
To: All Municipal Police Chief Constables
Chief Officer, South Coast British Columbia Transit Authority Police
Chief Officer – Stl’at’imx Tribal Police Service
Officers in charge – CFSEU, IRSU, OCA

And to: All Professional Standards Investigators

From: Clayton Pecknold, Police Complaint Commissioner

Revised: August 14, 2019

**Re: Section 89 – Reporting of Death, Serious Harm and Reportable Injuries, and
Mandatory External Investigations in Cases of Death and Serious Harm**

PURPOSE

The purpose of this Information Bulletin is to:

- i. Confirm the mandatory notification requirements of ‘Reportable Injuries’ (RI) pursuant to section 89(1) of the *Police Act*;
- ii. Prescribe the form and manner required for mandatory reporting to the OPCC
- iii. Outline the process for conducting Mandatory External Investigations pursuant to section 89(2) of the Act, respecting incidents resulting in ‘Serious Harm’.

The Guideline titled *Notification of Death and Serious Harm to the OPCC* is still in effect. The Guideline provides clarity to departments in the criteria to be applied in determining whether a matter meets the threshold for a notification as it relates to serious harm.

A. REPORTABLE INJURY NOTIFICATIONS

When a member of a municipal police department or designated law enforcement agency is involved in an incident resulting in a person receiving an injury caused by the discharge of a firearm, or an injury requiring emergency care by a medical or nurse practitioner and requires transfer to a hospital, the police department or law enforcement agency must immediately report the circumstances of that incident to the OPCC.

If it is not clear whether the conduct of a member caused an injury which required transportation to a hospital, a Reportable Injury notification is required if there was preceding use of force in order to establish whether there was a nexus to the officer’s conduct and whether any

investigation is required. In addition, injuries that appear to be self-inflicted or as a result of medical distress must be reported to the OPCC if the affected person was in the care or custody of the municipal police department.

Section 89 (1) does not discern between on-duty and off-duty conduct. Therefore, if a person dies or apparently suffers 'serious harm' as a result of the conduct of a member who was off-duty at the time, notifications are required to allow for an independent review of the facts to determine whether a *Police Act* investigation should be ordered.

The Act indicates that notifications of Serious Harm and Reportable Injuries are to be reported immediately to the OPCC. If an incident occurs during business hours, notifications to the OPCC should be made by contacting the Intake Services Coordinator to obtain a file number in order to submit documents through the File Transfer System (FTSS).

If an incident occurs outside normal business hours, the department should endeavor to notify the Deputy Police Complaint Commissioner (DPCC) of the circumstances of the incident, especially if serious harm/death or the incident could or has attracted media attention. Police departments can send an e-mail or phone the DPCC with the necessary information. It is recognized that in some circumstances only preliminary information may be available at the time of initial reporting.

If departments or agencies are unsure whether an incident may meet the definition of a 'Reportable Injury' or 'Serious Harm' as contained in section 76, departments should provide the OPCC with notification or contact the DPCC for clarification. Please refer to the OPCC Guideline on the criteria to be applied for Serious Harm notifications.

B. FORM AND MANNER OF REPORTABLE INJURY AND SERIOUS HARM NOTIFICATIONS (NEW)

Pursuant to section 89(1) of the *Police Act*, the Commissioner can direct the form and manner of Reportable Injury and Serious Harm notifications.

A '**Reportable Injury/ Serious Harm Reporting Template**' has been developed to assist departments in ensuring that all relevant information is provided to the OPCC (see Appendix A).

All notifications made to the OPCC pursuant to section 89(1) of the *Police Act* should include at a minimum, the following information:

- The General Occurrence Report, incl. synopsis & detailed narrative, statements of involved police members, witness statements,
- All relevant Subject Behaviour Officer Response Reports (SBORR's)
- The Dog Handler Deployment / Review Report (if applicable)
- A detailed description of the nature and extent of the injuries sustained & the medical treatment received/planned
- Photographs of the injuries

- Copy of any video / photographs of the incident
- Any other relevant information

C. MANDATORY EXTERNAL INVESTIGATION PROCESS- SERIOUS HARM (REVISED)

Jurisdiction of the Office of the Police Complaint Commissioner

Pursuant to section 89(2) of the *Police Act*, the Police Complaint Commissioner must direct a mandatory investigation to be conducted by an external police department or other agency if there is reason to believe:

- a person died or suffered serious harm while in the custody or care of a member;
- a person died or suffered serious harm as a result of the conduct of a member; or
- a person died or suffered serious harm as a result of the operations of a municipal police department or designated law enforcement agency.

Jurisdiction of the Independent Investigations Office (IIO)

The IIO is responsible for conducting criminal investigations where it appears that a person may have died or suffered serious harm as a result of the actions of an officer, whether on or off duty, to determine if the involved officers may have committed an offence.

The mandate of the OPCC is separate and distinct from that of the IIO. Section 89 of the *Police Act* places a mandatory, non-discretionary responsibility on the Police Complaint Commissioner to direct an investigation into these matters and appoint an external police agency to conduct this investigation.

