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To: All Municipal Police Chief Constables

And to: All Professional Standards Officers

And to: All Chairs, Municipal Police Boards

From: Office of the Police Complaint Commissioner

Revised: February 12, 2020

**Re: Division 6 - Internal Discipline Matters**

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## PURPOSE

This revised Information Bulletin is intended to provide guidance to police agencies regarding notification to the OPCC to determine whether a matter should be dealt with by way of a public trust investigation (Div. 3) or internal disciplinary matter (Div. 6).

## LEGISLATION - RELEVANT PROVISIONS OF THE *POLICE ACT* (THE "ACT")

### Section 177(1)

The police complaint commissioner is generally responsible for overseeing and monitoring complaints, investigations and the administration of discipline and proceeding under this Part, and ensuring that the purposes of this Part are achieved.

### Section 93(1)

Regardless of whether a complaint is made or registered under section 78, if at any time information comes to the attention of the police complaint commissioner concerning the conduct of a person who, at the time of the conduct, was a member of a municipal police department and that conduct would, if substantiated, constitute misconduct, the police complaint commissioner may

- a) order an investigation into the conduct of the member or former member,

### Section 76

**"internal discipline matter"** means a matter concerning the conduct or department of a member that

- a) is not the subject of an admissible complaint or an investigation under Division 3 [*Process Respecting Alleged Misconduct*], and

- b) does not directly involve or affect the public;

Sections 77(1) - (3)

(1) In this Part, “**misconduct**” means

- a) conduct that constitutes a public trust offence described in subsection (2), or
- b) conduct that constitutes
  - i. an offence under section 86 [*offence to harass, coerce or intimidate anyone questioning or reporting police conduct or making complaint*] or 106 [*offence to hinder, delay, obstruct or interfere with investigating officer*], or
  - ii. a disciplinary breach of public trust described in subsection (3) of this section.

(2) A public trust offence is an offence under an enactment of Canada, or of any province or territory in Canada, a conviction in respect of which does or would likely

- a) render a member unfit to perform her or his duties as a member, or
- b) discredit the reputation of the municipal police department with which the member is employed.

(3) Subject to subsection (4), any of the conduct described in the following paragraphs constitutes a disciplinary breach of public trust, when committed by a member.

## BACKGROUND

Historically, transgressions involving conduct or deportment of a minor nature were the subject of the internal disciplinary process, as in most cases they related to the nature of a member’s employment. Examples of these types of transgressions include: being frequently late for duty, abuse of sick time policy, unsatisfactory dress and deportment, poor performance, failure to meet expected standards to be a police officer such as failing an annual firearm qualification.

The provisions of the *Police Act* must be interpreted in light of the purposes of the Act and the responsibilities and duties of the police complaint commissioner. Importantly, the courts have recognized that the 2010 amendments to the Act introduced the objectives of improving transparency, accountability and public confidence in the police and the police oversight process.

## DETERMINING PUBLIC TRUST VS INTERNAL DISCIPLINE

The proper categorization of police conduct or deportment is an important oversight function intended to maintain public confidence in policing. It is a function which should be correctly determined at the outset, as opposed to an ex post facto discovery, in the interests of preserving the best evidence available, and the timely determination of a matter for the member.

Entrenched in the Act is the inclusion of the public interest in the legislative scheme, and in some instances, specifically required in certain provisions. In determining whether a matter should be dealt with as a disciplinary breach of public trust or an internal disciplinary matter, a number of factors must be considered.

The factors which should be examined to determine whether the conduct or the deportment of a member is either a disciplinary breach of public trust or internal disciplinary matter include, but are not limited to the following:

1. Whether or not the conduct or deportment of a member is the subject of an admissible complaint [sec. 82 – Registered Complaints].
2. Whether or not the conduct or deportment of a member is the subject of an investigation pursuant to Division 3, which includes conduct that if substantiated, would constitute misconduct [sec. 93(1) – Ordered Investigations].
3. Whether the conduct falls within that described in sec. 77(3). If so, then further consideration should be given to the following:
  - a. Whether the conduct or deportment of the member directly “involve(s) or affect(s) the public”. In determining whether the public is involved or affected, it is important to consider those disciplinary breaches of public trust which include a “public interest” component in their determination. For example,
    - i. Public trust offences include an offence under a federal or provincial statute which would “discredit the reputation of the municipal police department with which the member is employed” [sec. 77(2)].
4. A disciplinary breach of public trust includes “discreditable conduct” which occurs when a member, on or off duty, conducts him or herself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department [sec. 77(3)(h)].
5. Whether there is an overriding public interest in having the conduct investigated as an alleged disciplinary breach of public trust in order to preserve or restore public confidence in the investigation of alleged misconduct, or the administration of the police discipline process.

