
To: Retired Judges appointed under the *Police Act*
All Municipal Police Chief Constables
Chief Officer, Metro Vancouver Transit Police
Chief Officer – St’atl’imx Tribal Police Service
Chief Officer – Combined Forces Special Enforcement Units (CFSEU-BC) /
Organized Crime Agency (OCA-BC)

And to: All Professional Standards Officers

From: Office of the Police Complaint Commissioner (OPCC)

Date: February 12, 2020 (Reissued March 2023) – **Revised: January 15, 2024**

Re: **Processing Notifications to the OPCC Pursuant to Divisions 3 and 6 of the *Police Act***

PURPOSE

The purpose of this Information Bulletin is to advise municipal police departments¹ of the factors considered by the Police Complaint Commissioner when exercising the discretion provided under section 93 of the *Police Act*. This is separate from the statutory Guideline or Information Bulletin respecting notification of incidents involving serious harm and death. For those notifications, please refer to *Guideline 1 – S.89 Serious Harm* and *Information Bulletin 1 – Mandatory Reporting and External Investigations* for guidance.

RELEVANT LEGISLATION

This Information Bulletin has been developed in accordance with the responsibilities, powers, and definitions established in sections 177(1), 93(1), 76 (“internal discipline matter”), and 77(1)-(3) of the *Police Act* (the “Act”).

Section 76 of the Act defines an “internal discipline matter” as concerning the conduct or department of a member that is not the subject of an admissible complaint or an investigation under Division 3, **and**, does not directly involve or affect the public.

Section 77 (Division 2) provides for the definition of misconduct, and specifically, subsection (3) identifies 13 separate disciplinary breaches of public trust. Pursuant to section 175(3), the standards against which internal discipline conduct or department is assessed is not restricted to the definitions of misconduct as outlined in Division 2.

¹ Please note, the definition of “municipal police department” within the *Police Act* extends to all agencies with members who fall under OPCC jurisdiction.

The Police Complaint Commissioner (“Commissioner”) does not conduct investigations or decide misconduct allegations on their merits. Rather, the Commissioner performs a gatekeeping role to ensure such allegations are dealt with appropriately in the public interest and in accordance with the Act.

The process respecting investigations into alleged misconduct can be found in Division 3 of the Act, whereas Division 6 provides for the processes for internal discipline matters.

Depending on whether an investigation is commenced under section 82 or 93, there may be distinct parties involved. The sections contained in Division 3 govern the Commissioner powers in initiating or directing investigations, set out various timelines for reporting, investigation powers, members’ duties to cooperate, the taking of and use of statements, the contents of a “final investigation report”, and decisions by discipline authorities. This Division also governs the disciplinary processes in relation to alleged misconduct and includes important checks and balances through involvement of the OPCC. These checks and balances include providing investigative advice/direction to support thorough and complete investigations, and the appointment of retired judges to perform several adjudicative functions.

The provisions contained in Division 6 are relatively brief in comparison, rely on the procedures established by the respective police agency and are subject to the grievance procedures outlined within the department’s collective agreements.

At any time, the Commissioner has the authority to initiate investigations pursuant to section 93 of the Act, regardless of whether a registered complaint has been filed, if that conduct would, if substantiated, constitute misconduct. The Commissioner cannot direct the actions of municipal police boards or departments on issues of policies and service to the public, or internal discipline, staffing or employment matters.

NOTIFICATIONS UNDER SECTION 93 OF THE *POLICE ACT*

Municipal police departments should notify the OPCC as soon as they become aware of possible misconduct by one of their officers. It is important for the OPCC to be engaged at the outset to preserve public confidence in the police and to provide oversight of the police complaints process.

Police departments may request that the Commissioner initiate an investigation pursuant to section 93. Departments can also indicate if they are of the view that an investigation under Division 6 of the Act is more appropriate. The Commissioner will determine whether an investigation will be initiated pursuant to section 93. If an investigation is not initiated by the Commissioner, the department may proceed with an investigation pursuant to Division 6 should the department consider the circumstances warrant such an investigation.

Notifications to the OPCC should include the following:

1. All relevant information and documentation to ensure the Commissioner can undertake an assessment pursuant to section 93 to determine whether to order an investigation into

the matter. Departments should avoid undertaking investigative steps such as obtaining statements without the necessary authority.