The purpose of such investigations pursuant to section 89(2) of the Act are to ensure that in cases where a person dies or suffers serious harm while in the custody or care of member of the municipal police department, as a result of the conduct of any member of the police department, or as a result of the operations of the police department, an external examination of the matter is undertaken. The nature of this investigation will be to assess any training, policy or misconduct allegations that may be relevant for consideration.

Process

Once a determination has been made that an incident meets the criteria under section 89 of the *Police Act*, the Act requires that the Police Complaint Commissioner must direct an external investigation into the matter and that the investigation be conducted by an external police agency. Effectively, this means that there will be parallel or concurrent investigations into the same incident by the IIO and through the provisions of Division 3 of the *Police Act*.

An external police agency will be identified and assigned to conduct the Mandatory External Investigation. As there will be a concurrent investigation by the IIO, it is paramount that the external investigating officer be in communication with the IIO regarding their investigation to ensure that any investigation does not prejudice the IIO's investigation.

Recommended procedures:

1. The assigned external police department/agency shall be responsible for communicating with, and monitoring the status of the IIO investigation.
2. The assigned external police department/agency shall request and receive timely disclosure of all evidentiary materials from the IIO as they become available, both during and at the conclusion of the IIO investigation.
3. The assigned external *Police Act* investigator shall ensure that they do not interfere with, or prejudice, the IIO criminal investigation. To this end, the assigned investigator shall coordinate evidence collection with IIO investigators, including interviews with affected persons, witnesses, involved police officers and police witnesses.
4. If the IIO investigation results in a criminal prosecution, the external *Police Act* investigator will be responsible for monitoring the criminal court process and shall obtain all relevant court materials, including Crown and Court decisions, and any documents and records which may be relevant to the *Police Act* investigation.
5. Requests for Extension to the *Police Act* investigation period will be considered to allow the investigation to continue until the completion of the criminal investigation.

Section 179(4) of the *Police Act* provides the Police Complaint Commissioner the authority to suspend proceedings if continuation of the proceedings would prejudice a criminal investigation or prosecution. If the investigating officer is of the view that further investigation under the *Police Act* will prejudice the IIO's investigation or any subsequent criminal prosecution, it is recommended that the investigating officer submit a *Request for Suspension* to the OPCC for the Police Complaint Commissioner's consideration.

A Memorandum of Understanding has been implemented between the IIO and the OPCC which outlines an agreement to provide investigative materials to the OPCC or to the assigned investigating officer.

Reporting Requirements

Given that the threshold for a Mandatory External Investigation requires the very serious consequence of death or serious harm, it follows that the nature and manner of the investigations should be bound by the same statutory processes as other investigations under the Act.

The provisions of the Act which apply to ordered investigations should apply to mandatory investigations involving serious harm or death. These include, but are not limited to, the issuances of notices, discontinuations, statutory reports such as progress reports and Final Investigation Reports (FIR), time limits and Discipline Authority decisions.

The investigating officer will submit the required statutory reports with the Discipline Authority, Police Complaint Commissioner and any member who may be potentially impacted by the findings.

Therefore, effective immediately, all Mandatory External Investigations pursuant to section 89 of the Act will follow the same notification, filing and reporting requirements as that of an ordered investigation pursuant to section 93 of the Act, include the same time limitations. The assigned external investigating officer will deliver his or her FIR to the Discipline Authority for decision and notification of next steps within six months of the date of the *Notice of Mandatory External Investigation*. If the investigations by the IIO is not completed by that time, the investigating officer should send in a request for an extension to the time limit.

SUMMARY OF PROCESS (REVISED)

1. Police Departments and other designated law enforcement agencies must immediately notify the Police Complaint Commissioner or the Deputy Police Complaint Commissioner of all incidents that result in the death or serious harm to a person who was in the care or custody of a member or as a result of the conduct of a member, or the operations of the police department – these include incidents that occur either on or off duty.
2. Upon review of the available information, the Commissioner will determine whether the matter meets the criteria for a Mandatory External Investigation pursuant to section 89 and, if so, must direct an external investigation into the matter. A criminal investigation associated to the incident should take precedence and as a result, the Mandatory External Investigation will be coordinated with the criminal investigation to prevent risk of prejudice to the criminal investigation or prosecution.
3. A monitor file will be opened for incidents where a member was off-duty and a determination made whether an investigation under section 93 is necessary.
4. Notification of a Mandatory External Investigation will be provided to the Chief Constable/Officer of the involved police department/agency and to the subject officer(s) involved in the incident.
5. The IIO will disclose investigative materials related to their criminal investigation directly to the investigating officer as they become available.
6. The investigating officer will complete an investigation in the matter and assess any misconduct, training or policy considerations that may have arisen. The reporting requirements as set out in section 98 of the *Police Act* apply.

D. SECTION 93 ORDERED INVESTIGATION - POTENTIAL MISCONDUCT

Section 93 (1) of the *Police Act* provides the Commissioner with the power to order an investigation if at any time, information comes to the attention of the Commissioner concerning the conduct of a member of a police department.