## PROCESS

If potential misconduct becomes known, resulting from a complaint or other means, a determination shall be made whether the matter should be addressed as a disciplinary breach of public trust (Div. 3) or as an internal discipline matter (Div. 6). To that end, the police agency should commence the following process:

1. Presumptively deal with the matter as a disciplinary breach of public trust (Div. 3) and notify/seek direction from the OPCC in relation to the matter. It is important that the

OPCC is engaged in this determination at the outset to preserve public confidence in the police and to provide oversight of the police complaints process.

2. Provide the OPCC with all relevant information and documentation in order that the Commissioner can undertake an assessment pursuant to sec. 93, to determine whether to order an investigation into the matter.
3. Potential areas of uncertainty should always be forwarded to the OPCC for assessment. These may include, but are not limited to:
  - a. Matters related to Federal legislation including potential contraventions of the Criminal Code or other Federal Statutes, either on or off duty.
  - b. Matters related to Provincial legislation including potential contraventions of the *Motor Vehicle Act* provisions, both on and off duty, including Immediate Roadside Prohibitions (IRP's), driving prohibitions, unauthorized pursuits and which include all on-duty vehicle collisions and off-duty vehicle collisions where there are serious injuries, or where the member is charged with an offence.

In accordance with case law, the legislature intended the Act to constitute a complete code for dealing with disciplinary matters involving municipal police in this province. The existence of other mechanisms for review of police conduct and department cannot supersede the guidelines set out in the Act. While the findings of review boards such as the Accident Review Panel and Pursuit Review Panel may be beneficial in the gathering of evidence for a public trust investigation pursuant to the Act, they must not serve as an alternative mechanism to adjudicate a matter outside of the provisions of the *Police Act*.

## PROCESS - INTERNAL DISCIPLINE MATTERS

Once the Commissioner has determined the matter can proceed by way of internal discipline, departments must adhere to the processes laid out in Division 6 of the *Police Act*. This includes, but is not limited to, the following:

1. Advising our office of the outcome of an internal discipline investigation including the identification of the type of the alleged misconduct(s) and any disciplinary/corrective measures imposed. [sec. 175(4)]
2. Ensuring that the member's service record of discipline has been updated to include any disciplinary/corrective measures resulting from an internal discipline investigation. [sec. 180 (1)(f)]
3. Providing our office with any additional information or records respecting an internal discipline matter relating to the investigation (upon request). [sec. 175 (5)] and,

4. Ensuring that the delegation of Internal Discipline Authority responsibilities by the Chief Constable are in writing and provided to this office and the member concerned for each internal discipline matter. [sec. 176]

### **INVESTIGATION STATUS RESPECTING FORMER MEMBERS - *new***

If a respondent member's employment with their respective police department ceases or is terminated during the course of an ongoing Div. 6 Internal investigation, the Div. 6 investigation will continue and the DA will make a determination with respect to the identified allegations. All reporting requirements under Division 6 will continue to apply. The disposition of the matter shall be communicated to this office and if applicable, entries made on the former member's Service Record of Discipline as per sec. 180(1)(f) of the Act.

### **DEPARTMENTAL PROCEDURES**

Departments must establish procedures for dealing with internal discipline matters that are not inconsistent with the *Police Act* [sec. 175]. These procedures are not in effect until the board of the municipal police department approves the procedures and a copy of the procedures have been filed with this office. Departments are encouraged to review their internal discipline procedures to ensure they are current, are not inconsistent with the Act, are approved by the police board and filed with this office.



Clayton Pecknold  
Police Complaint Commissioner

cc: OPCC Staff