2. Identify whether continuation of the Act investigation may prejudice an ongoing criminal investigation or prosecution and a request to suspend.
3. Identify whether there is a need to direct an external police force to conduct the investigation or the need for an external Discipline Authority, including the public interest reasons for doing so. Please note that Discipline Authorities can delegate their powers or duties to a Chief Constable, Deputy Chief Constable, or senior officer of another municipal police department pursuant to section 134 of the Act.
4. For matters where the department is of the view that a Division 6 investigation is appropriate, it may be of assistance to note if the department is considering appointing an external investigator external (e.g., labour lawyer or police investigator with an external police force). Proceeding by way of Division 6 requires that the Discipline Authority reside with the home agency.
5. 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 (IRPs), driving prohibitions, unauthorized pursuits, all on-duty vehicle collisions, and off-duty vehicle collisions where there are injuries or where the member is charged with an offence.

An incident involving a member of a municipal police department may give rise to multiple legal processes and engage other mechanisms for review. The existence of other mechanisms for review of police conduct and department cannot supersede the requirements of 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 an investigation pursuant to Division 3 of the Act, they cannot serve as an alternative to the provisions of the Act.

DETERMINATIONS UNDER SECTION 93 OF THE POLICE ACT

All allegations of misconduct, regardless of whether they involve internal matters, must be provided to the OPCC for review. The Commissioner has a responsibility to consider the public interest when reviewing allegations of misconduct and must independently determine whether an investigation should be initiated under the Act. Determinations regarding whether the Commissioner will initiate an investigation pursuant to section 93 of the Act should take place at the front end rather than retroactively to preserve the best evidence available and to support timely conclusions of matters for those involved.

In determining whether to initiate an investigation pursuant to section 93 of the Act, the Commissioner will examine the following factors, among others:

1. Whether the conduct or department of a member is the subject of an admissible complaint or whether the matter should be more appropriately dealt with through the processing of a registered complaint [Section 82].
2. Whether the conduct, if substantiated, would constitute misconduct pursuant to section 77 of the Act.
3. Whether the conduct or department of the member directly involves or affects the public. It is noted that the term “affect” is broad (“make a difference to; produce or cause a change to”).
4. Whether there is an overriding “public interest” in having the conduct investigated pursuant to Division 3 of the Act. For matters that do not involve or affect the public, this may include, but is not limited to:
 - a. A member commits an offence under a federal or provincial statute that would “discredit the reputation of the municipal police department with which the member is employed” [Section 77(2)];
 - b. A member, on or off duty, conducts themselves in a manner that the member knows, or ought to have known, would be likely to bring discredit on the municipal police department [Section 77(3)(h)]; or
 - c. Violations of departmental policy or incidents where the allegation of misconduct would be likely to undermine public confidence in the police or the administration of police discipline.

PROCESS - INVESTIGATIONS PURSUANT TO SECTION 93 OF THE *POLICE ACT* (DIVISION 3)

The Commissioner will issue a notice initiating an investigation, identifying the respondent member(s), the investigating agency and Discipline Authority, and Chief Constable/Officer of the respondent member (if different from the Discipline Authority). The purpose of the notice is to advise departments and members of the Commissioner’s decision to initiate an investigation into the conduct of the member or former member.

Please refer to *Information Bulletin 16 – Orders for Investigation and Notices of Admissibility* for further information relating to Orders for Investigation issued by the Commissioner.

The investigation will proceed in accordance with Division 3, Part 11 of the Act.

PROCESS - INTERNAL DISCIPLINE MATTERS (DIVISION 6)

If the Commissioner determines that no investigation under Division 3 is required and the department proceeds under Division 6, police departments must adhere to the processes laid out in that Division of the Act and their established procedures. This includes, but is not limited to the following:

1. Advising the OPCC 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 [Section 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 [Section 180(1)(f)];
3. Providing the OPCC with any additional information or records respecting an internal discipline matter relating to the investigation (upon request) [Section 175(5)]; and
4. Ensuring that the delegation of Internal Discipline Authority responsibilities by the Chief Constable are in writing and provided to the OPCC and the member concerned for each internal discipline matter [Section 176].

If an investigation yields any new information that could impact the decision to continue by way of Division 6, that new information must be provided to the OPCC as soon as practicable for review and processing.

Former Members

If a member's employment with their respective police department ceases or is terminated during the course of an ongoing Division 6 investigation regarding their conduct, the Division 6 investigation must continue, and the Discipline Authority 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 must be provided to the OPCC and, if applicable, entries made on the former member's Service Record of Discipline as per section 180(1)(f) of the Act.

Internal Discipline Procedures

Departments must establish procedures for dealing with internal discipline matters that are not inconsistent with the Act [Section 175]. Such procedures are not in effect until the board of the municipal police department approves them and a copy of the procedures has been filed with the OPCC. Departments are encouraged to review their internal discipline procedures to ensure they are: (a) current; (b) not inconsistent with the Act; (c) approved by the board; and (d) filed with the OPCC.

Office of the Police Complaint Commissioner