Upon receipt of a Reportable Injury, if the serious harm threshold does not appear to have been met, the OPCC shall assess all relevant and available information, including the reported conduct of the involved officer(s), and the Commissioner will determine whether the actions of the officer(s) would if substantiated, constitute misconduct, may constitute misconduct as defined in the Act.



Clayton Pecknold
Police Complaint Commissioner

APPENDIX A

*Office of the
Police Complaint Commissioner*

**REPORTABLE INJURY / SERIOUS HARM
REPORTING FORM**

Sec. 89 (1) POLICE ACT

Note: This form is to be submitted as soon as practicable to the OPCC for all incidents resulting in Reportable Injuries, Serious Harm, or Death as defined in section 76 of the Police Act.

Department / Agency:

Incident Date:

Time:

Reporting Date:

Time:

Reported by - Name:

Rank:

Phone:

IIO Notified: Yes / No

Date/Time:

By:

The following information should be included (where applicable) for all Reportable Injuries:

Report Type	Attached	N/A
General Occurrence Report		
Subject Behaviour - Officer Response Report (SBORR)		
Description of Injuries		
Photographs of injuries / scene		
Medical treatment received / required		
Police Canine Deployment / Recording Report		
Video		

Appendix "B"

RELEVANT LEGISLATION

The following excerpts of the *Police Act* govern the process for Reportable Injury notifications and Serious Harm incidents:

BC Police Act, RSBC 1996, Chapter 367

Section 76 – Definitions and Interpretations

"Reportable Injury" means any of the following:

- a) An injury caused by discharge of a firearm;
- b) An injury requiring emergency care by a medical practitioner or nurse practitioner and transfer to a hospital;
- c) An injury described by regulation under section 184(2)(c) [regulations under Parts 9 and 11]

"Serious Harm" means injury that,

- a) May result in death,
- b) May cause serious disfigurement, or
- c) May cause substantial loss or impairment of mobility of the body as a whole or of the function of any limb or organ

Note: The OPCC has provided criteria to assist in the notification of serious harm to the OPCC. This includes, but is not specifically limited to, the following injuries:

- A fracture of the skull, jaw, vertebrae, rib, humerus, radius, ulna, femur, tibia or fibia;
- Burns, cuts or lacerations that require admission to hospital on an in-patient¹ basis;
- The loss of any body part;
- Loss of mobility (paralysis) of any portion of the body;
- The loss of hearing or vision;
- Internal injuries that require admission to hospital on an in-patient basis.

Section 89 – Reporting of death, serious harm and reportable injury, and mandatory external investigation in cases of death and serious harm

1. A Chief Constable of a municipal police department must immediately report to the Police Complaint Commissioner, in the form and manner required by the Police Complaint Commissioner, if

¹ In-patient is defined as a patient who is admitted to hospital or other health care facility for at least an overnight stay.

- a. *a person dies or suffers serious harm or a reportable injury*
 - i. *while in the custody or care of a member of the municipal police department, or*
 - ii. *as a result of the operations of that municipal police department, or*
 - b. *a person dies or suffers serious harm or a reportable injury and the death, serious harm or reportable injury could be seen to be the result of*
 - i. *the conduct of any member of the municipal police department, or*
 - ii. *the operations of that municipal police department.*
2. *Despite any other provision of this Part, if a person dies or suffers serious harm in circumstances described in subsection (1) (a) or (b), the Police Complaint Commissioner must direct that an investigation into the matter be conducted by either of the following as investigating officer:*
- a. *a constable of an external police force who is appointed for the purpose of this section by a Chief Constable, a chief officer or the commissioner, as the case may be, of the external police force;*
 - b. *a special provincial constable appointed for the purpose of this section by the minister.*

Part 7.1 Independent Investigations Office

Section 38.09

- (1) When an officer is at the scene of an incident where it appears that
 - (a) a person may have died or suffered serious harm as a result of the actions of an officer, whether on or off duty; or
 - (b) an officer, whether on or off duty, may have contravened a prescribed provision of the Criminal Code or a prescribed provision of another federal or provincial enactment,the officer must immediately notify the Independent Investigations Office in accordance with the guidelines established by the chief civilian director...
- (3) On arriving at the scene of incident, one or more IIO investigators must take over and conduct the investigation of the incident under this Part.

Section 38.10

- (1) When a police service is conducting an investigation into the conduct of an officer under Part 11 [Misconduct, Complaints, Investigations, Discipline and Proceedings] and there is evidence that the officer may have, whether on or off duty,
 - (a) caused the death of a person,
 - (b) caused a person serious harm, or
 - (c) contravened a prescribed provision of the Criminal Code or a prescribed provision of another federal or provincial enactment,

the chief of the police service must immediately notify the independent investigations office in accordance with the guidelines of the Chief Civilian Director.

- (3) When the Independent Investigations Office receives notice under this section, one or more of its members must initiate and conduct an investigation into the matter under this Part.