an investigation into the conduct of the member if that conduct would, if substantiated, constitute misconduct. This determination by the Commissioner is discretionary and includes the consideration of a public interest test when arriving at a determination.

Furthermore, the Commissioner has the discretion to discontinue investigations under the *Police Act* if it is determined that further investigation is neither necessary nor reasonably practicable.

### **The *Police Act* and Motor Vehicle Incidents**

With respect to motor vehicle incidents involving municipal police officers and the application of the *Motor Vehicle Act*, it is the view of our office that police officers are no different than members of the public in terms of the application of the Act. In fact, police officers are generally held to a higher standard of conduct than the public, and should not be accorded special treatment under the law. It has been our practice to conduct independent reviews of all motor vehicle incidents and employ an evidentiary approach, guided by the public interest. There will be matters dealt with under the *Police Act*, others will be dealt with only by the *Motor Vehicle Act*, and then other motor vehicle incidents where the conduct of the member will require accountability under both the *Motor Vehicle Act* and the *Police Act*. The *Police Act* is clear that available processes are not mutually exclusive.

In relation to the first issue identified in your correspondence, there is no basis in statute where the Commissioner can direct a municipal police department to issue a violation ticket to a member.

Although the BCAMCP indicated in their letter that a number of police agencies have received direction from our staff to issue violation tickets in the past, we take the position that this contention is anecdotally false. We would appreciate a specific case reference and name of the individual who made this assertion, as we have reviewed all of our relevant records over the past eight years and could not find evidence of any such direction from our staff.

In cases involving motor vehicle incidents, part of our review process involves contacting policing agencies to inquire whether a violation ticket has been or will be issued in the circumstances. This information is a relevant factor in determining whether the Commissioner will initiate an investigation into a motor vehicle incident. In some cases where a motor vehicle incident has been dealt with under the *Motor Vehicle Act*, it may be redundant and contrary to the public interest to review the same incident under the *Police Act*. You, Chief Dubord, are in an excellent position to validate our practice and process, as I recently dealt with you directly in relation to a motor vehicle incident involving one of your Delta Police members.

In relation to the second issue requiring clarification, it is the Commissioner's view that the commission of a *Motor Vehicle Act* offence on or off duty does not automatically constitute misconduct under the *Police Act*. It is unclear on what basis the BCAMCP would raise this issue, as again, our records confirm a case by case approach in our review of all motor vehicle incidents. Whether or not a *Police Act* investigation will be ordered as a result of a motor vehicle incident is dependent on the circumstances of the case and the public interest factors which exist. There are always a number of public interest factors for consideration in determining whether accountability under the *Police Act* is required for motor vehicle incidents involving on duty or off duty conduct of a police officer.

These public interest factors include, but are not limited to, the following:

- (i) Whether the *Motor Vehicle Act* process focused on the same conduct as a potential *Police Act* investigation, and whether the public interest concerns have been adequately address by a proceeding under the *Motor Vehicle Act*;
- (ii) The seriousness of the motor vehicle incident, which includes the consideration of any harm to the public or other police officers, the need to maintain public confidence in policing, and the potential that the matter may be considered for referral to the Criminal Justice Branch by the Police Complaint Commissioner pursuant to section 111 of the *Police Act*;
- (iii) Confirmation that the matter was concluded under the *Motor Vehicle Act* and the resulting disposition achieved the level of accountability which accords with the public interest [e.g., an appropriate Violation Ticket (VT) issued to the member and that the member has accepted responsibility and has paid the fine associated with the VT].

Depending on the circumstances of the motor vehicle incident, the issuance of a violation ticket and acceptance of responsibility on the part of the member, will be factors that the Commissioner will consider in determining whether to initiate an investigation under the *Police Act*.

The Commissioner has jurisdiction over approximately 3500 municipal and special municipal police officers. In March 2010 the new legislation was introduced, in the eight years since, the Commissioner has only reviewed 32 matters relating to incidents involving potential driving offences by police officers; there have been only 12 instances where the Commissioner has exercised his discretion to order an investigation into an allegation of misconduct.

Given the relatively low number of motor vehicle incidents reviewed by our office, and even fewer numbers in which investigations were ordered; we are at a loss to understand why the BCAMCP has raised this as an issue. In light of our records, the concerns expressed by the BCAMCP in this area, without any supporting documentation or evidence, seem imprudent.

As a reminder, the Police Complaint Commissioner is an Independent Officer of the Legislature. The actions of the BCAMCP in sending a letter to the Police Complaint Commissioner demanding agreement on the processes to be followed relating to motor vehicle incidents and the *Police Act* undermines the fundamental principles of civilian oversight of police: independence and accountability. I also remind you that the BCAMCP has no formal designation under this legislation.

In the future, should the BCAMCP disagree with the approach of this office or the Commissioner's decisions or interpretation of the legislation, there are more appropriate avenues for the BCAMCP to consider: convince government to amend the *Police Act* to reflect the type of civilian oversight your association is prepared to accept; file a petition for a Judicial Review in the Supreme Court of BC; or convince two thirds of the Legislature to remove the Police Complaint Commissioner from his position. The Police Complaint Commissioner is prepared to defend the practices and decisions of this office in whichever forum the BCAMCP chooses.

Attached is a letter which provides additional details regarding the Police Complaint Commissioner's response to the BCAMCP's letter.



Rollie Woods  
Deputy Police Complaint Commissioner

Enclosure